

Chapter 2

The Local Government Budget and Fiscal Control Act

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Introduction

The authority to raise money and to expend it for particular purposes varies among the different types of local entities. Almost all local entities are subject to a uniform set of rules governing fiscal management, though. Most of these rules are contained in a series of statutory provisions known as the Local Government Budget and Fiscal Control Act (LGBFCA). The act comprises Article 3 of Chapter 159 of the North Carolina General Statutes (hereinafter G.S.). It prescribes for North Carolina local governments and public authorities “a uniform system of budget adoption and administration and fiscal control,” detailing the proper procedures for budgeting, managing, disbursing, and accounting for public funds.¹

This chapter reflects the law as of March 1, 2023.

1. G.S. 159-7(c).

The LGBFCA covers five main topic areas related to fiscal management. The following statutory provisions, listed by topic area, are included within the act:

Finance Personnel and Local Government Commission

- G.S. 159-9 Budget officer.
- G.S. 159-24 Finance officer.
- G.S. 159-25 Duties of finance officer and internal control procedures subject to Commission regulation.
- G.S. 159-26 Accounting system (including Commission regulations).
- G.S. 159-29 Fidelity bonds.
- G.S. 159-35 Secretary of Commission to notify units of debt service obligations.
- G.S. 159-36 Failure of local government to levy debt service taxes or provide for payment of debt.
- G.S. 159-181 Enforcement of chapter.
- G.S. 159-182 Offending officers and employees removed from office.

Budgeting Public Funds

- G.S. 159-8 Annual balanced budget ordinance.
- G.S. 159-10 Budget requests.
- G.S. 159-11 Preparation and submission of budget and budget message.
- G.S. 159-12 Filing and publication of the budget; budget hearings.
- G.S. 159-13 The budget ordinance; form, adoption, limitations, tax levy, filing.
- G.S. 159-13.1 Financial plan for intragovernmental service funds.
- G.S. 159-13.2 Project ordinances.
- G.S. 159-14 Trust and agency funds; budgets of special districts.
- G.S. 159-15 Amendments to the budget ordinance.
- G.S. 159-16 Interim budget.
- G.S. 159-17 Ordinance procedures not applicable to budget or project ordinance adoption.
- G.S. 159-17.1 Vending facilities.
- G.S. 159-35 Secretary of Local Government Commission to notify units of debt service obligations.
- G.S. 159-36 Failure of local government to levy debt service taxes or provide for payment of debt.

Managing Public Funds

- G.S. 159-27 Distribution of tax collections among funds according to levy.
- G.S. 159-27.1 Use of revenue bond project reimbursements; restrictions.
- G.S. 159-30 Investment of idle funds.
- G.S. 159-31 Selection of depository; deposits to be secured.
- G.S. 159-32 Daily deposits.

Dispersing Public Funds

- G.S. 159-25 Dual signatures on checks.
- G.S. 159-28 Budgetary accounting for appropriations.
- G.S. 159-28.1 Facsimile signatures.
- G.S. 159-32.1 Electronic payment.

Accounting for Public Funds

- G.S. 159-18 Capital reserve funds.
- G.S. 159-19 Amendments.

G.S. 159-20	Funding capital reserve funds.
G.S. 159-21	Investment.
G.S. 159-22	Withdrawals.
G.S. 159-26	Accounting system.
G.S. 159-33	Semiannual reports on status of deposits and investments.
G.S. 159-33.1	Semiannual reports of financial information.
G.S. 159-33.2	Interim event reporting.
G.S. 159-34	Annual independent audit; rules and regulations.
G.S. 159-37	Reports on status of sinking funds.
G.S. 159-40	Special regulations pertaining to nonprofit corporations receiving public funds.

This chapter focuses on the first category; it discusses which local entities are subject to the LGBFCA and introduces the various actors involved in ensuring compliance with the act's provisions. Other chapters in this textbook flesh out the requirements of the LGBFCA in the remaining topic areas: budgeting public funds,² managing public funds,³ disbursing public funds,⁴ and accounting for public funds.⁵

Entities Subject to the LGBFCA

Before delving into the requirements of the Local Government Budget and Fiscal Control Act (LGBFCA), it is important first to determine if a particular local entity is covered by the act. There are two types of entities that are subject to the act—"units of local government" and "public authorities."⁶ Most local entities can be characterized as one of these two types. Almost all of the act's requirements and limitations apply equally to both, but occasionally units of local government are treated differently from public authorities. It is therefore important to know if a local entity is a unit of local government or a public authority to determine if the entity is subject to the LGBFCA and, if so, to determine which of the act's provisions apply.

Unit of Local Government

A unit of local government is defined as "a municipal corporation that is not subject to the State Budget Act and that has the power to levy taxes . . . and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations."⁷ There are three important components to this definition. First, the entity must be a municipal corporation. A municipal corporation is a public agency with corporate status. If the enabling legislation for a

2. See Chapter 3, "Budgeting for Operating and Capital Expenditures," and Chapter 7, "Financing Capital Projects."

3. See Chapter 10, "Accounting, Financial Reporting, and the Annual Audit."

4. See Chapter 8, "Managing and Disbursing Public Funds," and Chapter 11, "Procurement, Contracting, and Disposal of Property."

5. See Chapter 10, "Accounting, Financial Reporting, and the Annual Audit."

6. G.S. 159-7.

7. G.S. 159-7(b)(15).

local entity specifically states that it is a municipal corporation or otherwise indicates that the entity is a “body corporate and politic” or a “public corporation,” then the entity is a municipal corporation.⁸ Second, the entity may not be part of the state’s budgeting system. G.S. Chapter 143C, known as the State Budget Act, governs the budgeting and expenditure of state money by state agencies. Although local entities are subject to several provisions of the State Budget Act with respect to the receipt of state funds, they are not required to comply with the actual budgeting requirements of the act.⁹ Third, the local entity must have the power to levy taxes. Based on this definition, the following local entities constitute units of local government:

- counties (G.S. Chapter 153A);
- municipalities (cities, towns, villages)¹⁰ (G.S. Chapter 160A);
- consolidated municipal-county governments (G.S. Chapter 160B);
- sanitary districts (G.S. Chapter 130A, Article 2, Part 2);
- county water and sewer districts¹¹ (G.S. Chapter 162A, Article 6);
- metropolitan sewerage districts (G.S. Chapter 162A, Article 5);
- metropolitan water districts (G.S. Chapter 162A, Article 4);
- mosquito control districts (G.S. Chapter 130A, Article 12, Part 2);
- special airport districts (G.S. Chapter 63, Article 8);
- regional public transportation authorities (G.S. Chapter 160A, Article 26).

For purposes of the LGBFCA, a unit of local government also includes all boards, agencies, commissions, authorities, and institutions that are established or created by the unit’s governing board or that are not themselves municipal corporations. Governing boards often appoint citizen advisory boards for the administration of libraries and parks and recreation. Counties and municipalities also are served by functional boards and commissions in the areas of health, social services, elections, and planning. If these entities are not municipal corporations (and many are not) then their fiscal affairs are the responsibility of the county, municipality, or other unit of government with which they are associated.¹²

8. See generally *Carolina-Va. Coastal Highway v. Coastal Tpk. Auth.*, 237 N.C. 52, 61 (1953) (“[A] corporation formed for purely governmental purposes is a municipal corporation.”); *Wells v. Hous. Auth. of City of Wilmington*, 213 N.C. 744, ___, 197 S.E. 693, 697 (1938) (“[W]hen applied to corporations the words ‘political,’ ‘municipal,’ and ‘public’ are used interchangeably.”).

9. Note that before Fiscal Year 2007–2008, the terms “unit of local government” and “public authority” in G.S. 159-7 were defined as not being subject to the provisions in G.S. Chapter 143, Article 1, and G.S. Chapter 143, Article 1, did not define the entities subject to its provisions to include units of local government and public authorities. However, G.S. Chapter 143 was repealed as of July 1, 2007, and replaced with G.S. Chapter 143C. Somewhat confusingly, G.S. Chapter 143C does include units of local government and public authorities in its definition of entities subject to its provisions. This appears to be a drafting oversight. It is commonly understood that units of local government and public authorities are subject to the budgeting requirements of the LGBFCA and not the State Budget Act.

10. In North Carolina, unless a statute specifically provides otherwise, there is no legal difference among a city, town, or village. As used in this book, the term “municipality” is synonymous with “city,” “town,” and “village.”

11. G.S. 162A-89 specifies that a county’s governing board also serves as the governing board of the county water and sewer districts within its jurisdiction.

12. There are some boards and commissions established by local act that are invested with corporate status.

Occasionally, the LGBFCA refers to a “special district.” A special district is a unit of local government created for the “performance of limited governmental functions or for the operation of a particular utility or public service enterprises.”¹³ Any local entity that meets the definition of a unit of local government set forth above that is not a county, municipality, or consolidated municipal-county government is a special district for purposes of the LGBFCA (see the last seven items in the above list).

Public Authority

A local entity also is subject to the LGBFCA if it is a *public authority*. This is an umbrella term that covers a variety of special-purpose local government entities. G.S. 159-7(b)(10) defines two different categories of public authorities. The first has three distinguishing characteristics, two of which are analogous to a unit of local government. First, the local entity is a municipal corporation, and second, it is not part of the state’s budgeting system. The third and differentiating characteristic, however, is that the entity does not have the power to levy taxes. Under this definition, the following local entities are public authorities:

- housing authorities¹⁴ (G.S. Chapter 157, Article 1);
- redevelopment commissions¹⁵ (G.S. Chapter 160A, Article 22);
- water and sewer authorities (G.S. Chapter 162A, Article 1);
- soil and water conservation districts¹⁶ (G.S. Chapter 139, Article 1);
- parking authorities (G.S. Chapter 160A, Article 24);
- public transportation authorities (G.S. Chapter 160A, Article 25);
- tourism development authorities (local act¹⁷);
- regional transportation authorities (G.S. Chapter 160A, Article 27);
- regional natural gas districts (G.S. Chapter 160A, Article 28);
- single- and multi-county public health authorities (G.S. Chapter 130A, Article 2, Part 1B).

The second type of public authority has five distinguishing characteristics. First, it is *not* a municipal corporation. Second, it is not part of the state’s budgeting system. Third, it has no power to levy taxes. Fourth, it operates on an area, regional, or multi-unit basis. Fifth, it is not part of the budgeting and accounting system of a unit of local government. The last two

13. G.S. 159-7(b)(13).

14. A county’s or municipality’s governing board may adopt a resolution assuming responsibility for the fiscal affairs of a housing authority. If a unit adopts such a resolution, the housing authority is not a public authority for purposes of G.S. 159-7(b); rather, it is a department or agency of the county or municipality. G.S. 157-4.2.

15. A county’s or municipality’s governing board may adopt a resolution assuming responsibility for the fiscal affairs of a redevelopment commission. If a unit adopts such a resolution, the redevelopment commission is not a public authority for purposes of G.S. 159-7(b); rather, it is a department or agency of the county or municipality. G.S. 160A-505.1.

16. Several soil and water conservation districts are treated as departments of the counties in which they are located. Although technically still public authorities and thus independently subject to the LGBFCA, these districts often rely on county governments to manage most if not all of their fiscal affairs.

17. Many local governments are authorized to levy occupancy taxes pursuant to local act. The local acts establishing this authority often require a local unit to establish a tourism development authority (TDA) to manage the expenditure of occupancy tax proceeds. TDAs typically are municipal corporations that are not subject to the state’s budgeting system and not authorized to levy taxes.

characteristics are particularly important. As mentioned above, there are many local entities that are not municipal corporations, are not part of the state budgeting system, and lack the power to levy taxes. In fact, most of the boards, agencies, commissions, authorities, and institutions of a unit of local government satisfy these criteria. Very few are not part of the budgeting and accounting system of a unit of local government, though. Local entities that satisfy this second definition of public authority include the following:

- councils of government (G.S. Chapter 160A, Article 20, Part 2);
- regional planning commissions (G.S. Chapter 153A, Article 19);
- regional economic-development commissions (G.S. Chapter 158, Article 2);
- regional planning and economic-development commissions (G.S. Chapter 153A, Article 19);
- single- and multi-county area mental health, developmental disabilities, and substance abuse authorities (G.S. Chapter 122C, Article 4, Part 2);
- district health boards (G.S. Chapter 130A, Article 2, Part 1);
- regional libraries (G.S. Chapter 153A, Article 14; G.S. Chapter 160A, Article 20).

Sometimes a public authority that is independently subject to the LGBFCA chooses to contract with another local entity to perform many or even all its duties under the act. For example, many tourism development authorities (TDAs) contract with the county or municipality with which they are associated to manage, disperse, and properly account for their funds. And, though technically independent public authorities, several soil and water conservation districts rely on the county governments with which they are associated to adopt their budgets and perform some or all other financial management duties. In these cases, the governing board of the public authority still is responsible for ensuring full compliance with the LGBFCA.

There are a few special-purpose local governments that are not public authorities, including local school administrative units and Alcoholic Beverage Control (ABC) boards. These entities are subject to separate budgeting and fiscal control provisions, although many of the requirements are parallel to those in the LGBFCA.¹⁸

Private Entities Not Subject to LGBFCA

If an entity is not a unit of local government or a public authority, or a department, agency, board, commission, or institution of one of these entities, it is not subject to the LGBFCA. This may seem obvious, but some private entities, such as nonprofits, are closely aligned with, and even created by, government entities.¹⁹

A nonprofit may receive most, if not all, of its funding from the government.²⁰ It may be treated as a component unit of a local government under applicable accounting rules. And, at

18. Local school administrative units are governed by the School Fiscal Control Act, located in G.S. Chapter 115C, Article 31. The budgeting and fiscal management requirements for ABC Boards are found in G.S. 18B-702.

19. G.S. 159-42.1 explicitly authorizes a public authority to create a nonprofit corporation. Many counties and municipalities also have established nonprofit corporations, pursuant to their general administrative authority, to aid in fundraising or other support efforts. A local government or public authority must notify the state Local Government Commission if it creates a nonprofit. G.S. 159-7(e).

20. For more information on providing funding to nonprofits, see Chapter 1, “The Public Purpose Requirement.”

times, it may even effectively be controlled by a local entity through board appointments or budget-approval requirements. Because of its close ties to a public agency, a nonprofit may be treated as a public agency for some purposes. For example, a nonprofit agency that has close enough ties to a government entity may be subject to public records laws and open meetings laws that typically apply only to public agencies.²¹ Such a nonprofit likely would not be subject to the LGBFCA, though, because it does not satisfy the definition of a covered entity.

A local government or public authority may, however, require a nonprofit or other private organization to comply with some or all of the LGBFCA's provisions as a condition of contracting with the local entity and receiving public funds.²² In fact, the LGBFCA specifies that if a county or municipality appropriates \$1,000 or more to a nonprofit corporation in any fiscal year, the local unit may require that the nonprofit have an independent audit performed for the fiscal year in which the funds were received and provide a copy of that audit to the local government.²³ The statute exempts certain entities from this requirement—most significantly, nonprofits that “provide hospital services or operate as a volunteer fire department, rescue squad, [or] ambulance squad. . . .”²⁴ While a local entity may require these exempt nonprofits to provide an accounting of how any public funds were expended during a fiscal year, the entity is prohibited from requiring that exempt nonprofits undergo independent audits. A local entity also is free to require any nonprofits (including those exempt from the independent audit requirement) or other private entities to comply with any of the other LGBFCA provisions as a condition of doing business with the government or receiving public funds.

State law also requires a nonprofit that receives more than \$5,000 of public funds (from a local government, the state, or the federal government) within a fiscal year, in grants, loans, or in-kind contributions, to provide the following information upon written request from any member of the public:

1. The nonprofit's latest financial statements. The financial statements must include a balance sheet as of the end of the fiscal year and a statement of operations for that year. They also must contain “details about the amount of public funds received and how those funds were used.”²⁵
2. The nonprofit's most recently filed Internal Revenue Service (IRS) Form 990, Form 990-EZ, or a copy of its Form 990-N submittal confirmation. A nonprofit may redact information not required for public disclosure pursuant to 26 U.S.C. § 6104(d)(3). Alternatively, a nonprofit may satisfy this requirement if it posts this information on its website or if another entity posts the information as part of a database of similar

21. For more information on when a private entity may be treated as a public agency for certain purposes, see Frayda Bluestein, “When Do Government Transparency Laws Apply to Private Entities?” *Coates' Canons: NC Local Government Law* blog (June 1, 2011).

22. As discussed in Chapter 1, “The Public Purpose Requirement,” a local unit must require a nonprofit to provide some accounting of its contract performance. The provisions mentioned in this chapter are optional additional contracting terms.

23. G.S. 159-40.

24. G.S. 159-40. The statute also exempts nonprofits that operate as junior colleges, colleges, or universities duly accredited by the southern regional accrediting association, as well as those that provide sheltered workshops, adult development activity programs, private residential facilities for the intellectually or developmentally disabled, and developmental day care centers.

25. G.S. 55A-16-24(a).

documents. The information must be accessible by the general public without charge. Also, if another entity maintains the information, the nonprofit must include a link to the other entity's website on its own website.²⁶

The act exempts a few entities from disclosing this information because they already are required to report it to a state agency: (1) nonprofits required to report to the N.C. Medical Care Commission, (2) nonprofits required to report to the state Local Government Commission, and (3) certain private colleges required to report to the state. These entities must provide information on their public websites about how to access the information, though.

Ensuring Compliance with the LGBFCA

For those local entities that are subject to the Local Government Budget and Fiscal Control Act (LGBFCA), who within the entity is responsible for ensuring compliance with the act's provisions? A local entity's governing board ultimately is responsible for directing and overseeing the financial management of the entity and for ensuring the integrity of the unit's fiscal internal controls. The LGBFCA assigns some functions to specific finance personnel, though. In addition, the state Local Government Commission (LGC) is legally responsible for monitoring and ensuring the fiscal health of all local entities subject to the LGBFCA.

Governing Board

A local entity's governing board is responsible for the entity's financial management.²⁷ In this vein, the board's most important job is to set the tone at the top. In other words, the board must establish an expectation that all officials and employees will comply with financial policies and other internal controls. To hold others accountable, board members need to abide by strict internal controls and statutory compliance. The board also needs to develop sufficient knowledge and understanding of the unit's finances. Board members, however, do not generally perform specific financial management tasks. These are assigned or delegated to staff members. There are certain, non-delegable duties that the LGBFCA assigns specifically to the governing board:

- The governing board must adopt (and make any amendments to) the entity's annual budget ordinance.²⁸ If a unit adopts or amends one or more project ordinances, these actions also must be taken by the governing board.²⁹
- The board must select the entity's official depositories (bank accounts).³⁰

26. G.S. 55A-16-24.

27. *See generally* G.S. 153A-12 (counties); 160A-12 (municipalities).

28. G.S. 159-13, -15. The board may delegate to the entity's budget officer the authority to move moneys within a fund in the annual budget ordinance. The budget officer must report any such changes to the board at its next meeting.

29. G.S. 159-13.2. There is no authority to delegate any movement of moneys within a project ordinance to the entity's budget officer.

30. G.S. 159-31.

- The board also must select the entity’s auditor, execute the audit contract, receive the yearly audit report, and respond in writing to the LGC about any material deficiencies or financial performance indicators of concern.³¹
- Finally, the board must designate one or more individuals to serve certain statutory roles related to financial management—specifically, the budget officer,³² tax collector,³³ deputy finance officers,³⁴ and, in some cases, the finance officer.³⁵ If the budget officer, tax collector, or finance officer is fired, resigns, or is otherwise unable to carry out the position’s assigned duties, the governing board must ensure that a successor is appointed as soon as possible. As discussed below, there are several statutory duties that may be carried out only by individuals officially appointed to one of these positions.

Budget Officer

The LGBFCA requires each local government and public authority to appoint a budget officer.³⁶

Duties of Budget Officer

The budget officer has two main duties: (1) to prepare the entity’s annual budget for submittal to the governing board and (2) to execute the local entity’s annual budget ordinance and any project ordinances. These are fairly substantial duties. The individual who serves in this role often is a conduit between the unit’s or authority’s departments and staff members and its governing board. The budget officer provides a technical review of departmental requests and estimates to ensure accuracy and completeness. More important, he or she is in a position to critically evaluate departmental needs and recommend funding levels for various services and projects that are consistent with the unit’s overall priorities and goals.

Who Can Serve as Budget Officer?

The budget officer is appointed by, and serves at the pleasure of, the entity’s governing board. The board’s appointment discretion is limited by statute, though.³⁷ Who can or must serve as the budget officer differs both by type of local entity and by type of governance structure, as illustrated in Table 2.1.

Delegating Budget Officer Duties in Units with Manager Form of Government

In some units in which the manager is the statutory budget officer, a budget director, who reports to the manager (or occasionally to the finance officer), actually performs most of the duties of the budget officer. The manager remains legally responsible for the budget officer’s statutory duties, though, and should establish policies and procedures to ensure proper oversight.

31. G.S. 159-34.

32. G.S. 159-9.

33. G.S. 105-349.

34. G.S. 159-28.

35. G.S. 159-24. Under a council-manager form of government, the finance officer typically is appointed by, and serves at the pleasure of, the local unit’s manager. G.S. 153A-82 (counties); 160A-148 (municipalities).

36. G.S. 159-9.

37. G.S. 159-9.

Table 2.1 Budget Officer Eligibility

Type of Local Entity	Form of Government	Eligible to Serve as Budget Officer
County	Council-Manager	The manager serves as the budget officer.
County	Mayor-Council	The governing board may confer the duties of the budget officer on the county finance officer or on any other county officer or employee except the sheriff and, in most counties, the register of deeds. In counties with populations less than or equal to 7,500, the register of deeds may serve in this capacity.
Municipality	Council-Manager	The manager serves as the budget officer.
Municipality	Mayor-Council	The governing board may confer the duties of the budget officer on any municipal officer or employee, including the mayor if he or she consents.
Special District		The governing board may impose the duties of the budget officer on its chairperson, on any other member of the governing board, or on any other officer or employee.
Public Authority		The governing board may impose the duties of the budget officer on its chairperson, on any other member of the governing board, or on any other officer or employee.

Questions sometimes arise, particularly in smaller units, as to whether a governing board member may serve as a budget officer in a jurisdiction with a manager form of government. For municipalities with the manager form of government, the mayor or another council member may not serve as the manager and thus may not serve as the budget officer.³⁸ For counties with the manager form of government, the board may confer the duties of county manager and, therefore, county budget officer, on its chairperson or on another member of the board of commissioners. A board member may receive reasonable compensation for serving in this capacity.³⁹

Finance Officer

The LGBFCA also requires the governing board of each local government and public authority to designate a finance officer.⁴⁰

38. G.S. 160A-151. The mayor and members of the council also are ineligible to serve as manager or budget officer on an acting or interim basis. *Id.*

39. G.S. 153A-81.

40. "Each local government and public authority shall, at all times, have a finance officer appointed by the local government, public authority, or designated official to hold office at the pleasure of the appointing board or official." G.S. 159-24.

Duties of Finance Officer

Sometimes referred to as accountant, treasurer, finance director, or chief financial officer, the individual in this position is legally responsible for performing the following duties:

- establishing and maintaining the unit’s accounting system;
- controlling expenditures and disbursing moneys;
- preparing and presenting financial reports;
- managing the receipt and deposit of moneys, including routinely auditing accounts of other officials and employees;
- managing the unit’s debt service obligations;
- supervising investments.⁴¹

The finance officer is not limited to executing just these statutory duties. At the behest of the governing board, he or she may perform or supervise other functions for the unit. It is not uncommon, for example, for a finance officer to be involved with budgeting, purchasing and contracting, utilities, information technology, risk management, and even general administration of the unit.

Who Can Serve as Finance Officer?

The duties of the finance officer “may be imposed on the budget officer or any other officer or employee on whom the duties of budget officer may be imposed.”⁴² However, the Machinery Act,⁴³ which governs the assessment and collection of property taxes, forbids conferring the duties of tax collector and finance officer on the same person except with the written permission of the secretary of the LGC.⁴⁴ For municipalities, any other person or official who may serve as budget officer also may serve as finance officer, and the two positions may be combined. For counties, the sheriff may not be appointed finance officer, and in counties with a population greater than 7,500, the register of deeds may not be appointed finance officer. Otherwise, any other person or official who may serve as budget officer also may serve as finance officer, and the two positions may be combined.

Who Appoints the Finance Officer?

Who appoints a finance officer varies by jurisdiction. For a county or municipality without the manager form of government, as well as for special districts and public authorities, the governing board normally makes the appointment. For a county or municipality with the manager form of government, the manager is empowered to designate the finance officer.⁴⁵ The finance officer serves at the pleasure of whoever makes the appointment.

41. G.S. 159-25. Note that the position of finance officer may be referred to by any “reasonably descriptive title.” *Id.*

42. G.S. 159-24.

43. Subchapter II of G.S. Chapter 105.

44. G.S. 105-349(e).

45. See G.S. 153A-82 (counties); 160A-148 (municipalities). Occasionally, a municipal charter will specify that the finance officer be appointed by the board. In those cases, the charter provisions control.

Special Eligibility Requirements for Finance Officer

The individual serving as finance officer need not be a certified public accountant (CPA) or hold any specific degrees or certifications, but he or she should be well versed in the legal and financial rules, regulations, and best practices governing public finance. There are two threshold legal requirements that must be satisfied before the finance officer may assume the duties of the position: (1) the individual must be bonded and (2) the individual must take the oath of office.⁴⁶

Bonding Requirement

Effective January 1, 2023, the General Assembly made changes to the finance officer bonding requirement. The finance officer must “give a true accounting and faithful performance bond with sufficient sureties” in an amount to be set by the governing board.⁴⁷ At a minimum, the amount of the bond must be the greater of the following: (1) \$50,000 or (2) an amount equal to 10 percent of the local unit’s annually budgeted funds, up to a maximum coverage of \$1,000,000.⁴⁸ A finance officer “is bound to perform the duties of his office faithfully, and to use reasonable skill and diligence, and to act primarily for the benefit of the public.”⁴⁹ A true accounting and faithful performance bond typically insures for loss sustained by the failure of an employee to properly account for all moneys and property received by virtue of his or her position or the failure to otherwise faithfully perform his or her other duties. The bond inures to the benefit of the unit, and it typically covers acts or omissions due to the finance officer’s negligence, carelessness, or incompetence.⁵⁰ The bond does not protect the bonded finance officer. In fact, if a bonding company makes good any loss to the protected unit, the right to recover the loss directly from the defaulting employee succeeds to the unit. The unit’s governing board pays the premium for the bond.

Position bond not allowed. May a unit procure a bond for the position of finance officer (sometimes referred to as a position bond) that would offer coverage no matter who occupies the position at any given time? The answer is no. The statute states that a “person who is unable to secure the bond required by this section cannot assume the duties for which a bond is required under this section.”⁵¹ The purpose of the bonding requirement is to protect the unit from actions or inactions of the specific employee. In order to be fully protected, a unit needs to ensure that the individual who serves as finance officer actually is covered by the bond. If a unit procures a position bond, that bond may not cover certain individuals—for example, persons with criminal records or those who have committed other dishonest acts. Some units run background checks on potential employees. Others do not; thus, a unit may not realize that a particular employee does not qualify for bond coverage until it seeks to recover on the bond. Once hired,

46. The LGC may impose additional minimum qualifications for finance officers. See G.S. 159-24(c).

47. G.S. 159-29. Note that G.S. Chapter 58, Article 72 imposes some additional process requirements for accepting and registering a county finance officer’s official bond.

48. For more information on the bonding requirement, see Connor Crews, “Impending Changes to Bonding Requirements for Finance Officers: Prepare Now for January 1, 2023, and Beyond,” *Local Finance Bulletin* No. 62 (Nov. 23, 2022).

49. *Avery Cnty. v. Braswell*, 215 N.C. 270, 275 (1939).

50. *Braswell*, 215 N.C. at 275 (“Where a public officer is required to give a bond for the faithful performance of the duties pertaining to his office, the engagement of the surety executing the bond rests on the same legal obligation as is imposed by law upon the officer himself.”).

51. G.S. 159-29(b).

the finance officer also must remain bondable during his or her full tenure. The bonds normally are continuous, renewed each year by payment of an annual premium.

Bonding requirement when individual serves as finance officer for more than one unit. How is the bonding requirement satisfied if an individual serves as the finance officer for more than one unit or public authority? For example, what is the bonding requirement for an individual who serves as the finance officer for a county (a unit of local government for purposes of the LGBFCA) and also as the finance officer for the local tourism development authority (a public authority for purposes of the LGBFCA)?⁵² An individual who serves as a finance officer for more than one unit of government or public authority must satisfy the bonding requirement for each separate unit. The provisions of the LGBFCA apply to each “unit of local government” and “public authority” in the state.⁵³ As reflected in the different definitions, a unit of local government is a separate and distinct legal entity from a public authority. Each of these entities is independently required to comply with the provisions of the act. The act requires each unit of local government and each public authority to appoint a finance officer to perform certain duties for that unit. And the finance officer for each unit of local government and each public authority must be bonded.⁵⁴ It may be possible to include coverage for multiple units in the same bond, but the bond must clearly delineate the different beneficiaries as if there were separate bonds. The bond also must provide at least \$50,000 in coverage for each unit.

Oath of Office

Article VI, Section 7, of the North Carolina Constitution requires that elected and appointed public officers take an oath of office.⁵⁵ The position of finance officer likely qualifies as “public officer” and is thus subject to the oath requirement. The text of the oath is as follows:

I, [finance officer’s name], do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as finance officer, so help me God.

A finance officer must take the oath before assuming the duties of the office. The oath typically is administered by the mayor, chairman of the board, or clerk to the board, though it also may be administered by a few other officials.⁵⁶ For counties and municipalities, the oath must then be filed with the clerk to the board.

52. A tourism development authority is a public authority that is created by local act of the General Assembly to promote travel, tourism, and general development of a unit or region.

53. G.S. 159-7.

54. For more information on the bonding requirement when a finance officer serves multiple units, see Kara Millonzi, “Finance Officer Fidelity Bonds: When Are Multiple Bonds Required?,” *Coates’ Canons: NC Local Government Law* blog (Jan. 12, 2012).

55. See also G.S. 153A-26 (counties); 160A-61 (municipalities).

56. See G.S. 11-7.1 for a list of officials authorized to administer the oath.

Delegating Finance Officer Duties

The finance officer has many responsibilities. Even in a small unit, these could prove difficult for a single person to handle. In many units, the finance officer delegates the performance of some of his or her duties to other employees or officials.⁵⁷ For example, one or more staff members might be assigned to track accounts payable/receivable, run payroll, make deposits, monitor investments, prepare reports, and even affix the finance officer's signature to certain documents. The finance officer remains legally obligated to perform these functions, and he or she may be held legally liable for failing to comply with certain LGBFCA provisions. It is imperative, then, that a finance officer establish policies and procedures that allow for sufficient oversight.

Deputy Finance Officers

A unit's governing board may assign certain finance officer functions to one or more other employees or officials by designating them deputy finance officers.

Duties of Deputy Finance Officers

Deputy finance officers legally may perform duties mandated by the LGBFCA related to the obligation and disbursement of public funds.⁵⁸ The governing board must adopt a resolution or ordinance to make the deputy finance officer appointments. It may not delegate this task to the manager or finance officer. Once the appointment is made, a deputy finance officer legally is obligated to perform assigned functions in accordance with the LGBFCA. Like the finance officer, a deputy finance officer may be held legally liable for failing to comply with applicable law. A deputy finance officer may perform duties beyond obligating and disbursing public funds; however, the legal liability for these duties remains with the unit's finance officer.

Who May Serve as Deputy Finance Officer?

Generally, any employee or official of a unit may serve as a deputy finance officer.⁵⁹ The governing boards in larger units often designate one or more department heads as deputy finance officers in order to allow for more flexibility in ordering goods, entering into contracts, and disbursing funds at the department level.

Bonding Requirements for Deputy Finance Officers (and Other Officials and Employees)

Each officer or employee of a unit who handles or has in his or her possession more than \$100 or who has access to any of the unit's inventories must "give a faithful performance bond with sufficient sureties payable to the local government or public authority."⁶⁰ This requirement applies to deputy finance officers. In fact, it applies to most, if not all, employees and officials of a unit. There is no statutorily prescribed amount for the bond; it is to be set by the governing board. The unit may pay the premium on the bond each year, though it is not required to do so. The bond must be filed with the clerk to the board.

57. Note that duties related to accounting or treasury management may not be delegated to the unit's tax collector without prior approval of the LGC. *See* G.S. 105-349.

58. *See* G.S. 159-28. The duties are discussed in detail in Chapter 8, "Managing and Disbursing Public Funds."

59. Note that duties related to accounting or treasury management may not be delegated to a unit's tax collector without prior approval of the LGC. *See* G.S. 105-349.

60. G.S. 159-29.

Instead of requiring individual bonds for each deputy finance officer (and for each employee and official), a unit may adopt a system of blanket faithful performance bonding.⁶¹ Most units utilize this option and cover all of their employees and officials, up to a specified amount, with one bond.

Note that a blanket bond does not satisfy the individual bond requirement for the finance officer,⁶² tax collector,⁶³ sheriff,⁶⁴ or register of deeds.⁶⁵ These employees may also be covered by a blanket bond, however, if the blanket bond protects against risks not protected against by the employees' individual bonds.

Tax Collector

In addition to the budget officer and the finance officer, the governing board of each local government and special district must appoint a tax collector, for a term to be determined by the appointing body, to collect the taxes it levies.⁶⁶ A public authority needs to appoint a tax collector only if it levies taxes. The position of tax collector is not mandated by the LGBFCA but rather by the Machinery Act,⁶⁷ which governs the procedures for assessing and collecting taxes.⁶⁸ The specific duties performed by a tax collector, and the eligibility requirements for this position, are discussed in Chapter 5, "Property Tax Policy and Administration."

Local Government Commission (LGC)

The LGC is a nine-member state body situated in the Department of State Treasurer.⁶⁹ The commission approves most local government borrowing transactions and issues bonds on behalf of local units. It also monitors the fiscal health of local units in the state. The General Assembly has empowered the commission to "issue rules and regulations having the force of law governing procedures for the receipt, deposit, investment, transfer, and disbursement of money and other assets [by local units]. . . ." ⁷⁰ The commission also may "inquire into and investigate the internal control procedures of a local government or public authority, may require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable to prevent embezzlements or mishandling of public moneys, and may adopt rules establishing minimum qualifications for finance officers."⁷¹

State law allows the LGC to take more drastic action if a unit willfully or negligently fails to take corrective action or otherwise comply with the LGBFCA's provisions in response to the commission's notices or warnings. Specifically, G.S. 159-181(c) allows the commission

61. G.S. 159-29(c).

62. G.S. 159-29.

63. G.S. 105-349.

64. G.S. 162-8.

65. G.S. 161-4.

66. G.S. 105-349.

67. Subchapter II of G.S. Chapter 105.

68. Note that the provisions governing the office of tax collector outlined below are those authorized under general law. Several jurisdictions have local acts that create the office of tax collector. Units should look to those local acts to determine eligibility, duties, appointment, and removal requirements for the office of tax collector.

69. G.S. Chapter 159, Article 2.

70. G.S. 159-25(c).

71. G.S. 159-25(c).

to “impound the books and records [of the unit] and assume full control of all its financial affairs. . . .” The commission becomes “vested with all the powers of the governing board as to the levy of taxes, expenditure of money, adoption of budgets, and all other financial powers conferred upon the governing board by law.”⁷² The commission may assume full control of a unit’s water or sewer system and assume all powers of the governing board as to the operation of the public enterprise if the system, for three consecutive fiscal years, experiences negative working capital, has a quick ratio of less than 1.0, or experiences a net loss of revenue.⁷³

To aid the LGC in its oversight role, commission staff members review the yearly financial audits of each local government and public authority in the state. Staff members often work with local officials to remedy any financial issues or potential financial issues. The commission issues warning letters to the governing boards of local units, identifying any problems and often demanding that a unit take remedial actions within a specified period of time.⁷⁴ If the LGC issues a warning letter to a local unit, the LGC also may mandate that the unit’s finance officer and/or one or more of its deputy finance officers participate in training sponsored by the LGC.⁷⁵ The LGC also may require a unit to contract with outside entities if the local government or public authority has received a unit letter from the commission due to a deficiency in complying with the LGBFCA or if the unit has an internal control finding in the most recently completed financial audit.⁷⁶

In recent years, the LGC has established a more robust support process for units that are in financial distress or are demonstrating other financial indicators of concern. The LGC may place a unit on its Unit Assistance List (UAL) if, based on audited financial statements and associated data submitted to the LGC as required under G.S. 159-34(a), it identifies concerns related to the unit’s general fund, water/sewer quick ratio, income, cash flow, or internal controls. A unit also may be placed on the UAL if it fails to submit its annual audit to the LGC in a timely manner. Placement on the UAL triggers additional assistance for the unit. It also imposes additional statutory obligations and limitations on the unit, including the following:

- City and county managers of units on the UAL must complete a minimum of six clock hours of education, including fiscal management and the requirements of the LGBFCA.⁷⁷ (This is in addition to training requirements that may be imposed on finance staff.⁷⁸)
- Units on the UAL must obtain LGC approval of contracts relating to the lease, acquisition, or construction of capital assets with terms that exceed three years and

72. G.S. 159-181(c).

73. See S.L. 2013-150 (S.B. 207). “Working capital” is defined as “current assets, such as cash, inventory, and accounts receivable, less current liabilities. . . .” *Id.* A quick ratio of less than 1.0 “means that the ratio of liquid assets, cash and receivables, to current liabilities is less than 1.0.” *Id.*

74. As discussed in Chapter 9, “The Annual Audit,” the LGC requires a local governing board to respond in writing to any “significant deficiencies [or] material weaknesses” identified in the annual audit or to “other findings or if the auditor determined that Financial Performance Indicators of Concern were identified based on information presented in the audited financial statements. . . .” Title 20, Chapter 03, Section .0508 of the N.C. Administrative Code. The governing body must submit to the LGC a “Response to the Auditor’s Findings, Recommendations, and Fiscal Matters,” signed by a majority of the governing board members, within 60 days of the auditor’s presentation. *Id.*

75. See G.S. 159-25(d), (f).

76. G.S. 159-25(d).

77. See G.S. 153A-82 (counties); 160A-148 (municipalities).

78. G.S. 159-25.

\$50,000 (and meet the other criteria set out in G.S. 159-148, as applicable) and must obtain LGC approval for installment financings or other agreements involving the lease of, or the lease of with the option to purchase, motor vehicles where the contract amount equals or exceeds \$50,000.⁷⁹

Conclusion

Each local government and public authority in the state is subject to the provisions of the Local Government Budget and Fiscal Control Act (LGBFCA). These provisions establish a unified budgeting process and set certain mandated internal controls to ensure proper handling of public moneys. The LGBFCA also proscribes procedures for disbursing public funds and accounting for all of a unit's financial transactions. A unit's governing board is ultimately responsible for ensuring compliance with the act's requirements, though specific duties are assigned to several different officers or employees of the unit. The state's Local Government Commission aids a unit's governing board by identifying legal and financial management problems and by providing technical assistance to the unit to remedy these problems.

79. G.S. 159-148.