

Local Governments and Home Rule in South Carolina

A Citizen's Guide



By

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May 2011

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JIM SELF CENTER ON THE FUTURE

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Revised Edition

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Strom Thurmond Institute of Government and Public Affairs
Clemson University

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INTRODUCTION

South Carolina has more than 400 elected local governments. While South Carolina's counties (46) and municipalities (269) exist for general purposes, the 85 school districts exist solely to provide public education. There are also a number of special purpose districts, some of which are governed by elected boards. A few counties with more than one school district also have an elected county Board of Education.

Home rule is the exercise of independent authority by elected local governments. This booklet is intended to help South Carolina's local officials and citizens understand the powers that local governments may exercise under the state constitution and legislative acts of the General Assembly. It also describes some of the limitations on those powers that have been enacted by the General Assembly.

The United States Constitution does not mention local governments. Each state decides for itself what kinds of local governments are allowed and what powers they may exercise. Some states include a definition of home rule in their constitutions and describe the forms it may take in legislation. Other states define home rule by statute.

Local governments have those powers not forbidden by the legislature and only those powers that are part of the South Carolina code. From the local viewpoint, elected officials are accountable to their citizens. At the same time, they frequently are kept from responding to citizens' needs and wishes because of restrictions by the state.

From the state's viewpoint, all the powers and responsibility rest with state government, which has chosen to delegate some powers to local governments. When there is conflict, the courts decide. The General Assembly can and does overrule court decisions with subsequent legislation.

WHAT IS HOME RULE?

Citizens and Home Rule: Referenda

In some states, citizens have the power to tell state and local governments what to do by petitioning them to put issues on the ballot (called an initiative) and then voting in binding referenda to add or change laws. South Carolina does not permit statewide citizen initiatives to appear on the ballot, as is the case in many other states. Issues on the statewide ballot must originate in the General Assembly and South Carolinians do participate in some home rule decisions when they vote on constitutional changes that take place in conjunction with the November general election. Occasionally, the General Assembly will authorize advisory but not binding referenda, which provide them with a sense of the electorate's sentiments. Initiative is authorized at the municipal and county levels on specific issues.

The Home Rule Act provided for mandatory local citizen referenda in choosing the form of county and city government, described in a later section. Referenda are also required when schools wish to issue bonds to fund school improvements in excess of constitutional limits on borrowing.

A referendum is required to alter county lines by annexing a portion of one county to another. The referendum requires the consent of two of the three groups: the annexing county, the county losing territory, and the area to be annexed. Municipal incorporation or dissolution also requires a referendum.

County referenda are used to make those decisions that the state has decided should be made at the local level. For example, counties can adopt the local option sales tax through referendum. Adopting a capital project sales tax or issuing general obligation bonds in excess of the constitutional limit at the local level also require a referendum. At present, there is a citizen effort to require a referendum to change the makeup of local school boards and/or to consolidate or split school districts. Under the current system, the power to make those changes rests with the General Assembly.

Unlike states, local governments cannot delegate their powers through referenda. They, however, can use nonbinding referenda to gauge the feelings of their constituents.

Kinds of Home Rule

The extent and type of home rule authority granted to local governments varies considerably from state to state. There are three general kinds of home rule authority: structural, fiscal, and legislative or regulatory.

Structural home rule refers to the power of citizens, through referendum or through their elected officials, to determine the structure of local government including the size of the governing body, the terms of office, the method of selection, and the boundaries of the jurisdiction that they serve.

Fiscal home rule refers to the powers of local governments to make their own financial decisions about what revenue sources to use and at what rates, to approve their own budgets and make their own spending decisions.

Legislative/Regulatory home rule refers to the powers of local governments to pass and enforce ordinances of various kinds.

DEVELOPMENT OF HOME RULE IN SOUTH CAROLINA

In the 1880s, a national movement made headway in many other states, which granted local governments more freedom, flexibility, home rule and less state control. Just emerging from reconstruction after the Civil War, South Carolina was not a part of that movement. It was not until the 1970s, that South Carolina amended the 1895 state constitution to better define and to expand the powers of local governments, especially counties.

Since that time, the General Assembly has both expanded and restricted the powers of local governments, particularly in fiscal areas. The General Assembly has continued to exercise authority over a variety of local government appointments and legislation.

The 1895 Constitution

The 1895 constitution provided for counties, cities, and school districts. Until the 1970s, municipalities, the oldest form of local government in South Carolina, had more autonomy than other local governments.

The authority for local government is summarized in Article VIII, Section 17, which provides that “all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this constitution and by law shall include those fairly implied and not prohibited by this Constitution.”

Prior to 1974, the county delegation, which consisted of the senator and the House members from that county, was the county governing body. County delegations made appointments and prepared the supply bill (or budget) for their respective counties. Each supply bill was then enacted into law by the General Assembly. At the request of the county delegation, the General Assembly also approved requests from school districts, to levy taxes for school purposes.

Even though the county delegation now often includes non-resident senators and representatives who serve part of a county, remnants of the county delegation system persist today in local legislation and in the involvement of legislators from another county in appointments to county boards and commissions.

The Home Rule Act

During the 1970s, large parts of the 1895 Constitution were modified on an article-by-article basis, with voters asked to vote yes or no on entire articles. In 1973, voters approved of changes in Article VIII of the Constitution, which expanded home rule for local governments. Elected and autonomous county government in South Carolina emerged in 1974.

Challenge to Delegation Government

The motivation for this legislation was federal court decisions that required proportional representation for both houses of state legislatures. In the South Carolina Senate, districts had to be redrawn that crossed county lines, leaving some small counties with no resident senator, some large counties with multiple senators, and most counties sharing part of one or more senators with neighboring counties. In the House, it was no longer possible to confine House districts to a single county, so these districts also spilled over county lines.

As a result, some House members represented parts of two counties (sometimes three), and served in more than one county delegation. A part of a county would often be represented in both House and Senate by legislators who did not reside in the county. This situation represented a challenge to the role of county delegations in controlling county government.

Major Changes Under the Home Rule Act

The General Assembly passed the Home Rule Act in 1975, which implemented the specific changes authorized by the revision of Article VIII. Municipalities and school districts, whose powers were already well defined either by the constitution or in statutory law, experienced few changes as a result of the Home Rule Act.

To the contrary, the powers of counties were significantly expanded. Existing special purpose districts continued to operate, but new districts could no longer be created.

The structure, functions, and financing of counties and municipalities were spelled out in the Home Rule Act. For the first time, the act also made intergovernmental cooperation possible, because municipal and county governments now had similar powers.

The governance, function and financing of school districts are set up in the constitution and general law, but they were not included in the provisions of the Home Rule Act. The General Assembly specifically established the structure and financial authority of each individual county's school district in legislation, so their structures and fiscal powers are diverse.

Local Legislation

The Home Rule Act prohibited the General Assembly from passing bills related to a single political subdivision, although the courts have ruled that school districts are not included in that provision. Legislators still find ways to draft these bills, known as local legislation, to accomplish a particular local purpose. As a courtesy, legislators from other counties often abstain from voting on

the measure and instead voting that they are present. In this way, the only votes cast are by members of that county's delegation. Sometimes the governor chooses to veto local legislation, and occasionally there is a court challenge to the procedure.

In the House, each legislator representing some portion of a county has an equal vote on legislation affecting that county. Under Senate rules, however, if a county delegation includes more than one senator, the votes are apportioned based on the percentage of the county's population that each Senator represents.

STRUCTURAL HOME RULE: DEFINING THE BOUNDARIES

MUNICIPALITIES AND COUNTIES

Incorporation

[\[S.C. Code of Laws, Section 5-1-30 *et seq.*\]](#) New municipalities may be formed by referendum if the area to be incorporated has at least 300 persons per square mile and is at least five miles away from an existing municipality. The five-mile restriction does not apply if a neighboring municipality has turned down an unincorporated area's request for annexation; if the neighboring city is in a different county; if the area is within two miles of the Atlantic Ocean or on a sea island bounded by the Atlantic Ocean if such areas contain at least 150 dwelling units averaging one unit per acre, provided that the incorporation petition contain 15 percent qualified electors; or if the area is located in a county having a population of less than 51,000 people.

Article VIII of the constitution limits the number of counties to 46. A county must be at least 500 square miles with assessed taxable property of at least \$2 million and a population of 15,000, although McCormick and Allendale do not currently meet the population requirement.

Consolidation

[\[S.C. Code of Laws, Section 5-3-30 *et seq.*, and 4-8-10 *et seq.*\]](#) Two or more municipalities may vote to consolidate. In the past two decades, there have been a few consolidations. Batesburg and Leesville in Lexington County joined to form Batesburg-Leesville in 1992. The Spartanburg towns of Pacolet and Pacolet Mills consolidated in the early 2000s.

Counties may consolidate by petition to the governor, who sets a date for an election. If the citizens of both counties approve, the legislature may create a new consolidated county.

Cities and/or special purpose districts/tax districts may combine with a county, provided a consolidation commission is created and all statutory procedures followed. Specific cities or special districts may elect to be excluded from such a consolidation.

In 1992, the legislature finally implemented a 1972 constitutional amendment by enacting legislation that spells out the process for city-county consolidation. To date, no counties have taken advantage of that option.

Annexation

[\[S.C. Code of Laws, Section 5-3-10 *et seq.*\]](#) Portions of a county can seek annexation to an adjacent county. To start the process, the county council in the "losing" county may propose the change or 10 percent of the registered voters of the seceding area may petition for the change. Then the governor appoints a commission to study the request. When their work is completed,

elections are held in the area seeking change and the “accepting” county. If the election is successful in both areas, the General Assembly must ratify the change.

As growth occurs on municipal borders, municipalities have the powers to grow through annexation. Adjacent property owners can request annexation and be accepted by ordinance.

Larger areas can be annexed by petition if 75 percent of the landowners representing 75 percent of the value of the property to be annexed agree to annexation. The area is annexed by ordinance after a public meeting and hearing. Proposals to make annexation less difficult continue to be under consideration by the General Assembly.

South Carolina has very restrictive municipal annexation laws. In many states, municipalities can initiate annexation, and requirements for consent from landowners are much less strict. North Carolina’s municipalities find it very easy to annex adjacent property with urban character.

Municipalities in South Carolina would like to be able to annex “doughnut holes” or enclaved areas that are surrounded by the municipality. These enclaves create confusion and are inefficient when it comes to service provision. Municipalities have asked that the percentage numbers required in the petition method of annexation be reduced.

Counties, generally, have not favored municipal annexation of additional property. However, because county powers encompass the total county, a county does not actually lose jurisdiction in municipalities as they expand. Counties continue to levy county taxes in annexed areas, as they do in any municipality in the county. Counties continue to receive the revenue from accommodations and hospitality taxes that they received before the annexation. The annexing municipality receives any growth in revenues from these taxes.

Reduction

[\[S.C. Code of Laws, Section 5-3-280 and 285\]](#) Upon receipt of a petition of the majority of landowners, a municipal council may hold a referendum to release a portion(s) of its territory. If the vote is favorable by majority vote, the municipal council must adopt an ordinance to that effect. Publicly owned property may be removed from territorial limits upon resolution of council.

Dissolution

[\[S.C. Code of Laws, Section 5-1-100\]](#) Citizens may petition and vote to disband a municipality. The state may also disband municipalities if the Secretary of State determines that any previously incorporated municipality is neither performing municipal services nor collecting taxes or other revenues, and has not held an election during the past four years. Any municipality whose population falls below 50 must forfeit its charter, and cease to exist as a municipality. There is no provision for dissolving a county except by annexation or consolidation, since every resident of South Carolina needs to live in a county.

SCHOOL DISTRICTS

[[S.C. Code of Laws, Section 59-17-10](#) *et seq.*]

Eighty-five school districts provide education services in the state. In recent years, six smaller districts in counties with multiple districts have consolidated with neighboring districts. Before the 1950s, South Carolina had more than 1,200 school districts. Consolidation reduced that number over the years to the present 85 districts, which oversee preK-12 education.

Twenty-nine counties have a single countywide school district. Seventeen counties have multiple districts, ranging from two to seven in number. Ten school districts also serve small parts of neighboring counties.

Decisions about redrawing school district lines are made through local legislation. Those changes may increase or decrease the number of school districts in a county by consolidation or splitting districts, or by recombining parts of districts. In recent years, consolidations have taken place in Marion, Orangeburg, and Sumter Counties by this method.

STRUCTURAL HOME RULE: FORMS OF GOVERNMENT

MUNICIPALITIES

[[S.C. Code of Laws, Section 5-5-10](#) *et seq.*]

Cities may choose among three forms of government: the council form, the council-manager form, and the mayor-council form. The state sets other requirements such as the number of council members, the length of terms, and conduct of elections. The state also provides procedures for changing the form of government.

Council

In the council form, executive and legislative powers are jointly exercised by the mayor and council. In most cases, an administrator is hired to conduct the daily business and to implement the policy and legislation of the council. This form is known as the “weak mayor” form.

Council-Manager

In the council-manager form, policy-making powers are vested in the council, which includes the mayor. A professional manager makes all personnel decisions, prepares an executive budget, and implements the legislative decisions and policies of the council. The manager has executive powers that administrators do not.

Mayor-Council

In the mayor-council form, the council and mayor set policy together by ordinance. The mayor, however, has strong executive powers much like the manager’s powers in the council-manager form. This form is known as the “strong mayor” form.

Of South Carolina’s 268 municipalities, about 150 have the mayor-council form. Most are small municipalities with limited financial resources. Fewer than 35 municipalities have chosen the council-manager form.

The number of council members ranges from five to nine, with staggered-terms. Typically, the term is four years. Municipalities set their election dates by local ordinance.

Many municipalities have chosen to hold their elections on the general election date in November in odd-numbered years so that they will not be overshadowed by state or national elections.

COUNTIES

[[S.C. Code of Laws, Section 4-9-10](#) *et seq.*]

Counties may choose among four forms of government: the council form, the council-supervisor form, the council-administrator form, and the council-manager form. The state sets other requirements such as the number of council members, the length of terms, and conduct of elections. The state also provides procedures for changing the form of government. County elections are held in conjunction with the general elections in November in even-numbered years.

Council

In the council government form, the council exercises executive, legislative and administrative powers. In most cases, an administrator is hired to carry out daily business, implementing the policies and legislation of the council.

Council-Supervisor

In the council-supervisor government form, the supervisor is elected and serves as chief executive and chairs the council. Legislative and policy-setting powers rest in the council.

Council-Administrator

In the council-administrator government form, the administrator serves as the chief administrative officer for the county government. The administrator executes the policies, directives, and legislative actions of the council. The council-administrator form is the most common form used by counties.

Council-Manager

In the council-manager government form, the manager makes all personnel decisions, prepares an executive budget, and implements the legislative decisions and policies of the council. In this form, county council can decide to appoint the auditor and treasurer instead of have them chosen by election.

Currently 34 counties have the council administrator form of government. Six have the council form, four have the council-supervisor form, and two (Greenwood and York) have the council-manager form.

County Boards and Commissions

Regardless of the form chosen, the council appoints county boards and commissions with the exception of those established in the state code of laws or the constitution. School boards and boards of special purpose districts are exempt from this provision. In some cases, counties have inherited boards and commissions that were created by the legislature prior to home rule. In many cases, members of these boards and commissions, such as county boards of registration and elections and

the local governing board of social services, are still appointed by the legislative delegation, but the funding comes from the county budget.

State-Mandated Elected County Officers

The constitution requires that voters of each county elect a clerk of court, coroner, and sheriff in countywide elections. State law also requires that counties elect the auditor and treasurer, unless the county operates under the council-manager form, in which case the council appoints the auditor and treasurer. Although the county must provide operating funds and facilities for these officials, county government has no authority over them.

SPECIAL PURPOSE AND SPECIAL TAX DISTRICTS

[[S.C. Code of Laws, Section 6-11-10](#) *et seq.*]

In some parts of the state, special purpose districts provide water, electric, sewer, recreation, fire protection, and other urban-type services in defined areas. After the Home Rule Act in 1974, special purpose districts could no longer be formed. Instead, counties were given the ability to form special tax districts at the request of a majority of citizens within a specified area, subject to approval by referendum. Special tax districts for a particular service are also created by ordinance after petitioning by 75 percent of the owners of 75 percent of the assessed valuation of the real property in the proposed district. These special tax districts are authorized to provide specific services, financed by taxes levied in the service area.

SCHOOL DISTRICTS

[[S.C. Code of Laws, Section 59-17-10](#) *et seq.*]

School boards are governed by boards of trustees. The number of trustees and the use of designated seats or at-large method of selection are spelled out for each county in local legislation passed by the General Assembly. As a result, there is a great deal of diversity in the structure of school boards.

In most school districts, the trustees are elected by the citizens. However, board members are appointed in seven of the 85 districts. In Clarendon One, five seats are elected and four appointed. In Clarendon County and Dillon County, the legislative delegations appoint county boards that make appointments to the Clarendon One and Two and Dillon One, Two, and Three school boards.

Prior to massive consolidation of school districts in the 1950s, each county had a Board of Education that oversaw the many school districts in each county. Only five county boards remain in multi-county districts. Some are elected, others appointed. Their powers and duties are as specified in local legislation.

Marion County's county board is elected and appoints school board members and has fiscal authority over Marion One, Two, and Three. The Anderson County Board of Education has fiscal authority over five local school boards; Orangeburg County's board has limited fiscal authority over the county's three districts.

All school districts employ a superintendent of schools to administer board policies and manage day-to-day operations of the school district.

FISCAL HOME RULE

Fiscal home rule refers to the power of local governments to set their own mill rates for property taxes, to determine what other taxes to levy and what fees to charge for public services, and to establish their own budgets. Since 1974, counties have had more independent authority in these matters, making them similar to municipalities. Subsequent legislation has both expanded and restricted their fiscal authority.

The Home Rule Act permitted municipalities and counties to use revenue from property taxes, service charges, franchise fees, and business license taxes to support government services.

Shortly after the Home Rule Act, cities and counties found that they needed more revenue to provide local services to a growing population. The General Assembly commissioned a study of possible alternative local revenue sources. The study led to the creation of the statewide accommodations tax, passed in 1984, and the local option sales tax in 1990.

Later the General Assembly granted authorization for an additional local option accommodations tax, and the local hospitality tax. The property tax, however, is still the main local revenue source for cities, counties and school districts.

The Home Rule Act provided similar revenue sources to counties and municipalities, but counties make little use of franchise fees. Counties can use special sales and use taxes not available to municipalities: the capital projects sales tax, the transportation project sales tax, and the personal property tax exemption sales tax. Counties can also use front-foot sewer development fees and tourism infrastructure admissions taxes to finance infrastructure needed to support development.

Fiscal Authority and School Districts

Twenty-three districts in thirteen counties have total fiscal independence to approve their own budgets and set their own mill rates. Twenty-nine districts have no fiscal authority. In some districts, the legislative delegation approves the budget, and in others, the budget is approved in town meetings. In fourteen districts, the county council approves school district budgets. The remaining nineteen districts have limited fiscal authority, and can only exceed that limit with the approval of some other body, most commonly either the legislative delegation or the county council.

PROPERTY TAXES

[\[S.C. Code of Laws, Section 12-37-10, et seq.\]](#)

Mill Rates

Counties, municipalities and school districts may levy real and personal property taxes. They may set their own tax mill rate to cover the costs of services. There are, however, limits on the ability to

raise the mill rate. Since 2006, increases in the mill rate are limited to the same percentage as the inflation rate plus the rate of growth of population. The cap can be exceeded only by a two-thirds vote and must be for one of seven reasons specified in law.

School districts are subject to the same limitations on raising the mill rate. The power of school districts to raise the mill rate varies greatly from one school district to another, depending on the local legislation that governs school districts in that particular county. In some cases, the limits on raising mill rates are more restrictive than they are for counties and municipalities.

Some school districts have complete fiscal autonomy, subject only to the limits on the mill rates that apply to cities and counties. Others have limited fiscal autonomy and have to ask permission of the county delegation, the county council, or the citizens to raise the mill rate in excess of a specified limit. Still other school districts have no fiscal autonomy: decisions about the school mill rate are made by some other authority, such as the legislative delegation or the county board of education or, in thirteen counties, the county council. Counties may provide for comprehensive planning, growth regulation, and implementing ordinances.

State Property Tax Relief/Homestead Exemption

[\[S.C. Code of Laws, Section 12-37-250\]](#) For residents over age 65, the state provides a homestead exemption that covers the city, county and school district taxes on the first \$50,000 of market value of owner-occupied housing. The state reimburses local governments for the revenue loss from this exemption.

Act 388 further limits the power of school districts to raise additional revenue from the property tax by exempting all owner-occupied property from taxes for school operations, although homeowners still have to pay taxes to cover school debt service. The state reimburses school districts for this exemption, but the reimbursement is based on the 2006 value of owner-occupied property, so new owner-occupied residential property does not expand the tax base. Each year, the state reimbursement is adjusted for inflation and population growth, and is apportioned to school districts based on their relative growth in student enrollment.

This reimbursement is funded by an increase from five percent to six percent in the state sales tax. Any shortfall in the revenue from the sales tax is made up out of the state's general fund.

Assessment

[\[S.C. Code of Laws, Section 12-37-10, et seq.\]](#) Assessment is the valuation of real and personal property for tax purposes. Assessment rates for classes of property are set in the constitution, ranging from four percent to 10.5 percent. When the legislature changed the constitution to lower the assessment ratio on vehicles from 10.5 percent of assessed value to 6 percent at the rate of 0.75 percent a year from 2001 to 2006, municipalities saw a drop in that part of their tax base. Assessments are determined by the county under the supervision of an elected assessor. The state oversees property tax assessment to make sure that assessments are in line with market values.

Counties reassess property (which covers school districts, municipalities and the county) every five years, with a schedule that dictates which counties reassess in which years. Act 402 (2006) set a maximum increase of 15 percent in the assessed value of any property over that five year period. The only exception is for property that is sold, which is then reset to the actual sale price at the time of sale.

Tax Increment Financing

[[S.C. Code of Laws, Section 31-7-10](#), *et seq.*] A constitutional amendment in 1998 enabled counties to use tax increment financing which has been available to municipalities since 1984.

Tax increment financing (TIF) authorizes the redevelopment of blighted areas. For a municipality, creating a TIF zone requires the consent of the county government and school district since those governments do not receive any of the increase in revenue from the TIF until the bonds issued for the improvements are being repaid by the municipality from increases in revenue in the zone. After the authorization for the zone expires, county government and school districts will also benefit from the increased value of the properties in the zone.

For county initiated TIFs, counties keep all of the increased tax revenue created by public investments in the blighted area. The consent of the school district is required since the school district does not receive any of the increase in revenue in the blighted tax zone for a limited period. The county pays for the bonds issued for the improvements in the blighted area by revenue increases generated in the zone. The extra tax revenue raised in the designated area finances public improvements with the ultimate goal of expanding the tax base.

Business Location Incentives

Municipalities and counties may exempt new manufacturing establishments from the property tax for up to five years.

Unlike other local governments, county councils have significant powers and responsibilities in negotiating with firms seeking to locate or expand in the county. Counties may use a fee in lieu of property taxes to encourage the location of industry in the county. If an industry meets criteria set by state law, a county may set a fee based on an assessment rate that is less than the industrial rate of 10.5 percent to as low as 4 percent for a set number of years. The fee does not change over the duration of the agreement.

The county council negotiates fee-in-lieu-of tax agreements and sets up multicounty business or industrial parks, which reduce tax burdens on new firms. Most counties have an Economic Development Commission that works with prospective firms and the county council in these negotiations. Counties can also arrange for infrastructure and public services as part of the incentive package.

OTHER LOCAL TAXES

While municipalities and counties have been given access to additional local taxes and fees since the passage of the Home Rule Act, most of the revenue from these taxes and fees is earmarked for specific uses rather than the general fund.

In addition to the property tax, cities and counties receive revenue from the statewide accommodations tax. Twenty-nine counties levy a local option sales tax of one percent, approved by referendum. In addition, cities and counties are authorized to adopt local accommodations taxes and hospitality taxes. Counties can levy special purpose (capital projects and transportation) sales taxes that expire when enough funds are received for the designated projects. Most cities but only a few counties receive revenue from business license taxes.

Sometimes local governments have assumed financial home rule powers and created new revenue sources without specific authorization. For example, Hilton Head Island adopted a real estate transfer tax in the 1990s that is still in effect. The General Assembly has not allowed any other municipality to adopt the tax. When cities and counties started charging impact fees on new development, the state allowed them to continue but put restrictions on how the revenue could be used.

A few cities started charging hospitality “fees” on restaurant meals in the 1990s. The General Assembly conceded that such fees were taxes and were a good way of collecting revenue from tourists, so now all cities are authorized to levy a hospitality tax. Those existing fees were grandfathered by the new legislation. Again, the General Assembly specified how the revenue from this tax could be spent.

Since 1996, municipalities and counties have been unable to impose a new tax or fee unless specifically authorized by the General Assembly. New taxes or fees require three readings, a public hearing and a positive majority vote of the council.

Local Option Sales Tax

[[S.C. Code of Laws, Section 4-10-10](#), *et seq.*] Thirty-one of the forty-six counties have adopted a local option sales tax. Counties share the proceeds with municipalities. The county share is based on population and taxable sales in the unincorporated parts of the county. At least 71 percent of local option sales tax revenue must be used to offset property taxes. The remainder goes into the general fund.

Accommodations Tax

[[S.C. Code of Laws, Section 6-1-500](#), *et seq.*] A two percent tax is levied and rebated by the state on all transient accommodations. The money is allocated between counties and cities based on whether the revenue originates in or out of the municipal boundaries. Most of the revenue goes to municipalities.

The state mandates that the first \$25,000 in revenues and five percent of the remaining balance received from the statewide accommodations tax go to the general fund. The remainder must be spent on tourism-related activities. The state lists permitted uses for accommodations taxes, most of which are for capital projects, beautification, and tourism enhancement and tourism-related services.

Municipalities and counties may also levy a local accommodations tax. A municipality and county together may not levy more than a three percent combined local accommodations tax. Expenditures of the local accommodations tax revenue must be related to tourism.

Hospitality Tax

[[S.C. Code of Laws, Section 6-1-700](#), *et seq.*] A hospitality tax up to 2 percent may be levied on the sale of prepared food and beverages. A municipality and county together may not levy more than a 2 percent hospitality fee. Proceeds must be used for tourism-related projects and programs.

Business Licenses

[[S.C. Code of Laws, Section 6-1-315](#)] Business licenses are an important revenue source for municipalities. At last count, eight South Carolina counties have business license fees. Although the business license is described as a fee, it is actually a tax that is based on the gross receipts of business firms operating in the city or county levying the business license fee. Specifically exempt from business license taxes are teachers; ministers and rabbis; telephone, telegraph, gas and electric utilities or suppliers (or any other utility regulated by the PSC); insurance companies; banks, credit unions and any business that makes loans secured by real estate; and real estate licensees.

Capital Projects Sales Tax

[[S.C. Code of Laws, Section 4-10-300](#), *et seq.*] After a referendum, county council may impose a countywide one percent sales tax for seven years for any of the capital projects listed in the law. Before the referendum, a commission of county and municipal members develops the proposed list of projects and drafts the question to appear on the ballot. Bonds for capital projects financed by this sales tax are not affected by the 8 percent debt limitation. This tax cannot be considered if the county has already passed a transportation project sales tax.

Transportation Project Sales Tax

[[S.C. Code of Laws, Section 4-37-30](#)] After a referendum describing the projects to be funded, County Council may impose a one percent sales tax for up to 25 years to pay for transportation and transportation-related infrastructure. This tax is in addition to all other local sales taxes. The county is also authorized to use tolls for financing transportation infrastructure.

Personal Property Tax Exemption Sales Tax

[[S.C. Code of Laws, Section 4-10-510](#), *et seq.*] This tax is designed to provide personal property tax relief from the tax on vehicles for all county residents. Up to 2 percent may be levied according to

a complex procedure outlined in the law. The tax may be imposed in addition to any other local sales tax. This tax may not be used to offset the effect of the reduction in personal property tax from 10.5 percent to 6 percent.

STATE-SHARED REVENUES

[[S.C.Code of Laws, Section 6-27-10](#) *et seq.*]

Until 1991, municipalities and counties received revenues from seven taxes collected at the state level and designated as state aid to subdivisions. Revenues from these taxes are now part of the state's general fund.

In 1991, the legislature replaced state aid to subdivisions with the local government fund (LGF). Each year, the LGF, by law, must receive at least 4.5 percent of state general fund revenues based on general fund revenues of the previous fiscal year. The new funding formula was intended to protect local governments from state mid-year revenue cuts. LGF funds are distributed based on population, with a larger share going to counties. State-shared revenues from the LGF are part of the municipal or county general fund and can be spent for any public purpose. However, the state suspended that requirement for fiscal years 2010, 2011, and 2012 and there are discussions indicating that some state officials may try to do away with it.

Local fire departments receive revenue from state license fees on insurance brokers and a one percent state tax on fire insurance premiums for departmental use.

Municipalities and counties are reimbursed for the state phase out of the tax on business inventories at the 1987 mill rate and the assessed value of inventories.

FEES, SERVICE CHARGES, AND FINES

Franchise fees for electricity, cable services, natural gas, and other public utilities are important sources of general fund revenue, especially for municipalities. Unlike municipalities, counties cannot grant franchises for telephone, electricity, or any other utilities. Further, local governments no longer issue franchises for cable, which are now granted by the state.

Municipalities and counties may use development impact fees to pay for capital costs of new development. Impact fees must be spent on specific improvements that benefit the property being developed.

Counties may use a front-foot or per parcel assessment to construct sewer lines. Under certain conditions, the money may be used for maintenance, repair and replacement.

Service charges and fees support specific services with identifiable users. Typical service charges are made for recreation, building inspection, utilities and solid waste collection.

Many municipalities and some counties provide utilities such as water, sewer, gas, and electricity. Revenue and expenses for these services are accounted for in separate enterprise funds, although some transfers are made to and from the general fund if the enterprise shows a surplus or shortfall.

Fines levied for municipal or county ordinance violations go into the general fund. However, a portion of law enforcement fines and fees must be remitted to the state, some of which is used for training for local law enforcement personnel.

Development Impact Fees Municipalities and counties that have adopted Comprehensive Plans or Capital Improvements Plans are authorized to impose development impact fees for development projects that create demand for public facilities. Development impact fees must be used to pay a developer's proportional share of the cost of improvements needed to serve the people utilizing the improvements.

Local governments that charge development impact fees must publish an annual report that outlines all fees collected and spent the preceding year. Certain exemptions apply, such as projects involving structural repairs, affordable housing projects, and the use of onsite temporary structures during development. Impact fees may not be implemented until guidelines are developed by Planning Commissions and adopted into law by the governing bodies of the cities or counties.

BORROWING

Municipalities, counties and school districts are able to borrow money for long-term and short-term purposes, to refinance debt, and to borrow for emergency purposes.

Short-term loans may be used to cover spending in anticipation of future revenue.

Revenue bonds can be used to finance projects that generate income, such as water and sewer treatment plants, parking garages, and recreational facilities. The bonds are repaid with the income from the project. School districts do not use revenue bonds.

A municipality, county, or school district may only borrow up to 8 percent of the assessed valuation of its taxable property. The bonds are secured by the future revenue stream of the issuing local government. A referendum is required in order to issue bonds in excess of the 8 percent limitation. Bonds for improvement in tax increment financing zones are not included in the bonded indebtedness limitations.

The debt ceiling for borrowing through general obligation bonds was set when the property tax was the main source of local government revenue. Now that income sources for cities and counties are more diversified, the limitation is very low relative to the ability to service debt.

LEGISLATIVE AND REGULATORY HOME RULE FOR COUNTIES AND MUNICIPALITIES

Municipal and county councils make decisions about budgeting and spending, programs, service provision, and hiring or terminating workers without limitation by the legislature.

Municipalities and counties have the power to adopt ordinances, resolutions, and regulations.

Service Provision

Municipalities must have a city clerk whose duties are outlined in law.

Larger municipalities typically provide roads, law enforcement, fire protection, recreation and parks, streetlights, solid waste collection, and parking lots and garages. Most municipalities also offer some public utilities, such as water, sewer, electricity and public transportation, which are provided for in separate enterprise budgets and funded mainly on a fee for service basis.

Smaller municipalities offer fewer services. Some services are provided by interlocal agreement with counties or nearby municipalities. For example, the county animal control officer may also serve some or all of the municipalities in a county. Police protection is often provided by an interlocal agreement or municipal services agreement with the county.

Municipalities may provide utility or other services outside their municipal limits in areas not already assigned to other service providers.

Counties have a dual role as elected local governments and as agents of the state in providing services. The county must provide the local DSS with office space, janitorial, utility and telephone services, and related supplies, but they do not fund their budget.

Counties provide general public works including roads, drainage, street lighting, landfills and recycling, sewage collection and treatment, planning, and economic development.

Counties may designate the entire county as a district for providing a service in unincorporated areas by ordinance with the exception of areas already served by an active special purpose district. County fire protection typically is provided in this way.

Countywide taxes may not be used to provide any service that was provided by a municipality within the county prior to the Home Rule Act.

A county police department that would replace or duplicate the functions of the sheriff may be established by referendum. Municipalities can contract with the police department or sheriff to provide services in place of a municipal police department.

Counties are not required to provide any specific services to county citizens, but are required to provide infrastructure for state services based in the county.

Counties may join with adjacent counties, municipalities, and special service districts, or other political subdivision to provide services. Counties may contract with municipalities to provide municipal services. Tax collection and animal control are two of the most common services for which cities contract with the county.

Regulation

Most municipalities exercise the regulatory powers granted in the constitution by passing noise ordinances, leash laws, building codes, subdivision regulations, zoning ordinances, and other regulations. The state places restrictions on the exercise of regulatory powers by municipalities in such matters as zoning, building codes, subdivision regulation, and land use planning. Some of these state restrictions have limited the ability of municipalities to encourage innovative forms of development.

Counties also have regulatory powers. Like municipalities, they are authorized to provide for comprehensive planning, growth regulation, and implementing zoning and subdivision ordinances, subject to state restrictions.

POWERS AND DUTIES OF SCHOOL DISTRICTS

School districts are expected to provide education from kindergarten through twelfth grade and various support and adjunct services such as vocational education, adult education, transportation, and school lunches. School boards hire and fire teachers and administrators, including the superintendent, and have some discretion over teacher salaries. They plan the school construction program and its funding strategy.

School boards can also decide whether to offer a program for pre-kindergarteners and whether to offer locally funded after-school care.

When state funding is insufficient, local school boards may be granted more flexibility in determining class size and other factors that affect their costs.

School boards and school districts are highly regulated by the state in virtually every aspect of what they do from the acreage requirements for a school campus to class size.

Teacher qualifications, their minimum pay and benefits, curriculum, instructional days, and time requirements for classes are decided by the state. The state supplies a list of approved textbooks and sets the course and performance requirements for high school graduation. The state sets minimum standards for library books per pupil and other educational services.

Federal aid imposes additional requirements, such as nutritional quality of school lunches and specialized services for special needs students.

CONTINUING ISSUES

Over the last 35 years, three issues have remained contentious with respect to the evolution of home rule. One is the continued appointment power of the legislative delegation over many county boards and commissions. A second is the continued use of local legislation, much of it focused on school districts but some of it addressing county issues. The third is the more general rule of structural home rule for school districts and more uniformity in the degree of fiscal autonomy for school districts.

Of all the unresolved home rule issues, each type of local government has one especially pressing issue. For school districts, it is greater independence from the legislative delegation in both structural and fiscal matters. For municipalities, it is annexation rules. For counties, it is maintaining the ability to control land use. For all three, there is the overriding issue of having access to a greater variety of revenue sources that are under local control without legislators making decisions that cut local revenues.

Local public officials are elected, just as legislators are. If local officials are to be accountable to voters for what they do or fail to do, they must have the power to make and carry out decisions. Local governments in South Carolina have more powers than 35 years ago, but there are still unresolved areas of conflict between local and state officials over which entity has the power to make specific kinds of decisions.

WHAT CAN A CITIZEN DO?

A democratic system of government depends on the participation of informed citizens. Citizens who are aware and informed on public issues are an important counterweight to special interests seeking more money for their own purposes or trying to lower their own tax burdens or regulatory constraints. Citizens must represent the general interests when decisions are being made not only about the appropriate level of taxes, but also the quality of public services like education, transportation, public safety, and sewer provision.

SUPPORT HOME RULE

Citizens who support home rule can take steps to make it work better. Get actively involved in local government. Attend meetings of the city council, county council, or school board. Find out what issues they are addressing and express your views.

Visit local government web sites to find out what is happening. Attend public hearings. Volunteer to serve on a board or commission or even run for office. Local government is only as accountable as citizens demand it to be.

Talk to local government officials about home rule and their concerns about limitations on their ability to govern. Ask how you can make a difference.

If a referendum is scheduled, get informed and help others to do the same.

GET INFORMATION

For state legislation, go to www.scstatehouse.net or the government section of the state web page, www.firstgov.com.

For municipal research, resources, and legislative alerts on municipal home rule issues, go to www.masc.sc, the Municipal Association's web site.

For county publications and legislative information on county home rule issues, go to www.sccounties.org, the SC Association of Counties' web site.

For reports and advocacy resources on school district issues on home rule, go to www.scsba.org, the web site of the SC School Boards Association.

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