

Board Commissioner Training Module 8: North Carolina and South Carolina Public Housing Laws

Transcript

00:00:00 Margaret McGilvray: Welcome to an overview of North Carolina and South Carolina public housing laws for Boards of Commissioners. This is one of a series of live and recorded training modules for PHA Commissioners provided by Econometrica—that's us—on behalf of HUD. From August through October 2021, we provided five training modules in live webinars that included module one, Roles and Responsibilities; module two, PHA Budget and Finance; module three, PHA Plan, Capital Fund, and Strategic Planning; module four, Procurement; and module five, PHA Performance Monitoring and Risk Management. We have also provided two other recorded training modules, which were a deep dive into the low-income public housing program and the ACOP, or Admissions and Continuous Occupancy Policy, as well as a second one on the Housing Choice Voucher Program in more depth and the Administrative Plan.

So, let's get started. My name is Margaret McGilvray, and I'm from Econometrica, an organization that provides technical assistance and training to public housing agencies around the country, and who has provided—um, has been *hired* by HUD to provide this training to all PHAs in North and South Carolina. I myself have been working in this field for nearly 25 years. I'm joined by my colleague Cydney Jones, who's the consulting manager at Nan McKay and Associates. She's been with Nan McKay for 10 years, and began her public housing career at the DC and LA County housing authorities.

Let's take a look at what we'll cover today. Today, we'll talk about North Carolina and South Carolina public housing laws specifically and how they may impact your PHA's operations. Let's look at some of the key laws. This is a good reference slide for you to see the key public housing statutes for North Carolina and South Carolina.

And with that, I'll turn it over to Cydney to brief us on the public housing laws that are specific to North Carolina.

00:02:26 Cydney Jones: Well, good morning everyone and thank you, Margaret. Let's talk a little bit about North Carolina public laws. And let's go to the next slide. And one more there.

So, let's first talk about the appointment of Commissioners. In North Carolina, the mayor appoints the Commissioners of any city housing authority, while the Board of County Commissioners—which we refer to as the BCC—appoints the county and any regional housing authority Commissioners. Authorities have anywhere between 5 and 11 Commissioners, often based on the community and the housing authority size.

Now, when we say a quorum—which, a quorum means enough people to have a resolution passed—a quorum is constituted by a majority of the Board. So, for Boards of 5, a quorum would be 3 people, but the Board would need as many as 6 people if present and available for a vote for Boards of 11.

If a commissioner leaves her post prior to the expiration of his or her tenure, then the mayor or the County Board of Commissioners can appoint a new Commissioner to complete that

Commissioner's tenure. Now, the first chair of the commission is appointed by the mayor, or the BCC, and then the commission elects all subsequent chairs, as well as vice-chairs, from among its members. The commission may also employ other officers, agents, or employees as it requires, including a secretary, who usually serves as the Executive Director of the housing authority.

Commissioners are appointed for 5-year terms.

Now, North Carolina law mirrors the federal law, which dictates that at least one Commissioner is either a public housing tenant or a recipient of a Housing Choice Voucher. However, residents may not comprise more than one-third of the Board—but we certainly like to see residents and get their input on the Board of Commissioners. The resident Commissioners are appointed by the mayor or the County Commissioners, unless the authority's bylaws dictate that an election or other appointment process is needed. Resident Commissioners may vote just as all other Commissioners; however, not on materials involving their own tenancy or their own conduct. The requirement to appoint such a Commissioner is waived—and we're talking about resident Commissioners—if the authority operates fewer than 300 public housing units or provides reasonable notice to the Resident Advisory Board of the opportunity and has not received intention by any person to serve within a reasonable period of time after the notice is received by the Resident Advisory Board.

Let's go to the next slide.

City, county, and regional Commissioners all have the same processes for appointments and requirements.

So, what's a regional housing authority? Well, that can be created for contiguous counties of 60,000 or more, and then each of the county Commissioners involved in the regional housing authority appoint at least one Commissioner to the authority. The governor may appoint an additional Commissioner in order to bring the total Board size to an odd number—remember, anywhere between 5 and 11. By contiguous counties, we mean counties that are touching each other. Any two or more authorities may join or cooperate with one another for financing or most other activities of the authority; however, a resolution by each authority or authorities would be required. Now, if the PHAs determine that they want or need an executive committee to help steer the giant authority for the purposes of their collaboration, then two or more Boards can appoint Commissioners from their Board to a special Executive Committee. Any two or more authorities may cooperate by issuing a resolution for a range, and they appoint an Executive Committee for the two other Boards to act on behalf of the joint entities.

Let's take a look at the next slide.

So, let's talk about some responsibilities in a mixed-income or multifamily project. If the PHA owns or operates a mixed-income project, then the operating expenses must be met entirely through rent and rent subsidies provided to low-income tenants—and by low-income tenants, we mean the HUD income limit, 80 percent or less of the area median income. Any project or property that has units not designated for low- or moderate-income individuals are considered mixed-income. No rent subsidy can be provided to tenants who are not low-income. That said, for PHA-owned mixed-income housing, at least 20 percent of the units must be set aside for low-income families or individuals.

All right, so let's take a look at this pop quiz. True or false: Three Commissioners constitutes a quorum in North Carolina.

Well, the answer is true. If you have a Board of Commissioners at the smallest size allowable, which is five, then three would constitute a quorum. But keep in mind, your Board can be anywhere from 5 to 11 members, and if you have up to 11 members, then a quorum can constitute anything between 3 and 6 to make up a quorum. Good job there.

Let's talk a little bit about the specific responsibilities of the PHA.

The North Carolina statute goes into great detail regarding the responsibilities of the PHA, which focus on housing, property ownership and management, and then a series of legal and financial responsibilities as well. In general, the status—the statute indicates that PHA's housing is for low-income persons and can include all forms, from construction to rehab to acquisition, and also the ability of the PHA to create a housing nonprofit. It also indicates that the housing authority can own the housing, but is also responsible for the grounds, the systems, the supporting infrastructure around the housing, and the statute also states that the general requirements of property management include rent setting. So, in the legal and financial responsibilities, the laws speak to the housing authority's ability to borrow money, procure insurance and other products and services, and enter into contracts. It also notes that they can develop bylaws and should report on the condition of the properties to the Board. And keep in mind, if it's public housing, you're also reporting to HUD as well. So generally, the state public housing statutes refer more to circumstances that preceded the creation of the housing authority in the building of its properties vs. its responsibilities at this point in the long life of most housing authorities.

Let's take a look at the next slide.

So, additional powers of authority include the housing authority's ability to make revolving mortgage loans to sponsors of residential housing and moderate- and low-income persons or families. The PHA can also collect and pay reasonable fees for services of those loans, and generally the housing authority does not require the approval of the local government body to issue bonds or incur debt, but they may also submit grants and borrow from the federal government as well. It also states that the approval of the local commission is not required for the issuance of bonds and the occurrence of indebtedness, and it indicates that a public housing authority is a local government agency and therefore is exempt from taxation.

Let's talk about some other things as well. The appointing entity, meaning the city or county, may by resolution provide that the PHA's budgeting and accounting systems be a part of those of the city or county as well. If so, the PHA has to file a report at least once a year with the mayor or the BCC—remember, that's the Board of County Commissioners—regarding its activities from the preceding year and make recommendations regarding any legislative actions necessary for its ongoing functioning.

We have another pop quiz here. So, let me know—true or false? If a PHA owns or operates a mixed-income project, all of the tenants are eligible for rent subsidy.

And I hope you got this one right; the answer there is false. Remember, in North Carolina, no rent subsidy can be provided to tenants who are not low-income, and at least 20 percent of the units must be set aside for low income persons. Good job there.

All right, so here's a useful chart that kind of outlines the different types of procurement and how they should be addressed in your procurement policy for those housing authorities in North Carolina. This was covered in our live webinar training, module four; however, we thought it would be a really good, useful reference again in this specific module. Any purchase not in excess of \$250,000 for goods, products, equipment, etc.—not in excess of \$90,000, may be made in accordance with small purchase procedures. *[Ed. note: the limit for goods, products, and equipment is \$90,000 and it is \$250,000 for other items.]* So, all purchases above those thresholds respectively must be made using competitive or formal procurement procedures.

Now I'm going to turn it back to Margaret to walk you through the South Carolina public housing laws and those are the same for both North Carolina and South Carolina. So back to you, Margaret.

00:12:40 Margaret McGilvray: Thank you so much, Cydney, and let's go on to the next slide.

So, this section, I'll just highlight a few of the items from the South Carolina housing authorities law and related laws that are different from the federal and North Carolina requirements.

Although the powers of authority of the PHA and the Commissioner are similar to those in North Carolina, there are a few nuances. Based on the South Carolina law, PHAs have the full power and authority to enter into agreements and contracts; to acquire, purchase, sell, own, hold, lease, and operate real and personal property; to accept any grant, loan, or credit of money. Whenever it's considered necessary by an authority to take or acquire lands, structures, or buildings, or other rights, either in fee or as easements for any housing or slum clearance project, the authority may purchase them directly or through its agents from the owner or it may acquire them through the exercise of power of eminent domain. They may also dispose of any real property as they choose, other than those under HUD Declaration of Trust, or DOTs.

In South Carolina, an authority is declared to be a public property. So, it is exempt from all taxes and special easements of the city or county. However, an authority may agree to make Payments to the city or county in Lieu of Taxes. This is known as a PILOT, and we've discussed that in other modules. But they may not exceed—that PILOT may not exceed the estimated cost of the improvements, services, or facilities to be furnished through what would otherwise be seen as property taxes.

A PHA needs to keep its books and records in a form dictated by the mayor or the Board of County Commissioners (or BCC) and open for inspection at any point, and the accounts shall show the income from an all-sums chargeable against each project. Also, in South Carolina, on or before January 31st of each year, the PHA shall report to the mayor and the Council on its financial condition and its activities during the preceding calendar year and other information as requested.

This—we also have, just like we did in North Carolina—a quick useful chart slide on procurement and the different types and how they should be addressed in your procurement policy for those PHAs in South Carolina. This was covered, also, in our live webinar, module four. However, we thought it would be useful to go over it again in this specific South Carolina reference.

In this case, in South Carolina, any purchase not in excess of \$50,000; or small purchase of commercially available off-the-shelf products (sometimes known as COTS) are not to exceed \$100,000; or small purchase of construction not to exceed \$100,000 may be made in accordance with the small purchase procedures. Competitive or formal procurement procedures must be used for any procurements above these thresholds.

Now let's move on to some of the requirements found in both North Carolina and South Carolina public housing laws. Could we go—great.

So, some of the roles and responsibilities and conflict of interest that pertains to both North and South Carolina—Commissioners have basically the same roles and responsibilities that they do under the federal laws and regulations, such as to set up and champion the mission of the housing authority and to make strategic decisions to ensure the financial solvency of the agency. In all cases, they are tasked with monitoring the agency's ability to meet statutory, regulatory, and contractual obligations and ensure compliance with laws and regulations. They're also charged with ensuring that the management team has put a system of approved internal controls in place to safeguard the agency assets, and to include maintaining adequate insurance. Commissioners are also responsible for safeguarding the financial integrity of the PHA and preventing fraud, waste, mismanagement, and abuse, as well as overseeing the financial health of the PHA in general.

In terms of conflict of interest requirements, they too are the same as those under federal law. Commissioners must not have direct or indirect interests in any project or property under the jurisdiction of the authority, both current and planned, and they must not have any direct or indirect interest in materials, or services, or contracts connected with any project. In South Carolina, if a commissioner has any direct or indirect interest in any project property or a contract, he or she must disclose this information to the authority in writing, and this disclosure must be entered into the minutes of the appropriate authority Board meeting.

This is a best practice, to disclose in any situation, but the entry into the minutes is a specific requirement for North—for South Carolina. Also, South Carolina statutes specifically state that the board must adopt bylaws and elect officers vs. North Carolina, which is silent on this topic, though the practice is of course assumed.

Let's go on to some of the removal of Commissioner requirements.

In both North and South Carolina, the mayor, city council, or the Board of County Commissioners or the county legislative body has the power to remove authority Commissioners for insufficiency or neglect of duty, while in South Carolina that list also includes for misconduct in office. In all cases, these appointing bodies must provide the Commissioner in question with a copy of the charges against him or her. The Commissioner then has the right to a hearing of at least [ed. note: within] 10 days prior to the receipt of the charges. The hearing allows the Commissioner to be heard in person or by Council. If, following the hearing, the appointing bodies find the Commissioner has willfully violated any law of the state, or any term, provision, or covenant, the Commissioner can then be removed. The Commissioner may file a written objection to the charges. However, if the Commissioner does not provide a written objection, he or she will be deemed to have willfully participated in the violation. In South Carolina, a record of the

proceedings, charges, and findings must be filed in the same manner as appointment certificates, which is with the County Clerk, the Secretary of State, and the Secretary of Commerce.

South Carolina statute also notes that resident Commissioners may only remain on the Board while receiving assistance. Though this is generally accepted rule of thumb in all states, it is stated specifically in the South Carolina statute. If the resident moves out or is evicted from public housing or is no longer a participant in the HCV program within the jurisdiction, the mayor must automatically remove that Commissioner from the Board of Commissioners with no opportunity to be heard or contest the removal.

So, let's do a quick knowledge check. If a Commissioner has any direct or indirect interest in any project, property, or contract, they must disclose this information in writing. Is this true or false?

It is true. And in South Carolina, they must enter it into the authority's Board minutes.

Now, let's talk a little bit about Commissioner compensation. In both states, Commissioners may not receive compensation for their service on the board. Specifically, North Carolina statute Chapter 157.5 states that Commissioners shall not receive any compensation for their services. However, they are entitled to necessary expenses, such as traveling expenses for trainings or mileage for meetings, if appropriate, while the South Carolina statute states that no Commissioner shall receive any compensation, whether in the form of salary, per diem allowances, or otherwise for or in connection with his or her service as a Commissioner.

So, let's talk a little bit about the regional areas of operation. In North and South Carolina, the area of operation of a city, county, and regional housing authority include the city and the area within 10 miles from the territorial boundaries of the city, but it does not include the whole or part of any other city, except as otherwise noted or extended by the director of that housing authority in the case of South Carolina. The director may extend the territorial jurisdiction of any housing authority over territories contiguous to that of the housing authority if such extension does not conflict with any other housing authority. That said, a housing authority created for a city may operate and perform any of its functions within another city that has a common boundary when requested by the governing body of that particular city. And that needs to be by resolution.

The area of operation for a county housing authority includes all of the county other than an area that is within the boundaries of the city housing authority, unless that city allows for that overlapping operation. The same holds true for regional housing authorities, which include the boundaries of all included counties, except for any city authorities in their midst.

In South Carolina, if a PHA adopts a resolution by the city or county body, declaring the need for the other housing authority to exercise powers within their jurisdiction, then any PHA may do so within the boundaries of any municipality. In North Carolina, any two or more authorities may join, or cooperate with one another for financing or most other activities of the authority. However, a resolution by each authority involved will be required.

Let's do our last little knowledge check here. If the commissioner... A Commissioner may not receive any compensation for his or her services. Is that true or false?

The answer is true, although in North Carolina, the statute does go on to reference that they may receive reimbursement for expenses to include travel and mileage, etc.

And with that, I'll turn it over to Cydney to close us out.

00:25:26 Cydney Jones: Thank you all so much for joining us today. We hope we've answered your questions regarding the North Carolina and South Carolina public housing laws. For other topics, please see the other training modules, provided either through our live webinars and the two additional recoded modules. And we also thank you for your commitment and service to your community. We know you are volunteers and give a great deal of yourself to your residents and we commend and thank you.