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# **“South Carolina Special Purpose Districts”**

**February 4, 2016**

**C.D. Rhodes**

# South Carolina Special Purpose Districts



## What is a special purpose district?

- A form of local government?
- A “political subdivision”?
  - A service provider?

# South Carolina Special Purpose Districts



## Counties without an SPD?

# South Carolina Special Purpose Districts



## Counties without an SPD?

Barnwell

Calhoun

Dillon

Marion

McCormick

Hampton (sort of)

# South Carolina Special Purpose Districts



County with the most SPDs?

# South Carolina Special Purpose Districts



## County with the most SPDs?

Greenville County - 30

# South Carolina Special Purpose Districts



## Greenville County SPDs

### **Belmont Fire and Sanitation District**

Berea Public Service District

Boiling Springs Fire District

Canebrake Fire District

Donaldson Center Fire Service Area

Duncan Chapel Fire District

Dunklin Fire District

Foothills Fire Service Area

Gantt Fire, Sewer and Police District

Glassy Mountain Fire / Safety Service Area

Gowensville Fire Department

### **Greater Greenville Sanitation Comm.**

Greenville Airport Commission

### **Greenville Arena District**

Greenville Transit Authority

### **Greenville-Spartanburg Int. Airport District**

Lake Cunningham Fire Department

Marietta Water, Fire, Sanit. and Sewer District

### **Metropolitan Sewer Subdistrict Commission**

North Greenville Fire District

Parker Sewer and Fire Sub-District

Pelham - Batesville Fire District

Piedmont Park Fire District

Piedmont Public Service Area Commission

Rabon Creek Watershed Conservation District

Slater-Marietta Fire District

South Greenville Area Fire District

### **South Tyger Watershed Conservation Dist.**

Taylor's Fire and Sewer District

Wade Hampton Fire and Sewer District



# South Carolina Special Purpose Districts



SPD with the highest and lowest\* revenue?

# South Carolina Special Purpose Districts



SPD with the highest and lowest\* revenue?

Grand Strand Water and Sewer Authority - \$87 million

Lockhart Fire District (Union County) - \$44,513.01

\*Created by the General Assembly and not a “watershed district”

# South Carolina Special Purpose Districts



## Why do SPDs Exist: A History Lesson

- Pre-1973 – Counties and municipalities had strictly defined powers: “Dillon’s Rule”

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the declared objects and purposes of the corporation--not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved against the corporation, and power is denied.

# South Carolina Special Purpose Districts



## Why do SPDs Exist: A History Lesson

- Pre-1973 - Counties could only levy taxes for specific purposes and no others
  - Education
  - Build and Repair Roads, Buildings, and Bridges
  - Maintain and Support Prisoners
  - Pay For Jurors, County Officers, Litigation, Quarantine and Court Expenses
  - Support Paupers
  - Pay Past Indebtedness
  - Provide For Ordinary County Purposes

# South Carolina Special Purpose Districts



## Why do SPDs Exist: A History Lesson

- Not for lack of trying to do other things...
- Recreation (*Leonard v. Talbert*)
- Sanitation (*Doran v. Robertson*)
- Cultural Buildings (*Powell v. Thomas*)
- Airports (*Gentry v. Taylor*)

# South Carolina Special Purpose Districts



## Why do SPDs Exist: A History Lesson

- Pre-1973 – Municipalities could provide municipal-type services in urban areas
- New municipalities followed new population density where services were wanted and needed

# South Carolina Special Purpose Districts



## Why do SPDs Exist: A History Lesson

- Purpose of SPDs was to provide municipal-level services outside of cities and towns
- Created by the General Assembly in one of two ways:
  - Bills authorizing referendum in proposed districts
  - Bills directly creating the SPD
- We refer to these bills as an SPD's "Enabling Legislation"

# South Carolina Special Purpose Districts



## Why do SPDs Exist: A History Lesson

- Most SPDs were created with “Enabling Legislation” that defined all of their various attributes
  - Number of commissioners
  - Boundaries
  - Powers and duties
  - Ability to issue general obligation debt
- Enabling Legislation was often amended numerous times over many years



# South Carolina Special Purpose Districts



## Why do SPDs Exist: A History Lesson

- Post-1973 – Home Rule & New Article VIII of the S.C. Constitution broadened the powers of local governments

As of March 7, 1976:

The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.”

*- Article VIII, §17 of the South Carolina Constitution*

# South Carolina Special Purpose Districts



## Why do SPDs Exist: A History Lesson

### • Post-1973 – Home Rule & New Article VIII of the S.C. Constitution – A Big Win for Counties!!

- **Section 1** – “The powers possessed by all counties . . . shall continue until changed in a manner provided by law.”
- **Section 7** – “The General Assembly shall provide by *general law* for the structure, organization, powers, duties, functions, and the responsibilities of counties . . . . No laws for a specific county shall be enacted . . . .”
- **Section 16** – “Any county . . . may, upon a majority vote . . . , acquire by initial construction or purchase and may operate water, sewer, transportation or other public utility systems and plants other than gas and electric . . . .”

# South Carolina Special Purpose Districts



## Why do SPDs Exist: A History Lesson

- Post-1973 – New Article VIII – A Mixed Bag for SPDs
- Gave many of the powers to change and control SPDs to county councils
  - Change boundaries
  - Change the number of commissioners
  - Approve the issuance of general obligation debt
- Took away almost all power of the General Assembly to Change SPD Enabling Legislation
  - Made no provision to adjust powers and duties of SPDs

# South Carolina Special Purpose Districts



## SPDs: Home Rule or Dillon's Rule?

# South Carolina Special Purpose Districts



## SPDs: Home Rule or Dillon's Rule?

- *Evins v. Richland County Historic Preservation Com'n*  
– the “local governments” described in Article VIII, §17 only include Cities and Counties
- The result of all of this: SPDs remain as they were created by the General Assembly, but can exercise those powers that they have specifically been given
- SPDs are defined by their Enabling Legislation

# South Carolina Special Purpose Districts



## Enabling Legislation: Powers and Duties

### •Ex.: Boiling Springs Fire District, Greenville County

**SECTION 3. Powers and duties.**—The board shall have the following duties and responsibilities:

(a) To buy such fire-fighting equipment as the board deems necessary for the purpose of controlling fires within the money allocated or made available to the board for such purposes.

(f) To promulgate such rules and regulations as it may deem proper and necessary to insure that the equipment is being used to best advantage of the area.

(h) To borrow not exceeding twenty thousand dollars on such terms and for such a period as to the fire control board may seem most beneficial for the fire district in anticipation of taxes. The indebtedness shall be evidenced by a note issued by the members of the board and the county treasurer. The full faith and taxing power of the Boiling Springs Fire District is hereby irrevocably pledged for the payment of the indebtedness.



# South Carolina Special Purpose Districts



## Enabling Legislation: Powers and Duties

- Ex.: Startex-Jackson-Wellford-Duncan Water District, Spartanburg County

**SECTION 3.** There is hereby committed to the district the functions of constructing, operating, maintaining, improving and extending a water distribution system, and a system for fire protection within the district. To that end, the commission shall be empowered as provided below:

8. Build, construct, operate and maintain water lines and water mains throughout the district, and all apparatus necessary for the proper functioning of the same, and from time to time to enlarge and extend the same.

11. Distribute and sell water on such terms and rates as it shall from time to time approve. To that end the commission shall be empowered to place into effect and to revise, whenever it so wishes or may be so required, a schedule of rates and charges for water furnished by its water distribution system. The commission shall be further empowered to sell water beyond the limits of the district, on such terms as it shall approve, wherever it shall be economically feasible to do so.

# South Carolina Special Purpose Districts



## Enabling Legislation: Powers and Duties

- Types of powers including in legislation:
  1. To do whatever is necessary to provide their service
    - Provide fire service, operate an airport, etc.
  2. To do those things that all local governments must do to operate – contract, promulgate regulations, etc.
  3. To fix fees for services
  4. To levy taxes (we'll get back to this)
  5. To issue bonds up to a certain (usually very small) amount
    - These powers have since been preempted by general statutes – which are permitted under Home Rule



# South Carolina Special Purpose Districts



## Enabling Legislation: Boundaries

What Boundaries Often Look Like:

# South Carolina Special Purpose Districts



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**SECTION 2. Service area.**—The district shall include and be comprised of the following territory which shall be known as the service area :

Beginning at the intersection of the centerline of the Seaboard Railroad and Gillies Ditch and proceeding with the center of Gillies Ditch downstream to the western waters edge of the Wateree River, thence with the West bank of the Wateree River Northward (upstream) to a point on the West bank of the Wateree River being one mile North of the center of Five and Twenty Creek, thence running parallel to and one mile North of Five and Twenty Creek Westward to a point where said line intersects the center of South Carolina Highway No. 34, thence running due South approximately four and one-half (4½) miles to the centerline of the Seaboard Railroad, thence running Northeast with the centerline of said railroad to the intersection with the center of Gillies Ditch, being the point of beginning.

# South Carolina Special Purpose Districts



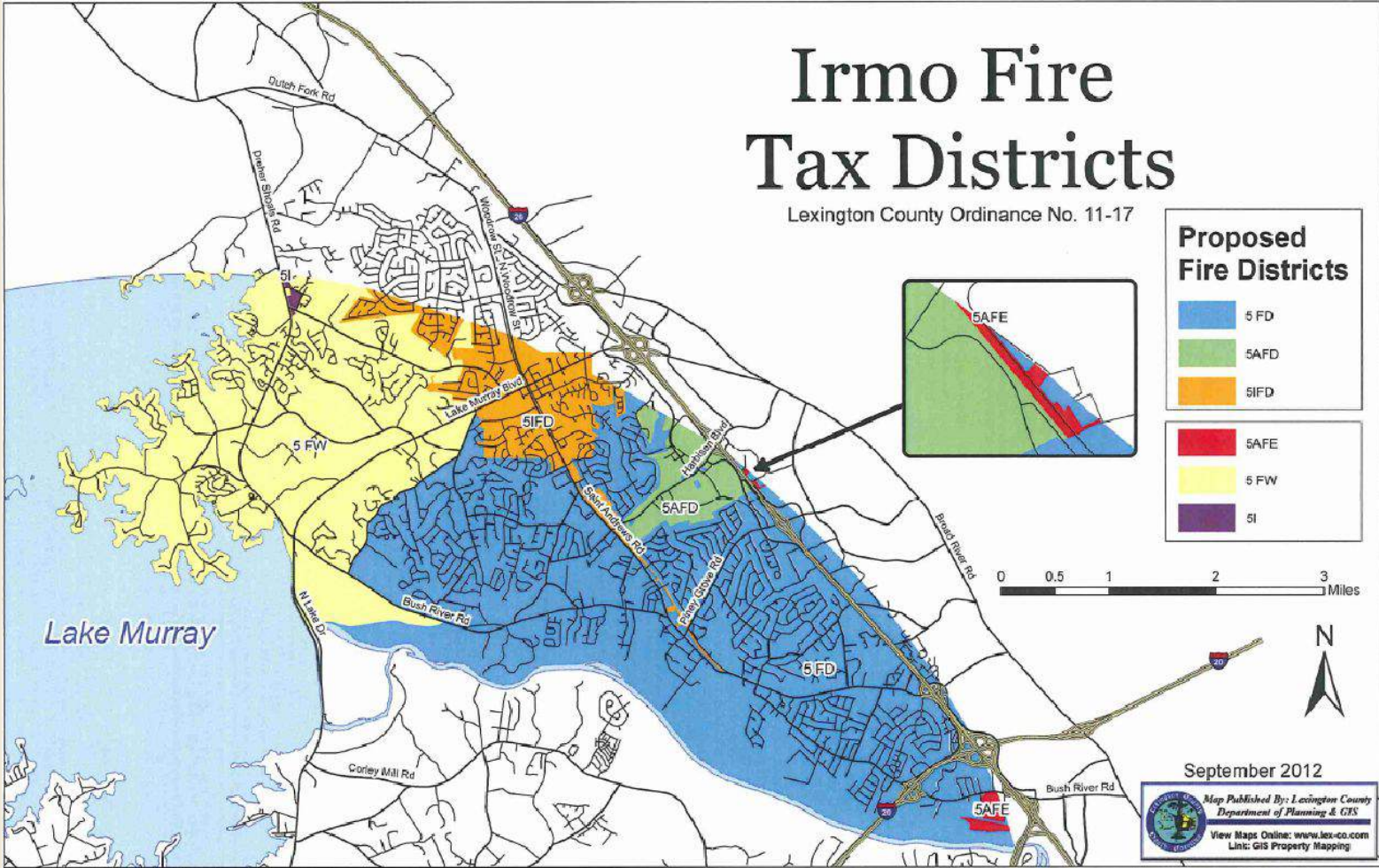
## Enabling Legislation: Boundaries

What Boundaries Should Look Like:

# South Carolina Special Purpose Districts



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# South Carolina Special Purpose Districts



## Enabling Legislation: Boundaries

What They REALLY Should Not Look Like:

# South Carolina Special Purpose Districts



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(R737, H2116)

No. 765

**An Act To Add Additional Territory To The East Richland Public Service District In Richland County, Created By Act 1114 Of 1960.**

Be it enacted by the General Assembly of the State of South Carolina :

**SECTION 1. Additional area.**—Section 2 of Act 1114 of 1960, as amended, includes the description of the area comprising the East Richland Public Service District in Richland County. In addition to the area described in that section, the district is hereby enlarged by adding certain additional territory so that the area included in the district, as described in Section 2, with additions provided for in this act shall include the following area :

**SECTION 14. Time effective.**—This act shall take effect upon approval by the Governor.

Approved the 10th day of July, 1973.

# South Carolina Special Purpose Districts



## Enabling Legislation: Millage Levy

- Many, but not all, SPDs are authorized to levy annual millage for operations
- The authorized millage can be capped or uncapped

# South Carolina Special Purpose Districts



## Enabling Legislation: Millage Levy

- Ex. of Uncapped Millage Levy: Spartanburg Sanitary Sewer District, Spartanburg County

the principal of and interest on the bonds as they become due. In addition to the above, there shall also be levied annually an ad valorem tax without limit as to rate or amount on all taxable property within the district sufficient to provide for the administrative expenses of the district and for the cost of maintenance and operation of the interceptors and the sewerage treatment facilities of the district. The annual taxes shall be levied and collected by the same officers and in the same manner as is provided for the levy and collection of taxes for county purposes in Spartanburg County. The money so collected shall be transmitted at such times as collections are normally apportioned by the Treasurer of Spartanburg County to the governing commission of the district. The commissioners of the district shall be authorized and empowered to annually determine the amount of millage required for administrative and operational expenses as above referred to and to pay the above-mentioned principal and interest on outstanding bonds of the district.



# South Carolina Special Purpose Districts



## Enabling Legislation: Millage Levy

- Ex. of Capped Millage Levy: Lady's Island – St. Helena Fire District, Beaufort County

**SECTION 4. Tax levy.**—The Auditor and Treasurer of Beaufort County are hereby directed to levy and collect a tax of not more than **five mills**, to be determined by the board of fire control, upon all taxable property of the district for the purpose of defraying the expenses incurred by the board. All monies collected from this levy shall be credited to the fire district.

# South Carolina Special Purpose Districts



## SPD Millage Levy & Fiscal Autonomy

- Degree of fiscal autonomy depends on whether an SPDs commission is elected or appointed
- Elected commissions have significant fiscal autonomy
  - Capped millage – can freely levy up to that capped amount
  - Uncapped millage – can levy any amount necessary for the operation of the SPD (within the bounds of Act 388)

# South Carolina Special Purpose Districts



## SPD Millage & Fiscal Autonomy

- Appointed commissions have less fiscal autonomy
  - Millage is fixed at what the SPD levied in 1998 (*See, S.C. Code §6-11-271, enacted in response to Weaver v. Recreation District of Richland County*)

# South Carolina Special Purpose Districts



## SPD Millage & Fiscal Autonomy

- Whether elected or appointed, SPDs with a capped millage have no independent authority to exceed it
- Capped millage rates may be exceeded with the annual approval of county council
  - Any millage increase is only effective for one year
  - May not exceed the limitations of Act 388
- Any SPD can ask for a referendum to increase their authorized millage

# South Carolina Special Purpose Districts



## SPD Bonds – GO Bonds

- SPDs are subject to the standard 8% debt limit
- All SPDs must receive the approval of county council to issue GO Bonds
  - Commission petitions county council for approval
  - County council schedules a public hearing on the issuance by resolution
  - After the public hearing, county council approves the bond issuance by ordinance
- Payments should be timed for auditors to put on mills in time for payment – less than 1 year from issuance

# South Carolina Special Purpose Districts



## SPD Bonds – Revenue Bonds

- Can only be issued by SPDs that generate revenue
  - Typically utilities
  - Can be based on any stream of revenue (fire service fees)
- Security
  - Cannot pledge the “full faith, credit and taxing power” of the SPD
  - Can pledge any “recurring revenue source” (for the most part)
- Not subject to a debt limit – limitations are normally provided by “coverage ratios” and “rate covenants”
- Can be issued without the approval of county council

# South Carolina Special Purpose Districts



## SPD Dissolution – It's Hard!!

- Two statutory schemes for dissolution
- Article 15, Chapter 11 of Title 6
  - Only one applicable to active SPDs
  - Petition – signed by 40% of electors of district
  - Election – dissolution must be approved by 2/3 majority



# South Carolina Special Purpose Districts



## SPD Dissolution – It’s Hard!!

- Section 4-11-290
  - Only applicable to inactive SPDs
  - District must have no outstanding debt and cannot have provided services within the last two years
- Any property owner within district may petition the Secretary of State for Dissolution
- Secretary of State investigates petition and dissolves the SPD if it is found to be inactive
- Assets associated with providing service must be conveyed to another political subdivision



# South Carolina Special Purpose Districts



## Other County Powers Over SPDs

- Section 6-11-420 allows county councils to:
  - Consolidate SPDs with others within the County – the consolidated SPD has all powers of each, including the power to levy a millage
  - Enlarge SPD boundaries
  - Diminish SPD boundaries – but not to the extent where they are diminished out of existence (*See Berry v. Weeks*)
  - Change the composition of the commission
- Must be done by ordinance, after a public hearing

# South Carolina Special Purpose Districts



## A Question for You

How does your county deal with parcels that are split between being inside and outside of an SPD that has an authorized millage?

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# Questions?



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