



Public Enterprise Authority

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UNC
SCHOOL OF GOVERNMENT

Public Enterprise

- Activity of commercial nature
- Generally voluntary
- Fee for service
- No duty of equal service
- (Aspire to be) self-supporting / sustaining
- Governed by statutes, common law of utilities, and contractual relationships with customers

North Carolina Public Enterprise Authority

Legal Structure	Purposes		Statute
Municipal Enterprise	Water Sewer Solid waste Airports Public transportation	Off street parking Stormwater Cable TV / Broadband Electric Natural gas	G.S. 160A, Art. 16
County Enterprise	Water Sewer Solid waste Airports	Public transportation Off street parking Stormwater	G.S. 153A, Art. 15
County Water and Sewer District	Water Sewer		G.S. 162A, Art. 6
Water and Sewer Authority	Water Sewer		G.S. 162A, Art. 1
Sanitary District	Water Sewer	Solid Waste Fire	G.S. 130A, Art. 2, Pt. 2
Metropolitan Water District	Water		G.S. 162A, Art. 4
Metropolitan Sewer District	Sewer		G.S. 162A, Art. 5
Parking Authorities	Parking		G.S. 160A, Art. 24
Public Transportation Authorities	Public Transportation		G.S. 160A, Arts. 25, 26, 27
Regional Natural Gas Districts	Natural Gas		G.S. 160A, Art. 28
Regional Solid Waste Management Authorities	Solid Waste		G.S. 153A, Art. 22
Airport Authorities and Commissioners	Airports		G.S. 63-4

County and Municipal Enterprises + Water and Sewer Authorities

- Not regulated by Utilities Commission
- Broad authority to adopt rules and regulations to protect and regulate public enterprise system
- Can mandate connection of properties located within reasonable distance of water or sewer line (within jurisdiction only)

County and Municipal Enterprises + Water and Sewer Authorities

- Very broad fee authority
- Interpreted by NC Supreme Court to include fees to cover operational and capital costs
- Fee “labels” vary significantly
 - Capacity fee, tap fee, impact fee, convenience fee, administrative fee, fixed fee, variable fee, usage fee, operations fee, connection fee, availability fee, capital charge, etc.
- Can vary fees by customer class
 - Subject to common law of utilities in establishing customer classes
- Can assess higher fees when services provided outside jurisdiction

County and Municipal Enterprises: Transfers into Enterprise Fund



- Broad authority to fund (or provide supplemental funding for) enterprise activities with general fund dollars

County and Municipal Enterprises: Transfers out of Enterprise Fund

- Broad authority to transfer enterprise fund “profits” to another fund, including general fund

G.S. 159-13(b)(14):

“No appropriation may be made from a utility or public service enterprise fund to any other fund than the appropriate debt service fund unless the total of all other appropriations in the fund equal or exceed the amount that will be required during the fiscal year, as shown by the budget ordinance, to meet operating expenses, capital outlay, and debt service on outstanding utility or enterprise bonds or notes.”

- But, legally earmarked funds may not be transferred and/or used for a non-designated purposes



Are Impact Fees Legally Earmarked?

- Answer unclear
- Not statutorily earmarked
- May or may not be earmarked by ordinance
- Subject to US Supreme Court *Koontz* framework???