

State and Local Government in Louisiana: An Overview 2012-2016 Term

CHAPTER 3 — LOCAL GOVERNMENT

In addition to the executive branch agencies discussed in the previous chapter, the management of many of the public affairs of Louisiana citizens is handled by local government. The governing authorities of parishes, municipalities, and special districts assume a tremendous amount of responsibility for governance in important areas such as public safety, the use, development, and ownership of immovable property, and roads and other transportation matters.

This chapter focuses on three important aspects of local government:

- Part A presents information on the organization and structure of local governments.
- Part B deals with civil service systems which cover certain employees of local governments.
- Part C covers local government finance.

Part A. Structure and Organization

Despite the important areas for which local governments assume responsibility and despite the fact that some cities are older than the state, the American federal system has defined the state as sovereign with respect to its local governments. Consequently, all matters relating to the form and authority of local government are subject to provisions of state constitutional or statutory law. An understanding of how the state provides for local government, therefore, is important to understanding local government.

Primary units of local government in Louisiana are parishes and municipalities. The constitution uses the term “local governmental subdivision” to refer to them collectively. Another term that is important to a discussion of local government is “political subdivision” which is a parish, a municipality, or any other unit of local government, including a special district, authorized by law to perform governmental functions.

For Louisiana parishes and municipalities, there exists a traditional form of government which remains the most common form: the police jury system for parishes and the mayor-board of alderman form, as provided by the Lawrason Act, for municipalities. Additionally, the constitution grants any parish or municipality the option of adopting a home rule charter. These forms of government will be discussed in this part, followed by a discussion of special districts and some recurring issues involving local government.

Parish Government

Most Louisiana parishes are governed by a police jury. The size of a police jury is established by ordinance of the jury itself though, with some exceptions, it must have at least five but not more than 15 members or the number of members authorized for that police jury on or before May 13, 1974, whichever is greater. (R.S. 33:1221)

Generally, a police jury may exercise only those powers authorized by the constitution or by law. However, the constitution authorizes a police jury to exercise any power and perform any function necessary, requisite, or proper for the management of its affairs, not denied by general law, if the exercise of this broad authority is approved by the electors of the parish. (Const. Art. VI, §7)

The legislature over the years has authorized police juries to act on a very long list of matters including: making regulations for its own government; making and repairing roads, bridges, and levees; maintaining banks of rivers and natural drains, drainage ditches, and canals; levying taxes for parish expenses; establishing ferries and toll bridges; and providing support for the poor and those in necessitous circumstances (R.S. 33:1236). The police jury may enact ordinances and provide for their enforcement by imposing fines or imprisonment. Such ordinances may be prosecuted by criminal process of indictment or information. The police jury may also provide for enforcement of ordinances by fine or forfeiture to be collected by civil process before any court of competent jurisdiction. (R.S. 33:1242) However, no police jury or any other local government may define or provide for the punishment of a felony. (Const. Art. VI, §9) (Also see page 3A-4 for a discussion of home rule charters.)

Forms of Parish Government

- Police Jury
- Home Rule

Municipal Government

The procedure for incorporating a new municipality and establishing the form and powers and duties of its government has evolved dramatically since Louisiana became a state. Generally this evolution has been in the direction of greater local autonomy.

Legislative Charters

Prior to 1879, municipalities were created by legislative Act. The 1879 Constitution prohibited the legislature from enacting any local or special law creating corporations or amending their charters, and in 1882, the first general statute was enacted establishing procedures for municipal incorporation. The Constitution of 1898, however, again provided that local or special laws creating municipal corporations could be passed by the legislature provided the municipality had a population of at least 2500 inhabitants. This remained true until 1952 when the 1921 Constitution was amended to prohibit the legislature from passing any further local or special laws creating municipal corporations. The 1952 constitutional amendment did allow the legislature to amend or repeal existing special

Forms of Municipal Government

- Mayor - Board of Aldermen (Lawrason Act)
- Special Legislative Charter
- Home Rule

legislation, and similar provisions have been retained in the 1974 Constitution. (Art. VI, §2)

When the legislature was in the business of creating municipalities, each creating Act served as the municipality's charter and it set forth the form of government as well as the municipality's powers and duties. However, once municipalities were allowed to incorporate independently of the legislature, a general charter was needed to provide for the form of government and the powers and duties of new municipalities. In 1898, the legislature passed the Lawrason Act to provide for such governance. The Lawrason Act provided only one form of government, the mayor-board of aldermen form.

Today in Louisiana, the picture of municipal governance is a complex one. Some of the municipalities created around the turn of the century continue to operate under their special legislative charters. Most small to mid-sized municipalities in the state operate

under the Lawrason Act. In addition, several municipalities, especially the larger ones, have adopted their own home rule charters. (See page 3A-4.)

Mayor - Board of Aldermen Form (Lawrason Act)

The officers of a Lawrason Act municipality are a mayor, aldermen, a chief of police, a tax collector, and a clerk. The number of aldermen varies from three to nine, depending upon whether the municipality is a village, town, or city (a classification determined by population). The mayor is elected at large. Aldermen are elected pursuant to statute (according to the number of aldermen, a certain number are elected by districts and a certain number at large) or the board may establish, by ordinance, a different manner of electing aldermen. The Lawrason Act generally provides that the police chief is elected at large, though the legislature has enacted numerous local exceptions. (For further discussion of police chiefs, see "Recurring Issues" beginning on page 3A-6.) Terms of office for municipal elected officials are four years. After each regular municipal election, the mayor and board of aldermen appoint a clerk, tax collector, and all other necessary officers. (R.S. 33:381 et seq.)

The powers of a mayor - board of aldermen municipal government were originally limited to those specified in the act itself. This often hampered local officials in their administration of municipal affairs. In 1985-86, the first comprehensive revision of the Lawrason Act since its enactment in 1898 was undertaken. Among the significant features of this revision are: (1) the grant of authority to municipalities to exercise any power and perform any function necessary, requisite, or proper for the management of their affairs not denied by law; (R.S. 33:361) and (2) delineating the respective powers and duties of the officials of a Lawrason Act municipality, particularly by designating the mayor as the chief executive officer and the board of aldermen as the legislative body of the municipality. (R.S. 33:362)

Special Legislative Charter Municipalities¹

Abbeville	Madisonville
Bastrop	Mansfield
Clinton	Marksville
Coushatta	Minden
Evergreen	Mount
	Lebanon
Farmerville	New Roads
Franklinton	Plain Dealing
Greensburg	Plaquemine
Homer	Springfield
Jackson	St. Martinville
Jeanerette	Vienna
Keachi	Zwolle

¹ As of October, 2011

Home Rule Charters

It is a well-recognized rule of law that local governmental subdivisions (parishes and municipalities) are creatures of the state, may be abolished by the state, and may be vested with such powers and authority as determined by the state. Without constitutional limitations, local governmental subdivisions are at the mercy of the legislature. The Louisiana Constitution, however, grants general authority to any Louisiana municipality or parish to draft, adopt, and amend a home rule charter.

There are several facets of the local autonomy which comes with adopting a home rule charter.

First, through the charter process, the citizens select their own form of government and decide how powers and duties will be distributed in that government. Once the charter is adopted, the legislature is constitutionally prohibited from enacting any law which changes or affects the structure and organization or the particular distribution and redistribution of the powers and functions of the local government. (Const. Art. VI, §6)

Second, a charter may provide the local government with the authority to exercise any power and perform any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with the constitution. (Const. Art. VI, §5) This is the reverse of the traditional understanding of local government authority under which local governments have only the power explicitly granted to them.

And third, the constitution grants some degree of protection from legislative interference in the exercise of power. The fact that a charter government can exercise any power not denied by general law means that a power cannot be taken away from a local government by a local law.

Broadly speaking, a home rule charter is prepared by a local charter commission and then submitted to the voters for approval. The constitution authorizes appointment or election of the members of the commission. The local governing authority is required to provide for the election of a commission if it is petitioned by 10 percent or 10,000, whichever is fewer, of the electors of the subdivision.

Home Rule Charters		
Who has a home rule charter? ¹		
<u>Municipalities</u>		
Alexandria	Hammond	New Iberia
Baker	Jennings	Oak Grove
Berwick	Kenner	Patterson
Bogalusa	Lake Charles	Shreveport
Bossier City	Leesville	Slidell
Covington	Mandeville	Sulphur
Dequincy	Monroe	Thibodaux
DeRidder	Montgomery	Washington
Donaldsonville	Morgan City	West Monroe
Franklin	Natchitoches	Zachary
<u>Parishes</u>		
Ascension	Livingston	St. Landry
Caddo	Plaquemines	St. Martin
Iberia	St. Bernard	St. Mary
Iberville	St. Charles	St. Tammany
Jefferson	St. James	Tangipahoa
Lafourche	St. John the Baptist	Washington
		West Baton Rouge
<u>City-Parishes</u>		
Baton Rouge - East Baton Rouge Parish		
Houma - Terrebonne Parish		
Lafayette - Lafayette Parish		
New Orleans - Orleans Parish		

¹ As of October, 2011

The statutes flesh out the requirements for the selection of a charter commission. (See R.S. 33:1395 et seq.) A charter commission consists of not fewer than seven but not more than 11 members. The commission is required to submit a proposed charter to the governing authority within 18 months of taking office. Members of the commission serve until the charter is finally adopted or rejected by the voters or until the end of the 18-month period. A home rule charter must include a method for amending the charter, but all amendments are subject to voter approval.

The constitution also authorizes consolidation of local governments under a single charter. Constitution Article VI, Section 5(D) provides that two or more local governmental subdivisions located within the boundaries of one parish may adopt a home rule charter subject to voter approval.

A variety of plans of parish, municipal, and consolidated government exists under home rule charters. For example, East Baton Rouge Parish and the city of Baton Rouge have a consolidation of the city and parish government; in Orleans Parish, the parish and city are coterminous and operate under a single governing authority; and in Jefferson Parish, the parish governing body is a parish council.

Special Districts

In addition to municipalities and parishes, Louisiana, like other states, has found it expedient to create other local governing authorities. A special district is one such authority.

The major difference between a special district and a municipality or parish is that a special district is usually created to perform one major function. At one time, districts were usually created to provide some particular service to a rural area; water or fire protection for example. Today there are numerous types of special districts, and they are becoming common in suburbs and inner cities also.

Special districts are most often governed by a commission or board appointed by local or state officials or some combination thereof. The commissioners are charged with executing the function of the particular district and are usually granted some taxing and borrowing authority in order to generate funds for such purpose. The authority of the commission is limited to a specified geographic area, but such area can be a part of a parish or municipality or a multiple parish area.

What is a Political Subdivision?

Many constitutional and statutory provisions are relevant to all units of local government: cities, parishes, and special districts. Other provisions are relevant to both cities and parishes but not to special districts. For the purpose of making this distinction, the constitution includes the following defined terms; these definitions apply generally and unless a term is otherwise defined in a specific instance.

Local governmental subdivision means any parish or municipality.

Political subdivision means a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions.

Source: Const. Art. VI, §44

Special districts are created through a variety of means. Some are created by the legislature

individually by local legislative acts. Many of the more common types of districts, e.g. fire protection and hospital service districts, are created by parishes or municipalities pursuant to a general law granting such authority. The constitution allows the legislature to grant special districts the power to levy taxes and issue bonds.

Recurring Issues

While the state government is ultimately responsible for all matters of governance left to it by federal law, local governments play a big role in many of the day to day details of maintaining the orderliness and security of the communities in which people live. For example, most police and fire protection is provided by municipal or parish governments or their officials or special service districts. Another important aspect of this role is the web of authority and functions local officials have with regard to immovable property (i.e., land and buildings). Still another aspect of this role is the question of extending the boundaries of a municipality and the impact it may have on parish government. The following discussion presents some of the ways local governments are involved in public safety, housing, and the management, development, and use of property.

Annexation

The legislature has delegated the power of annexation to municipalities and has authorized annexation by petition (R.S. 33:151 et seq.) and ordinance. (R.S. 33:171 et seq.) As municipalities have grown to fill their boundaries they have experienced the need to annex adjacent properties into the municipal limits. Often this is in response to petitions from citizens outside the municipality wanting to avail themselves of amenities such as water, sewer, lighting, streets and, in some instances, gas and electricity.

One area of contention has been over the question of revenue loss to the parish governing authority when municipal annexation occurs which has been even more contentious when the municipal annexation has crossed parish lines. Legislation has been adopted which provides for a sharing of revenue and establishes a procedure for resolution of conflicts by arbitration.

Automated Traffic Enforcement Systems (Red Light / Speed Cameras)

The use of automated traffic enforcement systems (ATES) by local governments has attracted much debate and attention locally and across the country. Local governments argue that ATES protect citizens and generate local revenue at a time when many local governments struggle to mend their financial straits. Opponents argue the use of ATES violate an individual's right of due process as local governments have turned traffic violations, which were previously criminal offenses, into civil matters. In addition, several national organizations have voiced opposition to the use of ATES with the claim that they do not improve safety.

In recent years the legislature has attempted to address the concerns voiced about the use of ATES. Legislation has been introduced to prohibit local governments from authorizing, installing, using, or enforcing electronic vehicle speed enforcement systems to regulate traffic laws. Additional legislation has been introduced to prevent local governing authorities, without voter approval, from imposing or collecting fines for both speed and red light infractions. The attempt at curtailing the use of ATES has not been successful. However, it is apparent that this issue will continue to be in the forefront as local governments continue to seek additional funding mechanisms.

Blighted / Abandoned / Adjudicated Property

Local governments are involved in insuring the security and safety of structures and other property within their respective jurisdictions. Most parishes and municipalities are authorized to require that property be maintained in a safe and sanitary condition. As a result of the failure of many property owners to comply with such requirements, many of these properties have been adjudicated to local governments. However, in recent years local governments have suffered financial burdens as a result of the expenses associated with demolishing or maintaining these properties.

The Louisiana Land Trust (LLT) is a non profit organization formed to manage properties that have been purchased by the state of Louisiana under the Road Home Program as part of the ongoing recovery effort from the damage caused by hurricanes Katrina and Rita in 2005. Funding for the LLT is provided through Community Development Block Grant funds administered by the Office of Community Development.

In recent years the legislature has enacted legislation to expand the laws and constitutional provisions regarding the sale by local governments of tax adjudicated property and to facilitate the involvement of nonprofit housing and historical preservation groups with local governments in the renovation of blighted housing.

Housing

Another public welfare issue for which local governments assume responsibility and which involves them in property matters is housing the residents of their respective communities. The issue of affordable housing has been front and center since as an unprecedented number of persons were displaced from their homes in the aftermath of hurricanes Katrina and Rita. Many public officials as well as residents continue to voice concerns over the lack of affordable housing in the state. Many have also complained that many of the existing agencies and programs are not providing timely service or adequate assistance to the state's needy citizens.

The legislature, in 2011, created the La. Housing Corporation (LHC) to provide access to affordable housing. The LHC replaces the Louisiana Housing Finance Agency (LHFA) and provides that its powers, duties, functions, and responsibilities shall be assumed by the LHC. The LHC is required to administer the La. Housing Trust Fund and administer and manage disaster recovery programs funded by certain federal programs. The LHC is additionally required to establish statewide policy for financing of housing for persons/families of low or moderate income, senior citizens, and persons with disabilities which policy shall apply to all units, divisions, agencies, public corporations, and instrumentalities of the state involved directly or indirectly in financing single or multi-family housing for such persons/families.

Police Chiefs

In many Lawrason Act municipalities it has become very difficult if not impossible to find qualified persons to run for the office of police chief. Since the office is elective, any candidate has to be an elector of the municipality and has to be interested in running for the office, a daunting task to some individuals, and sometimes no one qualifies. Municipalities have argued that if the position were not elective they could appoint qualified non-residents to the position of police chief. The legislature has amended the Lawrason Act to provide for the appointment of the police chief in many individual municipalities.

The Lawrason Act does provide several exceptions to the general rule that the office of police chief is elective. If the board of aldermen receives a petition signed by 25% of the qualified municipal electors, they are required to call an election on the question of authorizing the mayor to appoint the police chief. In municipalities with populations of 5000 or less, the board of aldermen may call an election on the question of authorizing the mayor to appoint the police chief after adopting an ordinance by a two-thirds vote of its membership.

Although these alternatives are available to local governments, many local officials continue to approach legislators with requests to amend the Lawrason Act to provide for the appointment of their respective police chiefs. In addition, the legislature continues to amend civil service laws for certain municipalities to permit the mayor greater latitude in appointing and removing the police chief. As police chiefs and mayors continue to disagree on budget issues and police personnel, these issues will continue to be hot topics in the local government arena.

Smart Growth

The Louisiana Constitution authorizes local governmental subdivisions (parishes and municipalities), subject to uniform procedures established by law, to adopt regulations for land use, zoning, and historic preservation (Const. Art. VI, §17). The Revised Statutes provide general laws regulating zoning and historic preservation. The Revised Statutes also authorize local governmental subdivisions to create planning commissions which are charged with the responsibility of formulating a master plan for the physical development of local governmental subdivisions.

Among the factors which are important in making a community livable is the proximity of various types of activities to each other. In recent years, the issue of creating livable communities has been placed front and center as many local governments across the country are advocating the use of smart growth principles in the planning and development process. Smart growth is an urban planning and transportation theory that advocates concentrated growth in compact walkable urban centers to avoid sprawl and advocates compact, transit-oriented, walkable, bicycle-friendly land use, including neighborhood schools, complete streets, and mixed-use development with a range of housing choices.

While many communities across the country have embraced the idea, many Louisiana communities have been reluctant to do so. Local officials have voiced concerns about the rising costs of infrastructure improvements and the use of tax dollars to promote private development. As smaller Louisiana communities continue to grow, pressure will continue to mount on local officials to implement smart growth principles in the planning and development process.

Tax Increment Financing

Local governmental subdivisions and certain special districts are authorized to use tax increment financing (TIF) as a tool to provide financial incentives to stimulate private investment in a designated area. (R.S. 33:9020 et seq.) TIF amounts to subsidizing current economic development by committing a portion of the projected revenues of the development. The local government freezes the taxes within the district at their pre-TIF level. After completion of the project, the new revenue generated beyond the pre-TIF level is used to pay the developer back for a portion of his costs.

As more local governments have turned toward the use of TIF, the mechanism has come under

attack as being ineffective, inefficient, and inequitable. Some argue that TIF can impose financial burdens on local governments by not only reducing its revenue base but also increasing operating costs (such as fire and police protection) without providing offsetting resources. Others argue that TIF will confer benefits on certain businesses located within the district at the expense of those businesses located outside of the district. The Louisiana Supreme Court has struck down the use of TIF by certain special districts. The court ruled that taxes that have been dedicated by the voters for particular purposes cannot be diverted to other purposes without voter approval.

Expropriation

The state and the political subdivisions of this state have the constitutional authority to take property from its citizens (Const. Art. I, §4 and Art. VI, §23). The authority of a governmental entity to take property is commonly referred to as "eminent domain". The proper term in Louisiana is "expropriation".

The constitutional authority to expropriate comes with two main limitations. The first limitation is that the taking must be for a public purpose. The second limitation is that the governmental entity taking the property is required to reimburse the owner to the full extent of his loss.

While the constitution authorizes and provides primary limitations on expropriation, the procedures for and additional limitations on expropriation are provided by statute. There are two basic procedures for exercising expropriation authority, general and expropriation by a declaration of taking, commonly referred to as "quick take". The primary difference between general and quick take authority is the timing of when title is transferred.

Under general expropriation authority, the expropriating authority (including the state, political subdivisions, public utility companies, etc.) provides the property owner with a statement of the full extent of loss. If the property owner does not agree and the property cannot be acquired amicably, the expropriating authority files a petition in district court. The case is tried by a judge, and the property owner may challenge the validity of the taking on the ground that the property was not expropriated for a public purpose. The property owner also has the right to a jury trial to determine compensation. Title to property does not transfer to the expropriating authority until final judgment, subject to devolutive appeal to appellate court. Although the cases are required to be tried with the greatest dispatch, they can take time particularly if a jury trial is demanded.

Unlike the general expropriation authority, the quick take authority provides for the transfer of title by an ex-parte order prior to trial and final judgment. Under the quick take procedure, the expropriating authority first provides the property owner of an estimate of the owner's loss prior to filing its petition for expropriation. If the expropriating authority cannot acquire property amicably, it files a petition in district court, attaches evidence of its authority to expropriate and an estimate of the full extent of the property owner's loss. Upon presentation of the petition, the court enters an ex parte order directing that the amount of the estimate be deposited in the registry of the court. The court issues a final ex-parte order stating that the property has been taken and the right to just and adequate compensation vests in the property owner. Upon issuance of the ex-parte order, title to the property vests in the expropriating authority. The property owner has 20 days from notice of the ex-parte order to file a motion to dismiss challenging the validity of the taking on the ground that the property was not expropriated for a public purpose or that the petition does not satisfy the procedural provisions of the expropriation statutes. The property owner has 90 days from notice of the

taking to ask for trial to determine compensation when an entire tract, lot, or block is expropriated, and one year if only a portion is expropriated.

R.S. 48:441- 460 provides for quick take authority by DOTD. DOTD's quick take has been determined to be constitutional. *State, Through Dept. of Highways v. Olinkraft, Inc.*, 350 So.2d 865 (La. 1977), certiorari denied 98 S.Ct. 1489, 435 U.S. 924, 55 L.Ed.2d 518. Jurisprudence has consistently held that expropriation is special and exceptional in character in derogation of common rights and must be strictly construed.

The most significant development in the last decade in the area of expropriation came with the case of *Kelo v. City of New London, Conn.*, 545 U.S. 469 (2005). This case involved the expropriation of several blocks of a neighborhood in a generally blighted area in the city of New London, Connecticut. The expropriated property was to be transferred to private owners for economic development purposes. The generation of additional taxes resulting from the economic development was the public purpose for the expropriation. This public purpose was challenged by the property owners whose non-blighted property was included in the generally blighted area that was expropriated.

The U.S. Supreme Court held that, while such a taking for economic purposes is valid under the United States Constitution, each state has the authority to impose tighter legislative limitations on the government's ability to expropriate property. Since Connecticut had not enacted any such restrictions, the Supreme Court upheld the expropriation.

In response to the Kelo case, the Louisiana Legislature enacted Act No. 851 of the 2006 Regular Session, a constitutional amendment which the electors of this state subsequently approved. Act No. 851 prohibited the expropriation of property by the state or a political subdivision of the state for the predominant use by or transfer to a private person under certain circumstances and defined "public purpose" relative to the expropriation of property.