



County Funding for Fire Services in North Carolina

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Introduction

Local governments are not required to furnish (or fund) fire protection services for their citizens, but many provide, or contract for the provision of, these services within their units. As such, most areas in the state today are afforded some level of fire protection. And, typically, that fire protection extends beyond basic fire prevention and suppression services to include, among other things, emergency dispatch services, medical and other response services, and building fire code enforcement.

The types and level of fire services that local governments provide and fund often vary significantly across their territorial boundaries.¹ There is no duty of equal service to all properties or citizens within a unit. That means that a local governing board may choose to provide fire services in some areas within its jurisdiction and not in others, or it may choose to provide a higher level of fire services in some areas than in others. Counties, in particular, tend to provide different levels of fire services across their unincorporated territories. This raises issues as to how a county's governing board can and should fund the fire services.

There are two major categories of local funding sources for most local government activities—taxes and user fees. Taxes are compulsory charges that governments levy on persons or properties. They need not bear any relation to the benefit from public services received by the taxpayers. User fees, on the other hand, typically are assessed on individuals who voluntarily avail themselves of certain government services. Local governing boards are increasingly turning to user fees to fund services and activities, particularly those that are not provided uniformly

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1. Counties and municipalities have broad authority to provide fire services within their territorial boundaries. See Sections 153A-233 and -234 and Section 160A-291 of the North Carolina General Statutes (hereinafter G.S.). Sanitary districts also may provide these services on a regional basis. See G.S. Chapter 130A, Article 2, Part 2.

across their units. But the authority for a local unit to use a revenue-raising mechanism to fund an activity must derive specifically from the General Assembly. Counties have broad authority to levy property taxes to fund fire services within their jurisdictions.² Their authority to assess fees and charges to fund these services is very limited, though.³ As such, most of the fire services that they provide are funded with tax revenue. Counties, however, are authorized to delineate one or more areas (districts) and levy an additional property tax on properties located within the districts to fund the fire services provided in the districts. At least to some extent, this allows counties to target their taxing power in the same manner as if they were imposing user fees—raising revenue to fund fire services from those who directly benefit from those services.

This bulletin analyzes the local revenue options available to counties to fund fire protection services.⁴ It focuses specifically on a county's authority to establish special tax districts for this purpose. There are two kinds of tax districts, rural fire protection districts and county fire service districts. This bulletin describes the procedures for establishing and altering each type of tax district, analyzes the authority and limitations on raising revenue within that district, and examines how district tax proceeds may be used to fund services within it. The bulletin then details the interrelationship between the two different tax districts. Finally, it briefly explains the relationship between the fire tax districts and county fire insurance districts.

Local Revenue Options to Fund Fire Protection Services

Section 153A-233 of the North Carolina General Statutes (hereinafter G.S.) authorizes a county to establish and maintain a county fire department. Doing so is often cost prohibitive, though. Instead, almost all counties contract with one or more incorporated volunteer fire departments or municipal fire departments to provide fire protection services in at least a portion of their unincorporated areas.⁵ To delineate the different service areas, a county's governing board may divide its unincorporated territory into multiple fire response zones, each of which is serviced by one or more fire departments.⁶ (Although incorporated territory may be included in a

2. G.S. 153A-149; *see infra* note 10 and accompanying text.

3. *See infra* note 8. Note that sanitary districts have broader authority to assess user fees to fund fire services. *See* G.S. 130A-64.

4. This bulletin focuses on local funding sources available to counties to finance fire protection services. Counties provide the majority of the funding for the provision of fire services in their unincorporated territories. Individual rural fire departments receive some funding through other sources, including federal and state grants and private fund-raising efforts. *See, e.g.*, G.S. 58-87-1 (Volunteer Fire Department Fund); G.S. Chapter 58, Article 85A (State Fire Protection Grant Fund); and G.S. 58-87-5 (Volunteer Rescue/EMS Fund). Additionally, the state has set up a few different funds to provide monies for individual firefighters: the Firefighters' Relief Fund (G.S. Chapter 58, Article 85), the Rescue Squad Workers' Relief Fund (G.S. Chapter 58, Article 88), and the North Carolina Fireman's and Rescue Squad Workers' Pension Fund (G.S. Chapter 58, Article 86).

5. G.S. 153A-233 specifically allows a county to "contract for fire-fighting or prevention services with one or more counties, cities, or other units of local government or with an agency of the State government, or with one or more incorporated volunteer fire departments."

6. Many counties, even those that contract with municipal or volunteer fire departments to provide fire suppression services, employ a fire marshal who, among other things, performs fire code inspections, oversees training of volunteer firefighters, and advises the governing board on matters related to the provision of fire service throughout the county.

county's fire response zones, typically municipal governments provide and fund services within their units.⁷) How though may a county raise revenue to fund the services provided in each of the response zones?

As stated above, a county's authority to impose user fees to support its fire services is very limited.⁸ That leaves its taxing power as the main source of revenue.⁹ A county may use a portion of the revenue generated from its general property tax levy to fund these services county-wide. Or, a county may set up special tax districts to provide funding in particular areas of the county. Most counties rely on both funding mechanisms. A county might use its general property tax proceeds, for example, to employ a fire marshal and finance countywide inspection, training, and education programs as well as a countywide emergency-response communication system. The county then may establish one or more special tax districts to fund fire suppression and other emergency-response services in the individual districts. Alternatively, a county might use a portion of the revenue generated in each tax district to fund the fire marshal's office and other countywide fire services. A number of similar funding permutations are available to counties. The particulars of each funding option are set forth below.

7. Municipalities have the same basic authority as counties to provide fire services. The provisions of G.S. 160A-291 authorize a municipality to "establish, organize, equip, and maintain a fire department" and to "appoint a fire chief." Unlike counties, many municipalities maintain fire departments, though many are staffed entirely or primarily with volunteers.

8. Under general law, counties do not have authority to impose fees on citizens or property owners to fund most fire suppression services, but some units have received local authority from the General Assembly to impose fees to fund these services. *See, e.g.*, 1991 N.C. Sess. Laws ch. 883 (as amended by 1995 N.C. Sess. Laws ch. 61, S.L. 1999-39, and S.L. 2010-84) (Union County fire fees) and S.L. 1999-323 (as amended by S.L. 2001-74 and S.L. 2007-335) (Brunswick County fire fees). Counties do have authority to impose reasonable fees and charges to fund their fire code inspection services. The North Carolina Supreme Court has held that local governments have inherent authority to recoup the costs of performing a regulatory function as long as the amounts collected are reasonable and do not exceed the aggregate (direct and indirect) expenses of performing the regulatory activity. *See Homebuilders Ass'n of Charlotte v. City of Charlotte*, 336 N.C. 37, 442 S.E.2d 45 (1994). Additionally, counties are authorized to franchise ambulance operators and adopt a schedule of rates, fees, and charges to be imposed by those ambulance operators for emergency rescue services. G.S. 153A-250.

9. A county also may use other unrestricted general fund revenue to fund its fire services. Aside from the property tax, the other major general fund revenue source for counties is local sales and use tax proceeds. All counties are authorized to levy up to 2.25 percent in local sales and use taxes. A portion of the county's share of the tax proceeds must be used to fund public school capital outlay, but the remainder may be used for any authorized public purpose.

General Property Taxes

Authority to Levy General Property Taxes

Counties are expressly authorized to finance “fire protection services and fire prevention programs” with property tax proceeds.¹⁰ Counties also are allowed to use property tax revenue to fund ambulance services, rescue squads, and other emergency medical services.¹¹ A county’s governing board determines whether or not to levy property taxes each year and at what rate or rates. The board may adopt a single tax rate, the revenue generated from which is used to fund a variety of authorized local government services. As an example, a county may adopt a general property tax rate of \$0.63 per \$100 in assessed valuation of taxable property in the county to fund its general administration, sheriff services, fire services, recreation services, zoning services, and solid waste services. In its annual budget ordinance, the unit’s governing board may divvy up the revenue generated by the general property tax rate to fund these services in any manner it chooses. And, with few exceptions, the board may, at any time after the budget is adopted, amend the budget ordinance to change its appropriations.¹²

Alternatively, a board may adopt a series of property tax rates, the proceeds from which are earmarked for specific services. For example, it may adopt a \$0.15 per \$100 valuation for general administration, \$.06 per \$100 valuation for recreation services, \$0.20 per \$100 valuation for sheriff services, \$0.13 per \$100 valuation for fire services, and so forth. If a governing board adopts its property tax rates in this manner it provides greater transparency as to how particular services and activities are funded. However, even if it adopts separate property tax rates for each service or activity, the governing board likely retains discretionary authority to amend the budget ordinance in order to divert the property tax revenue for different purposes during the fiscal year.¹³

10. G.S. 153A-149(c)(11). The property tax (also known as the ad valorem tax) is levied against real and personal property within a unit’s territorial jurisdiction. Not all property is subject to taxation. State and local government-owned property is constitutionally exempt from property taxation. In addition, the General Assembly may exempt property from taxation or classify property to exclude it from the tax base, give it a reduced valuation, or subject it to a reduced tax rate. It must do so, however, only on a statewide basis. For more information on property tax classifications, exemptions, and exclusions see SHEA RIGGSBEE DENNING, *A GUIDE TO THE LISTING, ASSESSMENT, AND TAXATION OF PROPERTY IN NORTH CAROLINA* (UNC School of Government 2009), available at shopping.netsuite.com/s.nl/c.433425/it.A/id.1907/f; see also Shea Riggsbee Denning & Gary A. Wagner, *The Property Tax*, Article 14 in *COUNTY AND MUNICIPAL GOVERNMENT IN NORTH CAROLINA* (David M. Lawrence ed., UNC School of Government 2007), at www.sog.unc.edu/pubs/cmng/cmng14.pdf.

11. G.S. 153A-149(c)(5).

12. See G.S. 159-15.

13. See *Long v. Comm’rs of Richmond Cnty.*, 76 N.C. 273, 280 (1877) (“We know of no statute nor any rule of law or of public policy which prevents County Commissioners from applying a tax raised professionally for one purpose; to any other legitimate purpose.”); see also *Parker v. Comm’rs of Johnston Cnty.*, 178 N.C. 92, 100 S.E. 244 (1919). Note that a county’s governing board may hold a referendum to get voter approval to expend property tax dollars on any expenditure item that is specifically authorized by the property tax statute, G.S. 153A-149. A unit also may seek voter approval to fund with property tax proceeds an item that is not listed in the property tax statutes but is an activity that the local government otherwise has statutory authority to undertake. G.S. 153A-149(d). If the voters specifically approve a tax levy for a specific purpose, the governing board likely is prohibited from using the tax proceeds for a different purpose.

Finally, a governing board may take a hybrid approach—adopting a general property tax rate to cover most general fund activities and adopting one or more additional property tax rates (listed separately in the budget ordinance) the proceeds of which are earmarked for particular purposes, such as to fund fire protection services. At least a few local governments have taken this approach because it allows governing boards to justify a property tax increase if it is to support what is deemed by the public to be an essential (or at least very important) service. Again, however, the governing board likely retains discretionary authority to amend the budget ordinance to divert the property tax revenue for different purposes during the fiscal year.¹⁴

Limitations on General Property Tax Rates

Generally, the total of all property tax rates may not exceed \$1.50 per \$100 assessed valuation of property in the county.¹⁵ A governing board may hold a referendum to increase the \$1.50 limit or to specifically approve a dedicated property tax rate for a particular purpose, such that it does not count against the \$1.50 limit. For example, a county's governing board could put to the unit's voters the question of whether or not to levy a dedicated property tax, at a specific rate, to fund fire services.¹⁶

Use of General Property Tax Revenue to Fund Fire Services

If a county uses its general property tax revenue to fund fire services, the governing board determines how much to allocate yearly to providing these services as well as what specific programs or activities are to be funded. The board may use the money to fund a county fire marshal and to fund inspection, training, and education programs that are furnished countywide. The revenue also may be used to fund fire prevention or suppression services in specific areas within the county. Services may be provided by county personnel or through contracts with one or more volunteer or municipal fire departments. The benefit of funding fire services in this manner is that the property tax provides a relatively stable stream of revenue, and a county's governing board has a good deal of flexibility in allocating this revenue to provide different types and levels of services in different response areas. The difficulty with this funding mechanism is that the tax is levied on all (nonexempted or nonexcluded) properties within the county. A fundamental tenant of property taxation in North Carolina is that a local government's property tax rate(s) must be applied uniformly to all taxable properties within a unit's jurisdiction.¹⁷ That means

14. See *supra* note 13.

15. See G.S. 153A-149(c) (counties) and G.S. 160A-209(d) (municipalities). There are a few purposes for which property taxes may be levied without limitation on the rate or amount. For municipalities, the most important of these purposes is to fund debt service on general obligation debt. For counties, the purposes include debt service on general obligation debt as well as the most significant state-mandated services: schools and social services. On the flip side, there are some (very limited) services or activities that a local government is not authorized to fund with property tax dollars without specific approval through a voter referendum.

16. If the voters approve a dedicated property tax, at a specific rate, for a particular purpose, the governing board may not divert the proceeds to a different purpose.

17. This limitation stems from Article V, Section 2, of the North Carolina Constitution, which provides that “[n]o class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.” For more information on the local property tax scheme in North Carolina see Denning & Wagner, *supra* note 10.

that, unlike some local taxes and fees, property taxes generally may not be assessed only on property owners that directly benefit from particular services provided by the local government. Because fire services typically are not provided equally across a county's territorial boundaries, the result is that some taxpayers pay for fire services they do not receive.¹⁸

Special Property Tax Districts

The state constitution carves out an exception to the general rule of uniform taxation, however, allowing the General Assembly to “enact general laws authorizing the governing body of any county, city, or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, or maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.”¹⁹ Fire services are among the handful of purposes for which the General Assembly has authorized counties to establish special tax districts to fund.²⁰ Thus, instead of appropriating its general property tax revenue to fund its fire services, a county may establish one or more special tax districts to fund different types and levels of fire services in different parts of the county. There are actually two different types of tax districts—rural fire protection districts and fire service tax districts. The major difference between the two is how the districts are formed and how they can be altered or abolished, but there are a few other distinctions. Each type of taxing district will be discussed in turn. Additionally, a chart summarizing the major differences between the districts is presented in the appendix to this bulletin.²¹

Rural Fire Protection Districts

One of the methods that a county may employ to raise revenue only from those citizens who directly benefit (or most directly benefit) from fire services provided by the county is to establish one or more rural fire protection districts and levy an additional ad valorem tax on all taxable real and personal properties within each of the districts, the revenue from which is earmarked specifically to fund the fire services provided within the districts. The General Assembly bestowed this authority on counties in the early 1950s in recognition of the fact that rural areas were increasingly becoming subject to urban-type development, resulting in pressure on county governments to provide and fund fire protection services in these areas.

ESTABLISHING A RURAL FIRE PROTECTION DISTRICT

A county's governing board may not simply establish a rural fire protection district. It first must receive a petition signed by at least 35 percent of the resident freeholders living within the

18. For example, a county's general property tax is levied on all (nonexempted or nonexcluded) properties located in incorporated municipalities. Counties typically do not provide any fire services within municipal territory, though.

19. N.C. CONST. art. V, § 2(4).

20. Under general law, neither municipalities nor sanitary districts are authorized to establish special tax districts to fund fire services.

21. Note that the authority, procedures, and limitations of special tax districts discussed in this bulletin are those prescribed by general law. See G.S. Chapter 69, Article 3A; G.S. Chapter 153A, Article 16. A number of special tax districts have been created by local act of the General Assembly to fund fire services, and a handful of local modifications to the general law authority apply to individual counties. Local officials should determine and follow the applicable laws in their jurisdictions.

proposed district. The proposed district must encompass only territory outside the corporate limits of any municipality,²² but it may include territory that lies in more than one county. (If the proposed district falls within more than one county, the petition must be submitted to the boards of county commissioners of all the counties in which the area lies.)

The county tax office must verify the freeholder status and confirm the location of the property owned by the petitioners. The term “freeholder” is not defined by statute. The common law defines this term as “an estate of indeterminate duration, in fee or for life”²³ or “one who possesses a freehold,” which is defined as “any real-property interest that is or may become possessory.”²⁴ The North Carolina Attorney General has opined that the term “freeholder . . . must be given the normal connotation and definition, which is ‘an estate in land or other real property of uncertain duration that is either of inheritance or which may possibly last for the life of the tenant.’”²⁵ Thus, in order to sign the petition, an individual must have a fee simple or life estate interest in real property within the proposed district.²⁶ It is not sufficient to merely reside within the proposed district. On the other hand, in order to count as a valid signator, each petitioner must also actually live within the district.²⁷ Nonresident property owners do not count toward the 35 percent requirement. Thus, resident freeholder is best understood to require that individuals both have an ownership interest in real property in the proposed district *and* live in the proposed district.²⁸

What happens, though, when multiple property owners have undivided interests in a single property parcel—such as when a husband and wife own property as tenants by the entirety²⁹ or multiple individuals own property as tenants in common?³⁰ Does each individual owner in these situations count separately toward the 35 percent threshold? Or do the multiple owners of an individual property parcel count as one “resident freeholder” for purposes of the statutory requirement? And, if the latter, must all the owners of an individual property parcel sign the petition in order to count as one “resident freeholder,” or can a single owner sign the petition,

22. As discussed below, municipal territory may be added to an existing rural fire protection district after the district is established. G.S. 69-25.11(5).

23. See 28 AM. JUR. 2D *Estates* § 11 (2010).

24. BLACK’S LAW DICTIONARY 736 (9th ed. 2009). Nonfreehold estates are property interests of limited duration, for example, the interest that tenants have in rental property.

25. See Op. N.C. Att’y Gen. (May 13, 1964) (on file with author).

26. An individual who owns personal property, but not real property, within the proposed district does not count as a freeholder. See *id.*

27. A question may arise as to whether an individual must reside at the real property in which she or he has a freehold interest. Although it is not entirely clear, the answer likely is no. As long as the individual has a freehold interest in real property in the proposed district and resides somewhere in the proposed district, the resident freeholder requirement likely is satisfied.

28. See *Chitty v. Parker*, 172 N.C. 126, 90 S.E. 17 (1916), for an application of a “resident freeholder” requirement to a number of different factual scenarios.

29. In North Carolina, a tenancy by the entirety is a form of co-ownership held by a husband and wife with the right of survivorship. It arises by virtue of title acquired by the husband and wife jointly after their marriage. Each spouse has a separate, undivided interest in the estate.

30. In North Carolina, a tenancy in common is created automatically when two or more individuals hold title to real estate either by deed, by intestate succession, or by devise. The interests held, unless specified differently in the instrument creating the tenancy in common, are equal. In addition, there is no automatic right of survivorship, meaning that each individual’s interest in the property is a separate share.

perhaps even against the wishes of a co-owner? The answers to these questions are not entirely clear. The common understanding of freeholder suggests, however, that in the case of multiple property owners for a single property parcel, each individual property owner who actually resides in the proposed district may sign the petition and be counted toward the 35 percent threshold. Under this interpretation, all resident property owners, including multiple owners for single property parcels, should count toward the total number of resident property owners for purposes of calculating the 35 percent figure. For example, if a husband and wife own property within a proposed district as tenants by the entirety and both reside at the property, both the husband and the wife could sign the petition as separate resident freeholders. In calculating the 35 percent figure, though, the county would need to include both the husband and the wife in the total number of resident freeholders. If, instead, five siblings owned a property parcel as tenants in common but only one sibling (Sibling A) lived in the proposed district, then only Sibling A could validly sign the petition and only Sibling A would count toward the total number of resident freeholders in the proposed district.³¹

Once a county board of commissioners receives a valid petition, it must call an election within the proposed district on the question of whether or not the county may levy a special property tax to fund fire services within the district.³² The statute sets the maximum tax rate at \$0.15 per \$100 assessed valuation of taxable property. A county is not required to accept a petition that calls for a different maximum rate limit, even if it is lower than \$0.15 per \$100 valuation.³³ In fact, the statutorily prescribed ballot language allows citizens to vote only to approve or not approve the levy by the county commissioners of the statutory maximum rate of \$0.15 per \$100 valuation.³⁴ It does not authorize the county to hold an election on any tax rate that differs from the statutory maximum rate. Thus, for example, a county board of commissioners may not propose a maximum rate of \$0.12 per \$100 valuation on the ballot, even if it receives a petition signed by at least 35 percent of the resident freeholders in the proposed district requesting the twelve-cent maximum tax rate.³⁵

All qualified voters in the proposed district may vote in the election.³⁶ The county board of commissioners, after consulting with the county board of elections, must adopt a resolution

31. There are, however, other possible interpretations of the statutory language. To err on the safe side, counties may demand that all co-owners of a single property parcel sign the petition. County officials should consult their local counsel before adopting a method of dealing with multiple owners of single property parcels for purposes of calculating the 35 percent threshold.

32. G.S. 69-25.1.

33. *Id.*; see Op. N.C. Att'y Gen. (July 8, 1969) (on file with author).

34. G.S. 69-25.3.

35. A more difficult issue is whether a county may call for a referendum if it receives a petition that specifies a tax rate that differs from the statutory rate of \$0.15 per \$100 valuation. The safest approach is for a county board to reject the petition and not call an election unless and until a proper petition is presented. If the board chooses to proceed with the referendum despite receiving a petition that specifies a different maximum tax rate, the referendum may not specify a maximum tax rate that is different from that provided in the statute. Thus, for example, even if the petition calls for a maximum tax rate of \$0.12 per \$100 valuation, if the county holds a referendum on establishing the rural fire protection district and the referendum is successful the maximum authorized tax rate is \$0.15 per \$100 valuation. It is possible, however, that the levy of the rural district tax subsequently could be challenged as invalid because the petition calling for the referendum did not satisfy the statutory requirements. As of this writing, there is no case law addressing this issue.

36. See G.S. Chapter 163, Article 6, for voter qualification requirements.

setting the date for the election.³⁷ The election is conducted by the county board of elections, with the cost borne by the county.³⁸ If a district ultimately is established, the county may recoup the costs of the election from tax revenue generated by the district tax. (If the proposed district lies within multiple counties, each board of county commissioners must call for an election and the election must be conducted jointly by the counties' boards of elections, with the cost shared equally by all counties.³⁹)

If a majority of the voters voting in the election approve the ballot issue to allow the county to impose a special property tax to fund fire services within the district (rural district tax), the county board(s) of commissioners may proceed to establish the district.⁴⁰ The district is a municipal corporation, a separate legal entity from the county or counties in which it lies. As a municipal corporation, a rural fire protection district's governing board is authorized to enter into contractual agreements to purchase property or procure fire protection services.

GOVERNING A RURAL FIRE PROTECTION DISTRICT

There are three possible governing structures for a district. If the district lies within a single county, the county's board of commissioners may serve as the district's governing board. If the district lies in more than one county, the boards of commissioners of those counties may jointly govern the district. And whether the district lies in a single county or in multiple counties, the board or boards of county commissioners may appoint a three-member fire protection district commission (fire commission) to govern the district. Members of the fire commission must be qualified voters who reside in the district. The fire commission serves "at the discretion of and under the supervision of the board[s] of county commissioners."⁴¹ Although technically the governing board of the district, the fire commission legally functions more like an advisory board to the county board(s) of commissioners. In fact, even if a fire commission is appointed, it is the board(s) of county commissioners that must determine the district tax rate each year. The county board(s) may not delegate this responsibility to the fire commission or to any of the fire departments with which it contracts to provide services within the district.⁴² The county commissioners also are statutorily responsible for determining the methods of providing fire services in the district (discussed below), though this function likely may be delegated to the fire commission.⁴³ In fact, the fire commission typically enters into the actual contractual agreements with the volunteer or municipal fire department(s) on behalf of the district.

37. G.S. 69-25.2. Note that the board of county commissioners likely may not proceed to call for an election if, before the board takes action, one or more resident freeholders withdraws his or her signature from the petition thereby keeping the 35 percent threshold from being met. *Cf. Idol v. Hanes*, 219 N.C. 723, 14 S.E.2d 801 (1941).

38. The county board of elections must advertise and conduct the election in accordance with the applicable provisions in G.S. Chapter 163.

39. G.S. 69-25.9.

40. If the ballot issue fails, then the issue may not be put to the voters again for at least two years. G.S. 69-25.1.

41. G.S. 69-25.7.

42. *See* G.S. 69-25.4. The fire protection district commission may advise the county commissioners as to whether or not to levy a district tax each year and at what rate, but the county commissioners likely must retain the discretionary authority to determine the tax rate each year. *See Plant Food Co. v. City of Charlotte*, 214 N.C. 518, 199 S.E. 712 (1938). *See generally* David M. Lawrence, *Contracts That Bind the Discretion of Governing Boards*, POPULAR GOVERNMENT, Summer 1990, at 38.

43. *See* G.S. 69-25.5.

LEVYING RURAL FIRE PROTECTION DISTRICT TAX

The county commissioners levy the rural district tax each fiscal year at a rate not to exceed \$0.15 per \$100 valuation. (If the district was formed before June 9, 1959, the maximum tax rate is \$0.10 per \$100 valuation, unless the district's voters have approved an increase to \$0.15 per \$100 valuation.⁴⁴) With one exception, the rural district tax applies to all real and personal property subject to the county's ad valorem property tax.⁴⁵ Property owners in the district may not opt out of paying the rural district tax even if the property owners procure their own fire protection. Commissioners are not required to levy the tax—instead the board is instructed to “levy and collect [the district tax] *in such amount as it may deem necessary*.”⁴⁶ Commissioners determine whether or not to levy the district tax and at what rate each year during budget time. The tax typically is adopted in the county's budget ordinance.⁴⁷

If the district lies in more than one county, each county board of commissioners may adopt a yearly rural district tax rate for the portion of the district that lies within their respective counties.⁴⁸ The tax rate adopted in each county need not be the same as that adopted in the other counties that comprise the district, though the boards of county commissioners may agree in any given year to adopt the same rate. No county may adopt a tax rate that exceeds the maximum rate approved by the voters.⁴⁹ Also, the rate adopted in each county must apply uniformly to all taxable properties that lie within that county's portion of the rural fire protection district.⁵⁰

The proceeds from the district tax(es) are placed in a special revenue fund administered by the district's governing board.⁵¹

PROVIDING SERVICES WITHIN A RURAL FIRE PROTECTION DISTRICT

In administering the fund, the district's governing board may expend district tax proceeds to finance any fire suppression or prevention programs or activities in the district.⁵² Additionally, district tax revenue may be used for “furnishing emergency medical, rescue and ambulance services to protect persons within the district from injury or death.”⁵³ Service provision does not need to be provided uniformly throughout the district.

There are several options for delivering these services in the district. The governing board may rely on a county fire department or establish a rural fire protection district fire department. As noted at the beginning of this bulletin, however, this option usually is cost prohibitive. The

44. G.S. 69-25.1; *see infra* note 63 and accompanying text.

45. If the rural fire protection district was established after May 1, 1971, the district tax does not apply to any electric generating plant that provides electricity to the public.

46. G.S. 69-25.4 (emphasis added).

47. Once the tax is adopted it likely may not be altered during the fiscal year, unless it satisfies one of the criteria set forth in G.S. 159-15.

48. G.S. 69-25.9.

49. Although the statutes specifically allow for the formation of a rural fire protection district that crosses county boundary lines, for purposes of adopting the district tax rate, each county controls the revenue generation for the portion of the district that lies within its territory.

50. *See* N.C. CONST. art. 5, § 2(2).

51. G.S. 69-25.7.

52. A rural district's governing board may not expend the tax proceeds to procure services or finance projects outside the district's boundaries.

53. G.S. 69-25.4(b). A rural fire protection district that provides ambulance services is subject to the provisions in G.S. 153A-250.

governing board also may contract with one or more incorporated municipalities or one or more incorporated nonprofit volunteer or community fire departments to furnish the fire protection services. Or it can provide services through a combination of the above methods—for example, employing a county fire marshal to implement its inspection and prevention programs, contracting with a volunteer fire department to provide fire suppression services, and contracting with a municipal emergency rescue department to provide ambulance services. A rural district's board has much discretion in allocating funds in any manner it chooses—splitting the funds among multiple fire and rescue departments or even appropriating a portion of the funds to support the county's fire marshal—to procure the desired fire services in the district.⁵⁴

That said, many district boards contract with a single volunteer fire department or municipal fire department to serve an entire rural fire protection district. There often is confusion as to who controls the district—the district's governing board, the county board(s) of commissioners, or the fire department's governing board. The practical answer is that all three have some degree of control. The county board(s) of commissioners set(s) the tax rate and determine(s) how services will be provided in the district. The district's governing board (which often is the county board(s) of commissioners) enters into contractual agreements with the fire department to procure services for the district. The fire department is a contracting agent of the district. As such, its degree of control over service provision is dictated by the contract's terms. A district may enter into multiyear contractual arrangements with fire departments to procure fire services. These contracts can take many different forms. They may provide for specified types and levels of services in exchange for specified reimbursement each year.⁵⁵ Alternatively, they may set forth a general agreement that a fire department will serve a particular area but leave the specific service and pay provisions to be negotiated each year. If a district has valid contractual agreements with one or more fire departments, it must abide by the provisions in those contracts or face liability for breach of the agreements.⁵⁶ However, subject to any existing contractual agreements, a district's governing board may change service providers or the nature of the services that are being provided at any time.⁵⁷ A volunteer or municipal fire department does not have a statutory right to continue to serve a particular district, even if the fire department has incurred significant expense (or even borrowed money) to fund operating or capital expenses to serve the district.⁵⁸

FUNDING CAPITAL PROJECTS IN A RURAL FIRE PROTECTION DISTRICT

In addition to providing services in the district, district tax proceeds may be used to fund capital projects. A question sometimes arises as to which entity owns the real or personal property funded with the rural district tax revenue. The answer to this question depends, at least in part, on which entity purchased the capital assets or engaged in the construction project. If a

54 Thus, although rural district tax revenue must be used to fund services in the district, there is no requirement that the funds be used to support a single fire department.

55. Note that a county board of commissioners likely may not contract away its legal authority to determine the rural district tax rate each year. *See supra* note 42 and accompanying text.

56. *See, e.g., Knotville Volunteer Fire Dep't, Inc. v. Wilkes Cnty.*, 85 N.C. App. 598, 355 S.E.2d 139 (1987), *other proceeding*, 94 N.C. App. 377, 380 S.E.2d 422 (1989).

57. *See Knotville Volunteer Fire Department*, 85 N.C. App. 598, 355 S.E.2d 139.

58. With the exception of some limited protections when a municipal annexation occurs (see G.S. 160A-37.1 and G.S. 160A-49.1), a rural volunteer fire department's only legal protection is pursuant to the contractual arrangements it enters into with the district.

municipal or volunteer fire department that serves a rural district purchases land, vehicles, or other equipment or constructs or makes capital improvements to a fire station or substation, it is the fire department (not the district or the county) that owns the property. This is true even if the district's governing board appropriated district tax monies to fund all or a portion of the capital outlay. On the other hand, if the district's governing board purchases the capital assets or engages in the construction project itself, the real or personal property belongs to the district. The district may convey the property to a fire department, though. Or it may otherwise allow a fire department to use the property as part of a service contract. A county also has the option to fund capital projects related to the provision of fire services in a rural district with general fund monies.

What if the fire department, district, or county needs to borrow money to fund the capital projects? A rural fire protection district has no authority to borrow money. The fire department that serves a rural district may borrow money to fund capital equipment or projects necessary to furnish the appropriate level of fire protection services. If a fire department borrows the money, neither the district nor the county(ies) in which the district lies legally are responsible for the debt service payments. As a practical matter, the fire department likely will use some of its appropriated district tax monies to repay the loan.

The county or counties in which a rural district lies also may borrow money to fund certain capital expenses related to the provision of fire services within the district. According to G.S. 159-48(b)(6), a county may issue general obligation debt to provide "facilities for fire fighting and prevention, including without limitation headquarters buildings, station buildings, training facilities, hydrants, alarm systems, and communications systems." By issuing general obligation debt, the county pledges its general taxing power as security for the debt. That means that if the county failed to meet its debt service payments, the bondholders could force the county to raise its general property tax rate (not its district tax rate) to a sufficient amount to cover the payments. A county also could finance the purchase of real or personal property (or improvements made to real property) by borrowing funds and pledging the property as security for repayment of the loan.⁵⁹ If the county borrows money to fund a capital project related to the provision of fire service in a rural district, it may use rural district tax revenue to meet its debt service obligations.

ALTERING A RURAL FIRE PROTECTION DISTRICT

From time to time a county, or citizens residing in a county, may wish to alter an existing rural fire protection district to, for example, increase the maximum tax rate, add territory, remove territory, or even abolish the district altogether. Each of these actions requires fairly detailed (statutorily prescribed) processes, which are outlined below.⁶⁰

It is important to note, though, that although it may be difficult to officially alter a rural fire protection tax district's boundaries or increase its maximum allowable tax rate, a county has much discretion to change the nature of the fire services provided within a district and to change who provides those services. Rural fire protection districts are simply taxing districts. Counties are in no way impeded from establishing fire protection response areas or insurance

59. See G.S. 160A-20.

60. Note that district boundaries also may be altered or districts may be abolished by local act of the General Assembly.

districts that cut across one or more rural fire protection districts.⁶¹ Thus, in many instances a county board of commissioners may make the desired changes to its fire protection services without resorting to officially altering rural fire protection district boundaries.

Increasing Maximum Tax Rate. When the General Assembly first enacted the rural fire protection district authority, the maximum tax rate was set at \$0.10 per \$100 valuation. The legislature subsequently increased the maximum allowable rate to \$0.15 per \$100 valuation.⁶² Resident freeholders residing in districts that were established with the \$0.10 per \$100 valuation maximum rate may petition for an election to increase the maximum limit to \$0.15 per \$100 valuation. The process is similar to establishing a new district. A county's governing board must receive a petition signed by at least 35 percent of the resident freeholders within the existing district requesting the increase of the maximum tax rate. Upon receiving a valid petition, the county board(s) of commissioners must call an election in the district, submitting the question to qualified voters of whether the maximum allowable tax rate should be increased from \$0.10 per \$100 valuation to \$0.15 per \$100 valuation.⁶³ The ballot may not specify a different maximum tax rate. If a majority of the voters voting in the election approve the ballot measure, a county's governing board may adopt a yearly rural district tax rate within its discretion at a rate not to exceed the \$0.15 per \$100 valuation threshold.⁶⁴

Increasing Territory in a Rural Fire Protection District.

Adding Unincorporated Territory. Once a rural fire protection district is established, the district may annex adjoining unincorporated territory but only if certain procedural hurdles are met. First, according to G.S. 69-25.11(1), the owner of a single adjoining property parcel or a two-thirds majority of the owners of the adjoining territory to be included must apply to the district's governing board to be added to the district. The owner or owners of the property(ies) at issue also must secure the unanimous written consent of the fire commission (if created), the consent of a majority of the board(s) of directors of any corporations furnishing services in the district, and the approval of a majority of the board(s) of county commissioners of the county(ies) in which the district lies. Before the county commissioners approve the application, they must hold a public hearing on this issue.⁶⁵

The term "owner" is not defined by statute. It is possible that in this context owner should be given the same meaning as freeholder. (Recall that for purposes of G.S. 69-25.1 the term "freeholder" likely encompasses each individual with an ownership in interest in a property parcel.) A letter opinion issued by the state attorney general in 1981 appears to support this interpretation. In response to the question "[D]oes the phrase 'majority of the owners' mean a majority of the total number of persons or entities owning an interest in any property within the area?" the opinion stated that the phrase "majority of the owners" means a "majority of persons and entities owning the territory (land) to be added to the fire district."⁶⁶

61. See *infra* pp. 29–30.

62. See 1959 N.C. Sess. Laws ch. 805 (codified at G.S. 69-25.1).

63. G.S. 69-25.1. If the existing district lies within more than one county, the petition must be submitted to each of the affected boards of county commissioners and each board must call for the election, which must be conducted jointly by the county boards of elections. See G.S. 69-25.9.

64. G.S. 69-25.4. If the ballot issue fails, it may not be introduced again for at least two years. G.S. 69-25.1.

65. G.S. 69-25.11(1). Notice of the public hearing must be provided once a week for two successive calendar weeks in a newspaper having general circulation in the district. Notice also must be posted at the courthouse door in each affected county and at three public places in the area to be included. The first notice must be published at least fifteen days before the public hearing occurs. *Id.*

66. 50 Op. N.C. Att'y Gen. 74 (1981).

But, if the General Assembly intended this result it could have used the term “freeholder.” Instead, the legislature may have intended that the term “owner” be interpreted more broadly, such that multiple individuals with undivided interests in a property parcel collectively constitute a single owner. For example, although a husband and wife who own a property parcel as tenants by the entirety likely count as separate freeholders, they would count as a single owner.⁶⁷ Although North Carolina courts have not addressed this issue directly, they have interpreted similar language in other contexts, unfortunately, to mixed results. In *City of Winston-Salem v. Coble*, the North Carolina Supreme Court held that the phrase “majority in number of the property owners,” as applied to what was then a petition requirement for levying special assessments, means that each individual with an ownership interest in a property parcel count as a separate property owner.⁶⁸ More recently, however, in *Rice v. Coholan*, the North Carolina Court of Appeals held that for the purposes of meeting the voting requirement in a restrictive covenant, the phrases “majority of owners of said lots” or “majority of the then owners of this and other lots” allocate only one vote per lot owned, regardless of the number of individuals with ownership interests in each lot.⁶⁹ In the absence of additional legislative or judicial guidance, at a minimum a county should adopt a consistent approach to how it interprets the application requirements. And no matter how a county interprets the term “owner” it is clear that it encompasses residents and nonresidents alike.⁷⁰

The statute allows for a single property parcel to be added to a district if it adjoins the district. The statute does not set out any specific requirements for a property to be considered “adjoining territory.” A court likely would construe this term as requiring that the property physically border the district to some extent.⁷¹ The statute also allows an adjoining area to be added to the district if two-thirds of the owners of properties in the area approve. In this case, one or more of the property parcels in the area to be annexed should border the district. What if a few property owners in a subdivision that borders a fire tax district wish to be included in the district but are unable to garner the support of two-thirds of the property owners within the subdivision? The properties at issue likely can be included in the district only if they actually border it. That the subdivision in which the properties lie borders the district would be insufficient. However, if two-thirds of the property owners in the subdivision approve, then all of the properties within the subdivision likely may be included within the district even if all the individual property parcels do not directly abut the district.

Adding Incorporated Territory. A county may not include territory within an incorporated municipality in a rural fire protection district at the time of the district’s creation.⁷² Any municipal territory that adjoins an existing rural fire protection district may be added to the district

67. Note that affording this interpretation to the term “owner” raises some additional questions. If multiple owners of a single property parcel count as a single owner for purposes of meeting the statutory application requirement, must all joint owners of a property parcel consent to the application, or may a single joint owner consent? There is not a clear answer to this question. Counties may wish to err on the side of caution and secure the consent of all joint owners before proceeding.

68. 192 N.C. 776, 136 S.E. 123 (1926).

69. ___ N.C. App. ___, 695 S.E.2d 484 (2010).

70. See 50 Op. N.C. Att’y Gen. 74 (1981).

71. The attorney general has concluded that property that is completely separated from an existing fire district by land and a lake owned by the United States is not “adjoining territory” within the meaning of the statute. *Id.*

72. See G.S. 69-25.1.

if the governing board(s) of the county or counties in which the district is located and the governing board of the municipality in which the territory to be added is located all agree by resolution to the inclusion.⁷³ There are no further procedural requirements prescribed for adding municipal territory to a district.

If municipal property becomes part of a rural fire protection district, the district's board controls the tax levy and fire service provision in the municipal territory (at least to the extent that the fire services are funded with district tax revenue). The municipality's governing board has no authority to determine the amount of the rural district tax or how the tax proceeds are to be expended. A municipality, however, is free to supplement the fire services provided by the district to properties within the municipality if it uses municipal funds.

Timing and Taxes. Unincorporated or incorporated areas may be added to an existing district at any time during a fiscal year. G.S. 69-25.12 specifies that taxpayers and other residents of the annexed territory are entitled to the same rights and privileges and "taxpayers shall pay taxes at the same rates as if said territory had originally been included in the said fire protection district." Thus, even if the new territory is not part of the rural fire protection district for a full fiscal year, taxpayers in the district must pay the district tax for the full year. As a practical matter, then, most district changes coincide with the beginning of a new fiscal year.

Changing Rural Fire Protection District Boundaries. What if a county wishes to merge two or more existing rural fire protection districts or transfer some territory from one district to another? A county or counties may merge adjacent rural fire protection districts or otherwise alter the boundary lines of adjacent districts, but as is the case with adding property to an existing district, a few procedural hurdles must be overcome. And the procedural processes differ if the districts have the same district tax rate in effect at the time of the proposed boundary change than if they have different district tax rates in effect.

Changing Boundary Lines of Districts with Same Tax Rate. If the adjoining districts have the same district tax rate in any given fiscal year, the board(s) of county commissioners may merge the districts, or transfer some territory from one district to another, after receiving a petition from the fire commission (if appointed) and the board of directors of any corporations furnishing fire services in the affected districts.⁷⁴ Before approving the petition, the board(s) of commissioners must hold a public hearing on the proposed change or changes.⁷⁵ And any merger of districts must occur at the beginning of a fiscal year. Once the districts are merged into a single district, or once territory from one district is added to another district, the board(s) of county commissioners may adopt a yearly rural district tax rate that applies uniformly throughout the newly constituted district. The tax rate may not exceed the maximum rate authorized by the voters.⁷⁶

73. G.S. 69-25.11(5).

74. G.S. 69-25.11(3). The county board of commissioners is not limited to the boundary line changes proposed in the petition; the board is free to relocate the boundary lines of the districts "in such [] manner as to the board may seem proper." *Id.*

75. *Id.* The county must publish notice of the public hearing in a newspaper having general circulation within the district once a week for two weeks preceding the hearing. *Id.*

76. Although it is not entirely clear, the statutory authority appears to allow two districts with different authorized maximum tax rates (one at \$0.15 per \$100 valuation and one at \$0.10 per \$100 valuation) to merge. If two such districts merge, the county's governing board likely is restricted to the lower maximum rate in the newly formed district.

Changing Boundary Lines of Districts with Different Tax Rates. If two adjoining districts have different tax rates in effect, the process of merging the districts, or transferring territory from one district to another, is slightly more complicated. The board(s) of county commissioners must receive a petition signed by at least two-thirds of the owners of the territory involved.⁷⁷ It also must receive a favorable recommendation of the fire commission (if one was appointed) and the boards of directors of any corporations furnishing fire protection in the districts.⁷⁸ Before changing the districts' boundaries, the board(s) of county commissioners must hold a public hearing.⁷⁹ And, a relocation of district boundary lines must take effect at the beginning of the next succeeding fiscal year.

Removing Territory from a Rural Fire Protection District. If a property owner wants to have his or her property removed from the district, the owner must apply to the board(s) of county commissioners of the county or counties in which the district lies. The board(s) of county commissioners may deny the request without taking any further action. Before approving a request for removal of property from a district, though, the board(s) of county commissioners must receive a unanimous written recommendation from the fire commission (if one is appointed), and the property owner or owners must secure the approval of a majority of the members of the board of directors of any corporations furnishing fire protection to the district.⁸⁰

Annexations. What happens when property within a rural fire protection district is annexed by a municipality? If the municipality furnishes fire protection to its citizens, then the territory that is annexed automatically ceases to be part of the district as of the effective date of the annexation.⁸¹ That means that the board(s) of county commissioners may not levy and collect the rural district tax as of the effective date of the annexation. The district's governing board may grant or convey to the annexing municipality any district property, including firefighting equipment or facilities.⁸² If the annexation becomes effective in any month other than June, the municipality that annexed the property must pay to each property owner whose property used to lie within the rural fire protection district a prorated amount of the district tax that the property owner paid for the current fiscal year.⁸³ The payment must occur within ninety days after

77. G.S. 69-25.11(4). In order to avoid the petition requirement, the county commissioners could adopt the same tax rate in each district in one fiscal year and then merge the districts, or transfer property from one district to another, according to the procedures outlined above. This action could not be taken until the next succeeding fiscal year, though.

78. *Id.*

79. *Id.* The county must publish notice of the public hearing in a newspaper having general circulation within the district once a week for two weeks preceding the hearing. *Id.*

80. G.S. 69-25.11(2).

81. G.S. 69-25.15. If the municipality that annexes the property that is part of a rural fire protection district does not furnish fire service to its citizens, then the annexed territory remains in the district and the county may continue to levy the district tax and provide fire protection services to the newly annexed property. Arguably, property owners within the newly annexed territory would have to follow the procedures in G.S. 69-25.11(2) for removing territory from the district. Because a municipal board must agree to add municipal territory to an existing fire district, it is possible that a municipal board may remove the newly annexed territory from the district simply by notifying the affected county(ies) of its intent.

82. G.S. 69-25.14. The district does not have to receive consideration for the rural fire protection district property it grants to the municipality.

83. G.S. 69-25.15(c). The prorated amount is based on the number of full months remaining in the fiscal year in which the annexation became effective. For example, if an annexation is effective on

the effective date of the annexation. And, under certain circumstances, the county or counties in which the district lies must pay a portion of the rural district tax to the municipality.⁸⁴

Incorporations. Instead of it being annexed by an existing municipality, what if territory that lies within a rural fire protection district incorporates into a new municipality? The statutes do not prescribe a specific procedure for removing newly incorporated territory from a rural fire protection district. The only apparent statutory method available to remove newly incorporated property from a rural fire protection district is to follow the procedures outlined in G.S. 69-25.11(2). It requires property owners to apply to remove their properties from the district and to secure the approval of the affected board(s) of county commissioners, unanimous consent of the fire commission (if one is appointed), and majority approval of the board of directors of any corporation furnishing fire protection services within the district. Thus, even if all the property owners of the newly incorporated territory wished to remove their properties from the district and even if the municipality's governing board wished to fund and furnish its own fire services,⁸⁵ the territory may not be able to be removed from the district if one or more of the other boards refused to consent.

A review of the statutory schemes for providing and funding fire services as a whole, though, indicates that the legislature intended for municipalities to have autonomy over the provision of fire protection services within incorporated territories. Municipal territory may not be included in the initial boundaries of a rural fire protection district. Areas lying within a municipality may be added after a rural fire protection district is formed but only upon express consent of the

September 1, 2011, the district taxpayers are entitled to a refund from the municipality of three-quarters (nine out of twelve months) of their fire district taxes for 2011–12. The refund payment is due from the municipality regardless of whether or not the annexed taxpayers already have paid their fire district taxes for the year in question.

84. If a rural fire department provides services within the rural fire protection district, the municipality that annexes property that was within the rural fire protection district is obligated to enter into good faith negotiations with the rural fire department to contract for continued services from the rural fire department within the newly annexed territory. *See* G.S. 160A-37.1; G.S. 160A-49.1. (For a detailed description of the statutory requirements see DAVID M. LAWRENCE, *Protections for Rural Fire Departments*, chap. 9 in ANNEXATION LAW IN NORTH CAROLINA, VOL. 1: GENERAL TOPICS (2d ed., UNC School of Government 2007), available at <http://shopping.netsuite.com/s.nl?c=433425&sc=7&category=107&search=annexation%20law>.) If the municipality enters into an agreement under G.S. 160A-37.1 or G.S. 160A-49.1 and the municipality is required to make a reimbursement payment to former district property owners pursuant to G.S. 69-25.15(c), then the county must pay a portion of the rural fire protection district tax proceeds to the municipality. *See* G.S. 69-25.15(d). The amount of the county payments to the municipality is equal to the amount that the municipality must pay to the rural fire department to furnish service for the remainder of the current fiscal year. However, the amount paid by the county may not exceed the amount that the municipality pays to the former district property owners pursuant to G.S. 69-25.15(c).

85. A newly incorporated municipality may have two strong incentives to fund fire protection services for its citizens with municipal property tax proceeds. First, any municipalities incorporated after January 1, 2000, must appropriate funds for at least four of a possible eight services (including fire protection services) in order to qualify for a distribution of local sales and use tax proceeds and several state-shared revenues. *See* DAVID M. LAWRENCE & KARA A. MILLONZI, INCORPORATION OF A NORTH CAROLINA TOWN (3d ed., UNC School of Government 2007), at www.sog.unc.edu/pubs/electronicversions/pdfs/incorporation07.pdf. Second, if a county distributes its local sales and use tax revenue on an ad valorem basis, the higher a municipality's property tax levy relative to the county and other municipalities in the county, the greater its percentage share of the local sales and use tax proceeds. *See* G.S. 105-472.

municipality's governing board. Furthermore, newly annexed municipal territory is automatically removed from an existing rural fire protection district if the municipality provides fire protection services. It is at least arguable that G.S. 69-25.11(5) could be interpreted to allow the governing board of a newly incorporated municipality to refuse to give consent to be included within the district, thereby effectively removing the incorporated territory from the district.⁸⁶

ABOLISHING A RURAL FIRE PROTECTION DISTRICT

In order to abolish a rural fire protection district altogether, a board of county commissioners (or the joint boards of county commissioners if the district lies in more than one county) must receive a petition with the signatures of at least 15 percent of the resident freeholders within the district requesting that it be abolished.⁸⁷ Upon receiving a valid petition, the board(s) of county commissioners must call for an election on the issue in the district, to be conducted by the county board of elections.⁸⁸ If a majority of voters voting in the election approve of abolishing the district, then the board(s) of county commissioners must cease collecting the rural district tax. County commissioners are not required to cease providing fire services to properties or citizens located in the district, though. As discussed above, counties are free to provide and fund fire protection services with general property tax proceeds or other unrestricted general fund revenues. Any unused district tax funds that remain after the district is abolished revert to the county's (or counties') general fund to be used for any public purpose.⁸⁹ And any district property may be used or disposed of by the board(s) of county commissioners.⁹⁰

Instead of abolishing the district, which requires both a petition and a voter referendum, could the commissioners allow the district to remain but treat it as if it had been abolished by not levying a rural district tax? The answer is yes. County commissioners have full discretion to choose whether or not to levy a district tax in any given year. If the commissioners wish to cease providing fire services within the district, or to fund the fire services in a different manner,⁹¹ they may simply cease levying the district tax. Unless the district is officially abolished, though, any unused district tax proceeds must be used to provide fire protection services within the district.

County Fire and Rescue Service Districts

The second type of special tax district that a county may establish to fund fire protection and rescue services is a county service district.⁹² A county is authorized to define one or more areas within the county to establish a service district to "finance, provide, or maintain" one or more of a specific list of authorized services, facilities, or functions "in addition to or to a greater extent

86. Note that the General Assembly also could remove the territory from the rural fire protection district at the time it enacts the municipality's charter.

87. G.S. 69-25.10.

88. The election must be conducted according to the procedures prescribed by G.S. 69-25.2.

89. G.S. 69-25.10.

90. *Id.*

91. As discussed below, county commissioners effectively may convert a rural fire protection district to a county fire service district (authorized by G.S. Chapter 153A, Article 16) without actually abolishing the rural fire protection district by ceasing to levy a rural fire protection district tax and establishing a county fire service district and imposing a county fire service district tax instead. See *infra* note 142 and accompanying text.

92. County service districts are governed by G.S. Chapter 153A, Article 16.

than those financed, provided or maintained for the entire county.”⁹³ This authority stems from an effort by the General Assembly in the mid-1970s to make municipal-type services more widely available to county residents. Among the authorized services for which service districts may be created are “fire protection” and “ambulance and rescue” services.⁹⁴ Unlike a rural fire protection district, a county service district is not a municipal corporation and has no independent authority. It is established and maintained by the county and is under the control of the county board of commissioners.

ESTABLISHING A FIRE OR RESCUE SERVICE DISTRICT

It is much easier to establish a fire or rescue service district than to create a rural fire protection district. A county board of commissioners may create one or more fire service districts or one or more rescue service districts (collectively, service districts) without receiving a petition from affected property owners and without holding a voter referendum. (There is no provision for multiple counties to establish fire or rescue service districts that cross county borders.) The board simply must find (1) that there is a demonstrable need for providing one or more of the services in the district, (2) that it is impossible or impracticable to provide the services on a countywide basis, (3) that it is economically feasible to provide the proposed services in the district without unreasonable or burdensome annual tax levies, and (4) that there is a demonstrable demand for the proposed services by persons residing in the proposed district.⁹⁵ In making its determination, the board must consider a number of factors, including the resident or seasonal population and population density in the proposed district, the appraised value of property subject to taxation in the proposed district, the present tax rates of the county and any municipalities or other special districts in which the proposed district is located, and the ability of the proposed district to sustain the additional taxes necessary to support the proposed district.⁹⁶ Although, a county board does not need to solicit formal citizen approval to create a district, because it must establish “demonstrable demand” for the services that will be provided in the district, it likely may not create a county service district if there is strong opposition to the county providing the fire protection services in the proposed district by the current residents.

Once the board makes the appropriate findings, it must hold a public hearing on the proposed creation of the service district. At least four weeks before the public hearing, the board (or staff) must prepare and make available for public inspection in the office of the clerk to the board a report that contains a map of the proposed district, a statement that the proposed district meets the required standards, and a plan for providing the fire or rescue services (or both) to the district.⁹⁷ After it holds the public hearing, the county board may adopt a resolution establishing the district. The district must take effect at the beginning of a fiscal year, though.⁹⁸

93. G.S. 153A-301.

94. G.S. 153A-301(a)(2) and (7).

95. G.S. 153A-302(a1).

96. G.S. 153A-302(a)(1)–(4).

97. G.S. 153A-302(b) and (c). Notice of the public hearing must state “the date, hour, and place of the hearing and its subject, and [must] include a map of the proposed district and a statement that the report . . . is available for public inspection in the office of the clerk to the board.” G.S. 153A-302(c). The notice must be published at least one week before the date of the hearing and mailed at least four weeks before the date of the hearing to the owners of all property located within the proposed district. *Id.*

98. G.S. 153A-302(d).

A county may include municipal territory in a newly established district, but only if the municipality's governing board adopts a resolution agreeing to the inclusion.⁹⁹ If municipal property becomes part of a county fire service or rescue district, the county board of commissioners controls the tax levy and service provision (to the extent funded by the service district tax) in the municipality. The municipality's governing board has no authority to determine the amount of the service district tax or how its proceeds are expended. A municipality is free to supplement the fire services provided to municipal property in the district with municipal revenue.

LEVYING A FIRE OR RESCUE SERVICE DISTRICT TAX

Once a service district is created, the county board of commissioners may, but is not required to, levy an annual property tax within the service district in addition to the property tax or taxes it levies throughout the county (service district tax). The service district tax applies to all real and personal property that is subject to the county's ad valorem property tax(es). As with rural fire protection districts, property owners in a county service district may not opt out of paying the tax, even if they procure their own fire protection. The board typically adopts the service district tax rate in its annual budget ordinance. Once the rate is adopted, the board generally may not alter it during the fiscal year.¹⁰⁰ County commissioners may adopt a new tax rate each year to reflect the estimated costs of servicing the district. Unlike rural fire protection districts, generally there is no specific maximum tax rate limitation for service district taxes. Such taxes are subject to the general aggregate property tax limit of \$1.50 on each \$100 valuation. That means that the district tax rate, when combined with the county's general ad valorem property tax rate(s), may not exceed \$1.50, unless the portion of the rate in excess of the limitation is submitted to and approved by a majority of the qualified voters in the district.¹⁰¹

Under certain circumstances, a county board of commissioners is restricted to a lower maximum allowable service district tax rate. With respect to a fire protection service district, if within ninety days before holding the public hearing on the proposed district (and before the first publication of notice of the public hearing) the board of commissioners adopts a resolution that states that property taxes within the fire protection service district may not exceed \$0.15 per \$100 valuation, then the yearly service district tax may not exceed this maximum rate.¹⁰²

Similarly, with respect to an ambulance and rescue district, if within ninety days before holding the public hearing on the proposed district (and before the first publication of notice of the public hearing) the board of commissioners adopts a resolution stating that property taxes

99. G.S. 153A-302(a1). Similarly, if territory to be included in the proposed district lies within a sanitary district, the sanitary district's governing board must consent to its inclusion. *Id.*

100. *See* G.S. 159-15.

101. G.S. 153A-307.

102. G.S. 153A-309.2. The notice requirements for the public hearing are different if the county commissioners adopt a resolution restricting the maximum tax rate for the district. Notice must be published at least twice, once not less than two weeks before the hearing and the other on a different day, but also not less than two weeks before the hearing. *Id.*

Note that there also are special rate limitations for industrial facility property that meets certain requirements and that is removed from an existing fire protection service district and simultaneously placed within a new fire protection service district. *See* G.S. 153A-309.3.

within the ambulance and rescue service district may not exceed \$0.05 per \$100 valuation, then the yearly service district tax may not exceed this maximum rate.¹⁰³

Revenue generated from the service district tax is specifically earmarked to finance the fire or rescue services to be provided in the district.¹⁰⁴ Service district tax proceeds may not be diverted to any other purpose, even if a service district is abolished. In addition to the service district tax revenue, a county may allocate to a service district any other unrestricted revenues.¹⁰⁵ Once these revenues are allocated to the service district they also are specifically earmarked to be used only to fund the fire or rescue services provided within the district.

PROVIDING SERVICES WITHIN A FIRE OR RESCUE SERVICE DISTRICT

The service district tax revenue must be used to furnish fire or rescue services “in addition to or to a greater extent than those financed, provided or maintained for the entire county.”¹⁰⁶ That means that a county may create a service district to provide fire or rescue services that it is not providing at all in other areas of the county or that it is not providing at the same level in other areas of the county. Service provision need not be uniform throughout the district. A county also may establish multiple service districts to provide fire or rescue services in different areas of the county. Each district may have the same tax rate and support the same level of services, or each may have different rates to fund different types or amounts of services. In addition, multiple authorized services may be provided within the same district. For example, fire protection services and ambulance and rescue services may be provided within the same district.¹⁰⁷ Alternatively, a county may establish coextensive service districts to provide different services. For example, a county may establish a fire service district and an ambulance and rescue service district with the exact same boundaries.

A county must “provide, maintain, or let contracts for the services for which the residents of the district are being taxed within a reasonable time, not to exceed one year, after the effective date of the definition of the district.”¹⁰⁸ The statutes are silent, though, as to how services may be provided within the district. Counties generally are authorized to contract with any private entity to “carry out any public purpose that the county is authorized by law to engage in.”¹⁰⁹ So, as with rural fire protection districts, a county is free to establish and maintain a county fire, ambulance, or rescue department to provide the services within its service districts, or it may contract with one or more municipal or volunteer fire departments to furnish these services.

103. G.S. 153A-310. The notice requirements for the public hearing are different if the county commissioners adopt a resolution restricting the maximum tax rate for the district. Notice must be published at least twice, once not less than two weeks before the hearing and the other on a different day, but also not less than two weeks before the hearing. *Id.*

104. G.S. 153A-307.

105. *Id.*

106. *Id.*

107. Generally, in order to provide multiple services within a single district, the services need to have been identified in the report generated on the proposed district and adopted in the governing board’s resolution establishing the district. G.S. 153A-309 provides an exception to this process. If a service district initially was established for fire protection purposes only, the board of county commissioners may adopt a resolution to permit the service district to provide emergency medical, rescue, and ambulance services and to use service district tax proceeds to fund these services. The resolution must take effect at the beginning of a fiscal year.

108. G.S. 153A-305.

109. G.S. 153A-449.

(Many adopt some combination of both.¹¹⁰) The county has a good deal of flexibility in how it allocates the service district tax revenue to procure services for the district.

And, as with rural fire protection districts, the relationship between counties and municipal or volunteer fire departments is of a contractual nature. The county board of commissioners retains legal control over setting the service district tax rate each year, and the county board of commissioners determines what fire services are provided within the district and by whom. That means that, subject to any existing contractual agreements, a board of county commissioners may change service providers or the nature of the services that are being provided at any time.¹¹¹ A volunteer or municipal fire department does not have a statutory right to continue to serve a particular district, even if the fire department has incurred significant expense (or even borrowed money) to fund operating or capital expenses to serve the district.

SINGLE COUNTY FIRE OR RESCUE SERVICE DISTRICT

In recent years several counties have explored ways to increase their flexibility in allocating resources among the various fire or rescue service areas. One option that is gaining popularity is to create a single county fire or rescue service district that encompasses the entire unincorporated area of the county. Under this approach, a county levies a single tax rate across the entire service district and allocates the proceeds among the various fire and rescue departments that service each response zone according to their individual budgetary needs. This approach provides a county board with the same flexibility as using its general property tax proceeds, with the added advantage that the tax is not levied in municipal territories. And creating a single county fire or service district that comprises the county's unincorporated area satisfies the statutory requirements for creating a service district because the district tax proceeds are used to provide services "in addition to or to a greater extent than those financed, provided or maintained for the entire county"¹¹² because services are not being provided in the incorporated areas.

FUNDING CAPITAL PROJECTS IN A COUNTY FIRE OR RESCUE SERVICE DISTRICT

In addition to providing services in the district, district tax proceeds may be used to fund capital projects. As with rural fire protection districts, a question sometimes arises as to which entity owns the real or personal property funded with the rural district tax revenue. And the answer is the same as for rural districts: it depends, at least in part, on which entity purchased the capital assets or engaged in the construction project. If a municipal or volunteer fire department that serves a fire or rescue service district purchases land, vehicles, or other equipment or constructs or makes capital improvements to a fire station or substation, it is the fire department (not the county) that owns the property. This is true even if the county's governing board appropriated service district tax monies to fund all or a portion of the capital outlay. On the other hand, if the county's governing board purchases the capital assets or engages in the construction project itself, the real or personal property belongs to the district. A county may use district tax proceeds or county general fund revenue to fund the capital project. And, the county may convey the property to a fire department, or it may otherwise allow a fire department to use the property as part of a service contract.

110. See *supra* note 54 and accompanying text.

111. See *supra* note 57 and accompanying text.

112. G.S. 153A-307.

What if the fire department or county needs to borrow money to fund the capital projects? A county fire or rescue service district is not an independent legal entity and has no authority to borrow money. The fire department that serves a service district may borrow money to fund capital equipment or projects necessary to furnish the appropriate level of fire protection services. If a fire department borrows the money, the county is not legally responsible for the debt service payments. As a practical matter, the fire department likely will use some of the appropriated district tax monies to repay the loan, though.

The county in which a service district lies also may borrow money to fund certain capital expenses related to the provision of fire services within the district. According to G.S. 159-48(b)(6), a county may issue general obligation debt to provide “facilities for fire fighting and prevention, including without limitation headquarters buildings, station buildings, training facilities, hydrants, alarm systems, and communications systems.” By issuing general obligation debt, the county pledges its general taxing power as security for the debt. That means that if the county failed to meet its debt service payments, the bondholders could force the county to raise its general property tax rate (not its district tax rate) to a sufficient amount to cover the payments. A county also could finance the purchase of real or personal property (or improvements made to real property) by borrowing funds and pledging the property as security for repayment of the loan.¹¹³ If the county borrows money to fund a capital project related to the provision of fire service in a rural district, it may use rural district tax revenue to meet its debt service obligations.

Note that before a county may issue general obligation debt it must first receive specific voter approval through a referendum process. And, G.S. 153A-308 stipulates that if general obligation bond proceeds “are to be used in connection with a service that is or, if the bond issue is approved, will be provided only for one or more service districts or at a higher level in service districts than countywide, the proposed bond issue must be approved concurrently by a majority of those voting throughout the entire county and by a majority of the total of those voting in all of the affected or to-be-affected service districts.”¹¹⁴ There is no statutory counterpart to this provision applicable to rural fire protection districts.

ALTERING A FIRE OR RESCUE SERVICE DISTRICT

Once a county establishes a service district, it may alter it by adding additional territory to the district, consolidating it with one or more other service districts, relocating the boundaries with an adjoining service district, or (under certain circumstances) removing territory from the service district. It also may abolish the district. A county board of commissioners must follow the appropriate statutory procedures for accomplishing each of these actions.

As with rural fire protection districts, it is important to note that a county has much discretion to change the nature of the fire services provided within a district and to change who provides those services without actually altering the district’s boundaries. County fire or rescue service districts are simply taxing districts. Counties are in no way impeded from establishing fire protection response areas or insurance districts that cut across one or more service districts.¹¹⁵ Thus, in many instances a county board of commissioners may make the desired changes to its fire protection services without resorting to officially altering service district boundaries.

113. See G.S. 160A-20.

114. This requirement is imposed because district tax proceeds likely will be used to make debt service payments.

115. See *infra* pp. 28–29.

Adding Territory to a Fire or Rescue Service District. A board of county commissioners may add territory to an existing fire or rescue service district if the area is contiguous to the district, with at least one eighth of the area's aggregate external boundary coincident with the district's boundary, and if the board determines that the area needs the services provided in the district.¹¹⁶ Alternatively, a board may extend a district's boundaries if it receives a petition signed by 100 percent of the real property owners of an area requesting inclusion in the district.¹¹⁷ (Municipal territory may not be added to an existing service district unless the municipality's governing board adopts a resolution agreeing to the annexation.¹¹⁸)

Under either scenario, the board of county commissioners must hold a public hearing on the proposed change to the district.¹¹⁹ And at least two weeks before the public hearing, the board must cause a report to be prepared and made available for public inspection in the office of the clerk to the board. The report must contain a map of the service district and the adjacent territory showing the current and proposed district boundaries, a statement showing that the area to be annexed meets the required statutory standards, and a plan for extending the services to the area to be annexed.¹²⁰

Once it holds the public hearing, the board of county commissioners may adopt a resolution extending the district's boundaries. The resolution must take effect at the beginning of the next fiscal year.¹²¹

Changing Fire or Rescue District Boundaries. A county board of commissioners may relocate boundary lines between adjoining service districts as long as the districts were established for "substantially similar purposes."¹²² The board may alter the boundary lines on its own accord or after receiving a petition from the affected landowners.¹²³ Similarly, a county board of commissioners may consolidate two or more service districts if the districts are contiguous and the

116. G.S. 153A-303(a).

117. G.S. 153A-303(b). The statute does not define "property owners." Thus, the same interpretation issues arise in interpreting this requirement as in extending a rural fire protection district under G.S. 69-25.11. *See supra* notes 66–70 and accompanying text.

118. G.S. 153A-303(c). Similarly, territory within a sanitary district may not be added to an existing service district unless the governing board of the sanitary district consents. *Id.*

119. G.S. 153A-303(e). Notice of the hearing must "state the date, hour and place of the hearing and its subject, and [must] include a statement that the report . . . is available for inspection in the office of the clerk to the board." *Id.* The notice must be published at least once, not less than one week before the hearing, and it must be mailed at least four weeks before the hearing to the property owners of all property located within the areas to be annexed. *Id.*

120. G.S. 153A-303(d). Note that G.S. 153A-303(d) requires that the report contain a "statement showing that the area to be annexed meets the standards and requirements of subsections (a), (b), and (c)." Subsection (a) allows the board to annex territory to the district if it is contiguous to the district and requires the services of the district, and subsection (b) allows the board to annex territory to the district upon receipt of a petition signed by 100 percent of the real property owners of the area to be annexed. These requirements are mutually exclusive. Subsection (c) allows territory within an incorporated municipality to be included in a district only if specifically approved by the municipality's governing board. Thus, the language in G.S. 153A-303(d) is best understood as requiring the report to include a statement that the annexation meets the requirements of subsections (a), (b), and/or (c), whichever applies.

121. G.S. 153A-303(f).

122. G.S. 153A-304.3.

123. *Id.* The board is not required to act if it receives a petition from the affected landowners. The statute is silent also on the issue of how many landowners must sign a petition before the board may act.

services provided in each of the districts are substantially the same or there is a need to increase services in one the districts to the level provided in the other district(s).

A county must hold a public hearing before consolidating districts or otherwise changing the boundary lines between districts. And, at least two weeks before holding the public hearing, the board of county commissioners must cause a report to be prepared and made available for public inspection in the office of the clerk to the board that contains a map of the service districts showing the current and proposed boundary lines, a statement indicating that the proposed boundary relocation meets the statutory requirements, and a plan for providing service to the areas affected by consolidation or the relocation of district boundary lines. In addition, if the change involves a change in district boundary lines, the report must also include a statement of the effect that the change in the amount of taxable property will have on the ability of each of the districts to provide services or, if applicable, to make debt service payments.¹²⁴

Once a board holds the public hearing, it may adopt a resolution relocating the boundary lines of adjoining service districts or consolidating contiguous districts. Any boundary changes must take effect at the beginning of the next fiscal year.¹²⁵

Removing Territory from a Fire or Rescue Service District. With a few exceptions, there is no statutory authority to remove territory from fire or rescue service district coverage. Thus, generally, in order to remove territory from a district, a county's governing board must abolish the district and reconstitute a new district with different boundary lines, according to the appropriate statutory procedures.¹²⁶ There are two circumstances in which the statutes explicitly allow a county to remove territory from a district: when all or some of the territory in a district is annexed by a rural fire protection district or, at least under certain circumstances, when all or some of the territory in a district is annexed by a municipality. There also may be implicit authority to reduce a district if a portion of its territory becomes part of a newly incorporated municipality.

Rural Fire Protection District Annexations. Recall that territory may be added to a rural fire protection district if the owner of a single adjacent property parcel or a two-thirds majority of the owners of an adjoining area petition the district's governing board to be added to the district. The owner or owners of the property(ies) at issue also must secure the unanimous written consent of the fire commission (if created), the consent of a majority of the board(s) of directors of any corporations furnishing services in the district, and the approval of a majority of the board(s) of county commissioners of the county(ies) in which the district lies.¹²⁷

If any portion of a fire service district is annexed into a rural fire protection district, the annexed territory immediately ceases to be part of the fire service district, and the board of

124. G.S. 153A-304.3(b). Notice of the hearing must "state the date, hour, and place of the hearing and its subject, and [must] include a statement that the report . . . is available for inspection in the office of the clerk to the board." G.S. 153A-304.3(c). The notice must be published at least one week before the date of the hearing. *Id.*

125. G.S. 153A-304.3(d).

126. The statutory procedures for abolishing a service district are summarized below. *See infra* note 136 and accompanying text.

127. G.S. 69-25.11(1). Before the county commissioners approve the application, they must hold a public hearing on this issue. Notice of the public hearing must be provided once a week for two successive calendar weeks in a newspaper having general circulation in the district. Notice also must be posted at the courthouse door in each affected county and at three public places in the area to be included. The first notice must be published at least fifteen days before the public hearing occurs. *Id.*

county commissioners may not levy the service district tax on properties in the service district. Instead, the territory will be subject to the rural fire protection district tax.¹²⁸ Although it is not statutorily required, as a practical matter an annexation of territory into a rural fire protection district should occur at the beginning of a fiscal year.¹²⁹

Municipal Annexations. If a municipality that provides fire services to its citizens annexes territory that is included in a fire service district, that territory immediately ceases to be part of the fire service district, unless the municipality's governing board agrees to allow the territory to remain in the district.¹³⁰ That means that the board of county commissioners may not levy and collect the service district tax as of the effective date of the annexation.

If the annexation becomes effective in any month other than June, the municipality that annexed the property must pay to each property owner whose property used to lie within the fire service district a prorated amount of the district tax that the property owner paid for the current fiscal year.¹³¹ The payment must occur within ninety days after the effective date of the annexation. And, under certain circumstances, the county must pay a portion of the service district tax to the municipality.¹³²

Incorporations. Instead of being annexed by an existing municipality, what if territory that lies within a fire or rescue service district incorporates into a new municipality? As with rural fire protection districts, the statutes do not prescribe a specific procedure for removing newly incorporated territory from a county service district. The only apparent statutory method available to remove newly incorporated property from a county fire service district is to abolish the district. Thus, even if all the property owners of the newly incorporated territory wish to remove their properties from the service district and even if the municipality's governing board plans to fund and furnish its own fire services,¹³³ the territory may not be able to be removed from the district if the county board of commissioners does not consent.

128. G.S. 153A-304.2.

129. *See supra* p. 16.

130. G.S. 153A-304.1.

131. *Id.* The prorated amount is based on the number of full months remaining in the fiscal year in which the annexation became effective. For example, if an annexation is effective on September 1, 2011, the district taxpayers are entitled to a refund from the municipality of three-quarters (nine out of twelve months) of their fire district taxes for 2011–12. The refund payment is due from the municipality regardless of whether or not the annexed taxpayers already have paid their fire district taxes for the year in question.

132. If a rural fire department provides services within the county fire service district, the municipality that annexes property that was within the district is obligated to enter into good faith negotiations with the rural fire department to contract for continued services from the rural fire department within the newly annexed territory. *See* G.S. 160A-37.1; G.S. 160A-49.1. (For a detailed description of the statutory requirements see LAWRENCE, *supra* note 84.) If the municipality enters into an agreement under G.S. 160A-37.1 or G.S. 160A-49.1 and the municipality is required to make a reimbursement payment to former district property owners pursuant to G.S. 153A-304.1(c), then the county must pay a portion of the service district tax proceeds to the municipality. *See* G.S. 153A-304.1(d). The amount of the county payments to the municipality is equal to the amount that the municipality must pay to the rural fire department to furnish service for the remainder of the current fiscal year. However, the amount paid by the county may not exceed the amount that the municipality pays to the former district property owners pursuant to G.S. 153A-304.1(c).

133. *See supra* note 85 and accompanying text for a discussion of why a newly incorporated municipality may wish to fund fire protection services for its citizens with municipal property tax proceeds.

As stated above with respect to rural fire protection districts, a review of the statutory schemes for providing and funding fire services as a whole appears to indicate that the legislature intended for municipalities to have autonomy over the provision of fire protection services within incorporated territories. In fact, there is an even stronger argument that, absent concurrence by the new municipal board, territory within an existing county service district that incorporates is no longer part of the district because municipal territory may not be included in a county service district without the express consent of the municipality's governing board.¹³⁴ At least arguably, G.S. 153A-302(a1) could be interpreted to allow the governing board of a newly incorporated municipality to refuse to give consent to be included in the district, thereby effectively removing the incorporated territory from the district.¹³⁵

ABOLISHING A FIRE OR RESCUE SERVICE DISTRICT

If the board of county commissioners determines that a fire or rescue service district tax is no longer needed to fund the fire or rescue services provided in the district, it has two options. The first option is to adopt a resolution abolishing the district.¹³⁶ The board may not abolish a district, however, if the county has any "outstanding bonds or notes issued to finance projects in the district."¹³⁷ That means that if the county issued general obligation debt to purchase capital equipment or fund infrastructure projects associated with fire or rescue protection, it may not abolish the district until the debt is repaid.¹³⁸ The board must hold a public hearing before abolishing a district, and the abolition must take effect at the end of a fiscal year.¹³⁹ Any service district tax funds remaining after a district is abolished must continue to be used to provide fire services to properties that were in the district. The monies may not be diverted for a different purpose.

The second option is to keep the district but simply not levy a service district tax.¹⁴⁰ The county board could levy the district tax again in future fiscal years without having to reestablish the district. Even if the county does not levy the service district tax, it may continue to provide fire and rescue services in the district, funded through alternative means.

Relationship between Rural Fire Protection Districts and County Fire or Rescue Service Districts

It is not uncommon for a county to have a mix of rural fire protection districts and county fire and rescue service districts within its territorial boundaries. As described above, there are various procedural processes (some more onerous than others) to modify the boundary lines of the

134. See G.S. 153A-302(a1).

135. Note that the General Assembly also could remove the territory from the rural fire protection district at the time it enacts the municipality's charter.

136. G.S. 153A-306.

137. *Id.*

138. The restriction does not apply if a volunteer fire department or municipal fire department that services the district borrows money to fund capital purchases or projects. The restriction also technically does not apply if the county has entered into installment purchase contracts, pursuant to G.S. 160A-20, to fund the projects in the district. Although a form of borrowing, a county does not issue "bonds" or "notes" when it enters into such financing agreements.

139. G.S. 153A-306. Notice of the public hearing must state the "date, hour and place of the hearing, and its subject." It must be published at least one week before the hearing. *Id.*

140. G.S. 153A-307 allows a county's governing board to determine whether or not to levy the service district tax, and at what rate, each fiscal year.

two different types of districts. But, what if a county wishes to replace one type of district with another or modify boundary lines between the two different types of districts? Both types of districts serve largely the same purpose—namely, they both provide a mechanism to target a county’s taxing power on those property owners who most directly benefit from the expenditure of the tax proceeds. Despite this, there is not an easy process to convert one type of taxing district into another type of taxing district or to modify the boundary lines between the different types of taxing districts.

CONVERTING A RURAL FIRE PROTECTION DISTRICT TO A COUNTY FIRE SERVICE DISTRICT

Most often, counties wish to convert a rural fire protection district to a county fire service district (or transfer property from a rural fire protection district to a county fire service district) because the latter has less statutory restrictions. Territory in a rural fire protection district may not be transferred directly into a county fire service district. There are two methods to accomplish this result indirectly, though. The first is to abolish the rural fire protection district according to the relevant statutory procedures and then establish one or more county fire service districts, again according to the relevant statutory procedures. The second is to overlay one or more county fire service districts over a rural fire protection district.

Under the latter option, a county’s board of commissioners could continue to levy the rural fire protection district tax and also levy the county service district tax on real and personal properties located in both districts.¹⁴¹ Alternatively, the governing board could cease levying the rural fire protection district tax and rely only on the service district tax to fund fire services in the area that is encompassed by both districts. Several counties have taken advantage of this second option in recent years. They have stopped levying taxes in some or all of their existing rural fire protection districts (without actually abolishing the districts). And they have established one or more county fire or rescue service districts in their place. The county service districts often have the same boundaries as the rural fire protection districts, but the new service district boundaries need not be coextensive with the existing rural district boundaries.¹⁴² Even if a county service district has the same boundaries as an existing rural fire protection district, the county establishes, maintains, and modifies the county service district according to the provisions set forth in G.S. Chapter 153A, Article 16 (not the provisions in G.S. Chapter 69, Article 3A). The county board, for example, is not limited to the statutory maximum tax rate (of \$0.15 or \$0.10 per \$100 valuation) imposed on rural fire protection districts.

CONVERTING A COUNTY FIRE SERVICE DISTRICT TO A RURAL FIRE PROTECTION DISTRICT

A county may overlay a county service district over an existing rural fire protection district, but it may not overlay a rural fire protection district over an existing county service district. G.S. 153A-304.2 provides that all or any portion of a fire service district that is annexed by a rural fire protection district immediately ceases to be a county fire service district or a part of a county fire service district. Although the statute is not entirely clear, it likely applies if an existing rural fire protection district annexes territory in a county fire service district according to the provisions in G.S. 69-25.11 and if a new rural fire protection district is created pursuant

141. Note that a county service district may not contain territory in more than one county.

142. As discussed above, at least a few counties have created a single county fire service district that encompasses the entire unincorporated territory in the county. *See supra* note 112 and accompanying text.

to G.S. 69-25.1 that encompasses territory in a county fire service district. Once the territory becomes part of a rural fire protection district, the county no longer has authority to levy a service district tax on the properties within the annexed territory. The properties in the annexed territory are subject instead to the rural fire district tax.¹⁴³

Relationship between Tax Districts and Insurance Districts

As discussed above, the customary way to provide fire protection in areas outside municipalities is to establish one or more fire response zones. This allows county governments to provide different types and levels of services in different parts of the county. A county may fund these services with its general property tax proceeds. Alternatively, it may establish and maintain one or more special tax districts to generate revenue specifically to provide the fire services in the district(s). In addition to the tax districts, a county also is authorized to establish fire insurance districts within its unincorporated territories, with the approval of the Office of the State Fire Marshal of the North Carolina Department of Insurance.¹⁴⁴

The primary purpose of insurance districts, as their name suggests, is to delineate the fire protection coverage afforded to particular properties for purposes of determining whether those properties may be covered by fire insurance and at what cost. The North Carolina commissioner of insurance and the state fire marshal are responsible for rating departments that serve areas with populations of 100,000 or less.¹⁴⁵ A private corporation, the Insurance Services Office, Inc. (ISO), rates departments that serve more populous areas.¹⁴⁶ Insurance ratings are based on the staffing levels and apparatus of the fire department itself as well as on the applicable emergency response communication system and available water supply. A fire department that serves the properties within an insurance district is rated on a scale of 1 to 10, with 10 effectively constituting no fire protection for purposes of setting insurance rates. Thus, the minimum insurance

143. The “transfer” of territory from a county fire service district to a rural fire protection district does not present much difficulty if it occurs at the beginning of a fiscal year. If the annexation occurs at a time other than the beginning of a fiscal year, however, the property owners in the affected territory likely will end up paying both the county fire district tax and the rural fire protection district tax for the fiscal year in which the annexation occurs. That is because, according to G.S. 153A-304.2(b), once the county board of commissioners levies the fire service district tax, property owners within the fire service district are responsible for paying the tax even if the property is subsequently annexed into a rural fire protection district. And, pursuant to G.S. 69-25.12, property owners whose properties are annexed into a rural fire protection district are responsible for paying the rural fire protection district tax as if the properties had been part of the district at the time the tax was levied.

144. G.S. 153A-233. The statute authorizes a county to “designate fire districts or parts of existing districts and prescribe the boundaries thereof for insurance grading purposes.” There is no mention of approval by the state fire marshal. However, the North Carolina Department of Insurance requires that proposed insurance boundaries be submitted to the state fire marshal for approval. See N.C. ASS’N OF FIRE CHIEFS, N.C. DEP’T OF INS., & OFFICE OF STATE FIRE MARSHAL, NORTH CAROLINA FIRE SERVICE REFERENCE MANUAL (2008), available at www.ncafc.com/2008%20NC%20Fire%20Service%20Reference%20Manual.pdf (last visited Jan. 13, 2011).

145. See G.S. 58-36-10(3); G.S. 58-40-25(4). For more information on the rating system see N.C. ASS’N OF FIRE CHIEFS ET AL., *supra* note 144.

146. Additional information on ISO’s rating systems is available at www.isomitigation.com/ppc/0000/ppc0001.html (last visited Feb. 9, 2011).

grade for departments rated by the Commissioner of Insurance is 9S. In order for a county insurance district to qualify for a 9S rating, its boundaries may be no more than six road miles from the fire station and the fire station that serves those properties must meet certain requirements. Some fire departments receive a split rating—providing a lower (better) insurance rating to properties in the insurance district that are located within a thousand feet of a fire hydrant.¹⁴⁷

A secondary (and related) purpose of fire insurance districts is to delineate fire response areas for particular fire departments. Fire insurance district boundaries often are coextensive with fire tax district boundaries. This allows for ease of administration by identifying a particular funding source for a particular set of services provided in a particular area by a particular service provider. Fire insurance districts are legally distinct from fire tax districts, though, and they do not have to have the same boundaries. There may be times when a county wishes to alter its insurance districts to account for new growth and development or new service providers but it is not practical for it to change its existing tax districts. As a result of the change, an insurance district may cut across two or more tax districts. If properties in the insurance district are served by a single fire department, the county's (or rural district's) governing board may appropriate monies from each of the tax districts to the fire department to provide services across the insurance district. A change in insurance district boundaries also may result in a tax district that comprises properties in two or more insurance districts. In this case, the county's (or rural district's) governing board may divvy up the district's tax proceeds and allocate them among the various fire departments that serve the tax district. As described above, in recent years a handful of counties have officially (or unofficially) abolished their rural fire protection tax districts and established a single county fire service tax district that encompasses all of the unincorporated territory in the county. These counties maintained their insurance districts and contract with multiple fire departments to serve the different insurance districts. The counties' governing boards appropriate the service district tax revenue among the various fire departments according to their yearly budgetary needs.

Conclusion

Although not traditionally viewed as a county government function, fire protection services have been provided by counties in their unincorporated areas for many years. Many of these services are not provided uniformly across a county's territory, though. A county has broad authority to fund the fire services—defined broadly to include fire prevention and suppression services as well as inspection programs, emergency response programs, and training and other educational efforts—with its general property tax proceeds. County officials are increasingly looking to implement funding mechanisms that are more closely tied to the provision of the local government services they support. And, with respect to paying for fire services, a county has the option of creating special tax districts within the county to generate revenue to fund the specific

147. The nuances of fire insurance grading are beyond the scope of this article. For more information on fire insurance rating in North Carolina see N.C. ASS'N OF FIRE CHIEFS ET AL., *supra* note 144. See also Requirements to Meet the 9S Rating for Initial Certification/Re-Inspection of Fire Departments in North Carolina (produced by the N.C. Office of the State Marshal), *available at* www.ncdoi.com/osfm/ri/ri_9s.asp (last visited April 1, 2011). See generally Shea Riggsbee Denning & Richard D. Ducker, *Fire Protection*, Article 33 in COUNTY AND MUNICIPAL GOVERNMENT IN NORTH CAROLINA (David M. Lawrence, ed., UNC School of Government 2007), *at* www.sog.unc.edu/pubs/cmng/cmng33.pdf.

fire services that are provided in each district. There are two types of special tax districts—rural fire protection districts and county fire service districts. Each has separate procedures governing its creation and modification. Both, however, allow counties to target their taxing power to those properties that most directly benefit from the fire services. And both provide significant flexibility to county officials to determine how and by whom fire services ultimately are delivered.

Appendix

Summary Comparison of Rural Fire Protection Districts and County Fire and Rescue Service Districts

	Rural Fire Protection District	County Fire or Rescue Service District
Creating District	<ul style="list-style-type: none"> County board(s) of commissioners receive(s) petition signed by at least 35 percent of resident freeholders in proposed district and holds successful referendum of qualified voters in proposed district Municipal territory may not be included 	<ul style="list-style-type: none"> County board of commissioners makes certain statutory findings and holds public hearing Municipal territory may be included with consent of municipality's governing board
Maximum Tax Rate	<ul style="list-style-type: none"> \$0.15 per \$100 valuation (\$0.10 per \$100 valuation if district established before June 1959, unless voters have approved increase to \$0.15 per \$100 valuation maximum) 	<ul style="list-style-type: none"> No maximum district tax rate, but district tax, combined with county's general ad valorem property tax rate(s), may not exceed \$1.50 per \$100 valuation, unless the portion of the rate in excess of the limitation is approved by the district's voters County board of commissioners may impose maximum tax rates (of \$0.15 per \$100 valuation in fire district, or \$0.05 per \$100 valuation in rescue district) if board follows certain procedures in establishing district
Governing Structure	<ul style="list-style-type: none"> County board of commissioners <i>or</i> Joint county board(s) of commissioners if district lies in more than one county <i>or</i> Three-member appointed fire commission under supervision of the county board(s) of commissioners 	<ul style="list-style-type: none"> County board of commissioners
Authorized Services and Projects	<ul style="list-style-type: none"> Any fire suppression or prevention programs including, but not limited to, inspections, training and educational activities, emergency medical, rescue and ambulance services, and any capital projects related to the provision of these services 	<ul style="list-style-type: none"> Fire Service District <ul style="list-style-type: none"> Any fire suppression or prevention programs including, but not limited to, inspections, training and educational activities, emergency medical, rescue and ambulance services, and any capital projects related to the provision of these services Rescue Service District <ul style="list-style-type: none"> Emergency medical, rescue and ambulance services, and any capital projects related to the provision of these services

(continued)

	Rural Fire Protection District	County Fire or Rescue Service District
Modifying Tax Rate	<ul style="list-style-type: none"> • County board(s) of commissioners set(s) district tax rate each year up to maximum authorized by voters • If district established before June 1959, maximum tax rate may be increased from \$0.10 per \$100 valuation to \$0.15 per \$100 valuation if county board(s) of commissioners receive petition signed by at least 35 percent of the resident freeholders in the district and the increase is approved by a majority of qualified voters voting in referendum on the increase 	<ul style="list-style-type: none"> • County board of commissioners set district tax rate each year
Adding Territory to District	<ul style="list-style-type: none"> • <i>Unincorporated Territory</i> <ul style="list-style-type: none"> ◦ District's governing board must receive a petition from owner of a single adjoining parcel or from two-thirds majority of the owners of adjoining territory ◦ Petition must be approved by fire commission (if created), majority of the board(s) of directors of any fire departments servicing the district, and the majority of the county board(s) of commissioners of the county(ies) in which the district lies ◦ County board(s) of commissioners must hold public hearing • <i>Incorporated Territory</i> <ul style="list-style-type: none"> ◦ Municipal governing board and county board(s) of commissioners adopt resolutions approving of inclusion of municipal territory in district 	<ul style="list-style-type: none"> • Area to be added is contiguous to district, with at least one-eighth of the area's aggregate external boundary coincident with the district's boundary and county board of commissioner determines that area needs services provided in district or county board of commissioners receives petition signed by 100 percent of real property owners in area to be added • County board of commissioners must make certain statutory findings and hold public hearing <ul style="list-style-type: none"> ◦ <i>(If the area to be added is in a municipality, the municipality's governing board must adopt a resolution consenting to the inclusion)</i>

(continued)

	Rural Fire Protection District	County Fire or Rescue Service District
Changing Boundaries between Districts	<ul style="list-style-type: none"> • <i>Districts with Same Tax Rate</i> <ul style="list-style-type: none"> ◦ County board(s) of commissioners receive(s) petition from fire commission (if appointed) and the board(s) of directors of any fire or rescue departments providing fire services in the district ◦ County board(s) of commissioners must hold public hearing • <i>Districts with Different Tax Rates</i> <ul style="list-style-type: none"> ◦ County board(s) of commissioners receive(s) petition signed by at least two-thirds of the owners in the territory ◦ County board(s) of commissioners receive(s) favorable recommendation from fire commission (if appointed) and the board(s) of directors of any fire or rescue department providing services in the district ◦ County board(s) of commissioners must hold public hearing 	<ul style="list-style-type: none"> • If two districts were established for “substantially similar purposes,” the county board of commissioners may alter the boundary lines on its own accord or after receiving a petition from affected property owners. • County board of commissioners must make certain statutory findings and hold public hearing
Removing Territory from District	<ul style="list-style-type: none"> • Property owner applies to county board(s) of commissioners • County board(s) of commissioners receive unanimous written consent from fire commission (if appointed) and approval of the majority of members of the board(s) of directors of any fire or rescue departments servicing the district • If property in a district is annexed by a municipality that provides fire services, the property ceases being part of the district 	<ul style="list-style-type: none"> • No statutory authority to remove territory from district unless property in district is annexed by rural fire protection district or by municipality that provides fire services • If territory in district is annexed to existing or new rural fire protection district it ceases to be part of service district • If territory in district is annexed by municipality that provides fire services it ceases to be part of service district
Abolishing District	<ul style="list-style-type: none"> • County board(s) of commissioners receive(s) petition signed by at least 15 percent of the resident freeholders in the district and holds successful referendum of qualified voters in the district 	<ul style="list-style-type: none"> • Board of county commissioners adopts resolution abolishing the district • <i>(District may not be abolished if the county has any “outstanding bonds or notes issued to finance projects in the district”)</i>

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