

Revenue Resources For County Government

2009 Supplement



**South Carolina
Association of Counties**

**2009 REVISIONS
FILE WITH REVENUE RESOURCES FOR COUNTY GOVERNMENT
2006 EDITION**

PREFACE

Store this supplement with the 2006 Edition of Revenue Resources for County Government. Anytime the 2006 Edition of Revenue Resources for County Government is consulted, this volume must also be checked for amendments to the statutes, Attorney General's opinions interpreting the statutes and updated case law.

The 2006 Edition of Revenue Resources for County Government addressed the revenue raising authority granted to counties other than those in the Home Rule Act. This 2009 supplement follows the same.

This publication is intended to give you a readily available reference to begin your search for information and is not designed to be the final word on the law affecting county government revenue raising ability. The statutes, case notes, and summaries of Attorney General's opinions are not a complete source of the law which may affect the answer to a question you may have. It is important to consult your county attorney when you have a question regarding the law.

Should you need additional assistance, the South Carolina Association of Counties staff is available to help all county officials and employees with any questions which might arise regarding revenue raising authority of local governments or any other matter which affects county government. You may call the Association of Counties at 1-800-922-6081 or email us at scac@scac.state.sc.us.

TABLE OF CONTENTS

PART I	GENERAL PROVISIONS AND TARGETED TAXES	1
ARTICLE 1:	GENERAL PROVISIONS	1
SECTION 6-1-50:	Financial Reports	1
SECTION 6-1-70:	Real Estate Transfer Fees Prohibited	2
ARTICLE 3:	AUTHORITY OF LOCAL GOVERNMENTS TO ASSESS TAXES AND FEES	2
SECTION 6-1-315:	Limitation on Business License Taxes	2
SECTION 6-1-320:	Millage Rate Limitations and Exceptions	3
SECTION 6-1-330:	Local Fee Imposition Limitations	6
ARTICLE 7:	LOCAL HOSPITALITY TAX ACT	7
SECTION 6-1-730:	Use of Local Hospitality Tax Revenue	7
ARTICLE 9:	DEVELOPMENT IMPACT FEE ACT	8
SECTION 6-1-910:	Short Title	8
SECTION 6-1-920:	Definitions	8
SECTION 6-1-1060:	Grandfathering of Existing Impact Fee Ordinances	8
CHAPTER 35, TITLE 4:	COUNTY PUBLIC WORKS IMPROVEMENT ACT	8
SECTION 4-35-10:	Short Title	8
SECTION 4-35-20:	Authorization Does Not Limit or Restrict Other County Powers	9
SECTION 4-35-30:	Definitions	9
SECTION 4-35-40:	Financing of Improvements	11
SECTION 4-35-50:	Findings and Approvals Required to Establish a District	11
SECTION 4-35-60:	Resolution Describing Improvement District and Plan	12

SECTION 4-35-70: Publication and Notice of a Public Hearing	12
SECTION 4-35-80: Resolution May Provide for Source of Financing	12
SECTION 4-35-90: Financing of District is Discretionary and Rates May Vary	13
SECTION 4-35-100: The Governing Body Must Prepare an Assessment Roll	13
SECTION 4-35-110: Notice of Improvement and Assessment; Objections	14
SECTION 4-35-120: Objections to and Collection of Assessments	14
SECTION 4-35-130: Confirmations of and Appeals of Assessments	15
SECTION 4-35-140: Creation of Improvement District	15
SECTION 4-35-150: Improvements Must be Owned By Public Entity	16
SECTION 4-35-160: Abolition of District	16
CHAPTER 35, TITLE 6: RESIDENTIAL IMPROVEMENT DISTRICT ACT	17
SECTION 6-35-10: Short Title	17
SECTION 6-35-20: Definitions	17
SECTION 6-35-30: Exercise of Powers Granted in the Chapter	19
SECTION 6-35-40: Authorization Does Not Limit Other Powers	20
SECTION 6-35-50: Imposition and Collection of an Assessment	20
SECTION 6-35-60: Financing of Improvements	21
SECTION 6-35-70: Exclusion of Bonds from Constitutional Debt Limit	22
SECTION: 6-35-90: Improvements Constructed or Under Construction	22
SECTION 6-35-95: Disclosure by Owner or Developer of the Real Property to Prospective Purchasers	22
SECTION 6-35-100: Improvement Fee	23

SECTION 6-35-110: Improvements Funded by Multiple Districts	23
SECTION 6-35-115: Construction or Additions to Schools	24
SECTION 6-35-118: Petition to Create a District	24
SECTION 6-35-120: Resolution Proposing the Residential Improvement District	25
SECTION 6-35-130: Notice of the Public Hearing	25
SECTION 6-35-160: Improvements Are to Become the Public Property	26
SECTION 6-35-170: Creation of District by Ordinance and Challenges	26
SECTION 6-35-180: Preparation of Assessment Roll, Objections, Appeals	27
SECTION 6-35-190: Abolition of District	29
PART II LOCAL SALES AND USE TAXES	31
ARTICLE 3: CAPITAL PROJECTS SALES TAX ACT	31
SECTION 4-10-310: The County Governing Body May Impose a Sales and Use Tax	31
SECTION 4-10-330: Ballot Question and Use of Tax Revenue	31
SECTION 4-10-340: Tax Imposition and Termination	34
SECTION 4-10-350: Department of Revenue to Administer and Collect	35
ARTICLE 7: LOCAL OPTION SALES AND USE TAX FOR LOCAL PROPERTY TAX CREDITS	36
SECTION 4-10-810: EIA Local Effort	36
CHAPTER 37, TITLE 4: OPTIONAL METHODS FOR FINANCING TRANSPORTATION FACILITIES	37
SECTION 4-37-30: Sales Taxes or Tolls as Revenue	37
SECTION 4-37-40: Limitation on Sales Tax Rate	37
PART III OTHER REVENUE SOURCES	38

ARTICLE 27, CHAPTER 21, TITLE 12: THE TOURISM INFRASTRUCTURE ADMISSIONS TAX ACT	38
SECTION 12-21-6520: Definitions	38
SECTION 12-21-6540: The Special Tourism Infrastructure Development Fund and Distribution	39
SECTION 12-21-6590: Extraordinary Retail Establishments	40
PART IV STATE AID TO SUBDIVISIONS ACT	43
CHAPTER 27, TITLE 6: STATE AID TO SUBDIVISIONS ACT	43
SECTION 6-27-30: Funding the Local Government Fund	43
SECTION 6-27-40: Distribution and Use of the Local Government Fund	43
SECTION 6-27-50: Amendment by Separate Act Only	43

PART I

GENERAL PROVISIONS AND TARGETED TAXES

ARTICLE 1: GENERAL PROVISIONS

P.1 SECTION 6-1-50: FINANCIAL REPORTS

EDITOR'S NOTE: This section was substantially altered by Act No. 388 of 2006. Counties and municipalities are now required to submit a financial report to The Office of Research and Statistics in the Budget and Control Board. The Office of Research and Statistics is to determine the content and form of the report. Act No. 57 of 2007 changed the date the financial reports are due from November 15 to January 15.

§6-1-50. Financial report required.

Counties and municipalities receiving revenues from state aid, currently known as Aid to Subdivisions, shall submit annually to the State Budget and Control Board, Office of Research and Statistics, Economic Research Section a financial report detailing their sources of revenue, expenditures by category, indebtedness, and other information as the State Budget and Control Board, Office of Research and Statistics, Economic Research Section requires. The State Budget and Control Board, Office of Research and Statistics, Economic Research Section shall determine the content and format of the annual financial report. The financial report for the most recently completed fiscal year must be submitted to the State Budget and Control Board, Office of Research and Statistics, Economic Research Section by January fifteenth of each year. If an entity fails to file the financial report by January fifteenth, then the chief administrative officer of the entity shall be notified in writing that the entity has thirty days to comply with the requirements of this section. The Director of the Office of Research and Statistics may, for good cause, grant a local entity an extension of time to file the annual financial report. Notification by the Director of the Office of Research and Statistics to the Comptroller General that an entity has failed to file the annual financial report thirty days after written notification to the chief administrative officer of the entity must result in the withholding of ten percent of subsequent payments of state aid to the entity until the report is filed. The State Budget and Control Board, Office of Research and Statistics, Economic Research Section is responsible for collecting, maintaining, and compiling the financial data provided by counties and municipalities in the annual financial report required by this section.

HISTORY: 1988 Act No. 365, Part I, §2; 2006 Act No. 388, Part IV §2C; 2007 Act No. 57 §2.

P.2 SECTION 6-1-70: REAL ESTATE TRANSFER FEES PROHIBITED

ATTORNEY GENERAL'S OPINIONS

A homeowners' association is a private entity, and therefore, without specific statutory authority, it does not have the authority to levy a fee or tax upon the public at large. Thus, we do not find 6-1-70 applicable to homeowners' associations. Unpublished Op. Atty. Gen. Dated July 11, 2008 (2008 WL 3198122).

ARTICLE 3: AUTHORITY OF LOCAL GOVERNMENTS TO ASSESS TAXES AND FEES

P.6 SECTION 6-1-315: LIMITATION ON BUSINESS LICENSE TAXES

EDITOR'S NOTE: Act No. 412 of 2008 amended this section to state that a county or municipality may not impose a fee upon real estate licensees, except upon the broker-in-charge at the place where the real estate licensee maintains a principal or branch office. Additionally the legislation states that a county or municipality may not impose fee upon the gross proceeds of an auctioneer for the first three auctions conducted by the auctioneer in the county or municipality, unless the auctioneer maintains a principal or branch office in the county or municipality.

Section 6-1-315. Limitation on imposition or increase of business license tax; real estate licensees, auctioneers.

(A) By ordinance adopted by a positive majority vote, a local governing body may impose a business license tax or increase the rate of a business license tax, authorized by Sections 4-9-30(12) and 5-7-30.

(B)(1) Notwithstanding any other provision of law, the governing body of a county or municipality may not impose a license, occupation, or professional tax or fee upon real estate licensees, except upon the broker-in-charge at the place where the real estate licensee shall maintain a principal or branch office. The license, occupation, or professional tax or fee shall permit the broker-in-charge and the broker's affiliated associate brokers, salespersons, and property managers to engage in all of the brokerage activities described in Chapter 57 of Title 40 without further licensing or taxing, other than the state licenses issued pursuant to Chapter 57 of Title 40 or pursuant to other provisions of law. No license, occupation, or professional tax or fee shall be required of the affiliated associate brokers, salespersons, or property managers of a broker-in-charge for such gross receipts upon which a license, occupation, or professional tax or fee has already been paid.

(2) Brokered transactions of real property in counties or municipalities other than those in which the broker-in-charge maintains a principal or branch office create a nexus for imposition of a license, occupation, or professional tax or fee only with respect to gross receipts derived from transactions of property located in that county or municipality.

(3) Notwithstanding any other provision of law, the governing body of a county or municipality may

not impose a license, occupation, or professional tax or fee upon the gross proceeds of an auctioneer licensed under Chapter 6 of Title 40 for the first three auctions conducted by the auctioneer in the county or municipality, unless the auctioneer maintains a principal or branch office in the county or municipality.

HISTORY: 1997 Act No. 138, §7; 2008 Act No. 412, §1.

P.7 SECTION 6-1-320: MILLAGE RATE LIMITATIONS AND EXCEPTIONS

EDITOR'S NOTE: Act No. 57 of 2007 amended §6-1-320(A) to state that for the purposes of the local government millage increase limitation, if the average of the twelve monthly consumer price indices experiences a negative percentage, the average is deemed to be zero. If an entity experiences a reduction in population, the percentage change in population is deemed to be zero. Section §6-1-320(E) was also amended to state that the section does not amend or repeal any caps on school millage that are more restrictive than the limitation in §6-1-320(A).

Act No. 410 of 2008 further amended §6-1-320 to allow two additional millage cap limitation exceptions. Section 6-1-320(B)(6) allows a local government to exceed the millage cap (upon a 2/3 vote) to purchase undeveloped real property near an operating United States military base if the property has been identified as suitable for residential development but would constitute undesirable residential encroachment upon a United States military base. Section 6-1-320(B)(7) allows a local government in a county having a population of less than one hundred thousand persons and having at least forty thousand acres of state forest land may exceed the millage cap to purchase capital equipment and make expenditures related to the installation, operation, and purchase of the capital equipment.

§6-1-320. Millage Rate Increase Limitation; exceptions.

(A) Notwithstanding Section 12-37-251(E), a local governing body may increase the millage rate imposed for general operating purposes above the rate imposed for such purposes for the preceding tax year only to the extent of the increase in the average of the twelve monthly consumer price indices for the most recent twelve-month period consisting of January through December of the preceding calendar year, plus, beginning in 2007, the percentage increase in the previous year in the population of the entity as determined by the Office of Research and Statistics of the State Budget and Control Board. If the average of the twelve monthly consumer price indices experiences a negative percentage, the average is deemed to be zero. If an entity experiences a reduction in population, the percentage change in population is deemed to be zero. However, in the year in which a reassessment program is implemented, the rollback millage, as calculated pursuant to Section 12-37-251(E), must be used in lieu of the previous year's millage rate.

(B) Notwithstanding the limitation upon millage rate increases contained in subsection (A), the millage rate limitation may be suspended and the millage rate may be increased upon a two-thirds vote of the membership of the local governing body for the following purposes:

- (1) the deficiency of the preceding year;

- (2) any catastrophic event outside the control of the governing body such as a natural disaster, severe weather event, act of God, or act of terrorism, fire, war, or riot;
- (3) compliance with a court order or decree;
- (4) taxpayer closure due to circumstances outside the control of the governing body that decreases by ten percent or more the amount of revenue payable to the taxing jurisdiction in the preceding year; or
- (5) compliance with a regulation promulgated or statute enacted by the federal or state government after the ratification date of this section for which an appropriation or a method for obtaining an appropriation is not provided by the federal or state government.
- (6) purchase by the local governing body of undeveloped real property or of the residential development rights in undeveloped real property near an operating United States military base which property has been identified as suitable for residential development but which residential development would constitute undesirable residential encroachment upon the United States military base as determined by the local governing body. The local governing body shall enact an ordinance authorizing such purchase and the ordinance must state the nature and extent of the potential residential encroachment, how the purchased property or development rights would be used and specifically how and why this use would be beneficial to the United States military base, and what the impact would be to the United States military base if such purchase were not made. Millage rate increases for the purpose of such purchase must be separately stated on each tax bill and must specify the property, or the development rights to be purchased, the amount to be collected for such purchase, and the length of time that the millage rate increase will be in effect. The millage rate increase must reasonably relate to the purchase price and must be rescinded five years after it was placed in effect or when the amount specified to be collected is collected, whichever occurs first. The millage rate increase for such purchase may not be reinstated unless approved by a majority of the qualified voters of the governmental entity voting in a referendum. The cost of holding the referendum must be paid from the taxes collected due to the increased millage rate; or
- (7) to purchase capital equipment and make expenditures related to the installation, operation, and purchase of the capital equipment including, but not limited to, taxes, duty, transportation, delivery, and transit insurance, in a county having a population of less than one hundred thousand persons and having at least forty thousand acres of state forest land. For purposes of this section, 'capital equipment' means an article of nonexpendable, tangible, personal property, to include communication software when purchased with a computer, having a useful life of more than one year and an acquisition cost of fifty thousand dollars or more for each unit.

If a tax is levied to pay for items (1) through (5) above, then the amount of tax for each taxpayer must be listed on the tax statement as a separate surcharge, for each aforementioned applicable item, and not be included with a general millage increase. Each separate surcharge must have an explanation of the reason for the surcharge. The surcharge must be continued only for the years

necessary to pay for the deficiency, for the catastrophic event, or for compliance with the court order or decree.

(C) The millage increase permitted by subsection (B) is in addition to the increases from the previous year permitted pursuant to subsection (A) and shall be an additional millage levy above that permitted by subsection (A). The millage limitation provisions of this section do not apply to revenues, fees, or grants not derived from ad valorem property tax millage or to the receipt or expenditures of state funds.

(D) The restriction contained in this section does not affect millage that is levied to pay bonded indebtedness or payments for real property purchased using a lease-purchase agreement or used to maintain a reserve account. Nothing in this section prohibits the use of energy-saving performance contracts as provided in Section 48-52-670.

(E) Notwithstanding any provision contained in this article, this article does not and may not be construed to amend or to repeal the rights of a legislative delegation to set or restrict school district millage, and this article does not and may not be construed to amend or to repeal any caps on school millage provided by current law or statute or limitation on the fiscal autonomy of a school district that are more restrictive than the limit provided pursuant to subsection (A) of this section.

HISTORY: 1997 Act No. 138, §7; 1999 Act No. 114, §4; 2005 Act No. 145, §6; 2006 Act No. 388, Part II, §2; 2007 Act No. 57, §3; 2008 Act No. 410 §1.

ATTORNEY GENERAL'S OPINIONS

Pursuant to the Education Finance Act (EFA), the value of property located in each district determines the district's ability to provide its own funding. With the passage of Act No. 388 of 2006, school districts are no longer primarily funded by property tax revenue and therefore, property values are less relevant to the districts' ability to providing their own funding. It may appear the Legislature intended to repeal portions of the EFA calculating districts' fiscal capacity based on their property values. However, implied repeals are disfavored and we do not believe that a court would find the Act implicitly repeals the EFA. Unpublished Op. Atty. Gen. Dated April 24, 2007 (2007 WL 1302772).

As part of Act No. 388 of 2006, the Legislature rewrote §6-1-320(B) containing the reasons for which a local governing body, which by definition includes local school districts, may exceed the general millage rate limitation contained in subsection (A). Most significantly, the Legislature removed the provision allowing the millage rate limitation to be suspended to meet the per pupil maintenance of effort requirement of §59-21-1030. By removing this provision, the Legislature clearly indicates its intention to prevent school districts from exceeding the millage rate limitations set forth in subsection (A) based on a need to satisfy the local maintenance of effort requirement imposed by §59-21-1030. Moreover, we find none of the five exceptions currently in place allow a school district to exceed the millage rate limitation in order to raise additional funds to satisfy this requirement. Therefore, we do not believe a school district's need to satisfy the local maintenance of effort requirement under §59-21-1030 provides an exception to the millage rate limitation contained in §6-1-320. Unpublished Op. Atty. Gen. Dated June 13, 2007 (2007 WL 2459753).

Based on §4-9-30(5)(a), we are of the opinion that providing fire protection services is a general operating purpose. An increase in the millage rate imposed for fire protection services provided by the county pursuant to Chapter 19 of Title 4 is limited by the provisions of §6-1-320. Unpublished Op. Atty. Gen. Dated June 26, 2007 (2007 WL 1934802).

Relying on our recent June 13, 2007 opinion, we continue to believe the Act (Act No. 388 of 2006) does not repeal the per pupil maintenance of effort requirement set forth in §59-21-1030. We do not believe the amendments to §6-1-320 repeal §59-21-1030. We find the amendments to §6-1-320(B) demonstrate the Legislature's intent to prevent local school districts from exceeding the millage rate limitations set forth in §6-1-320(A) in order to meet the per pupil maintenance of effort requirement under §59-21-1030. Unpublished Op. Atty. Gen. Dated July 11, 2007 (2007 WL 2459753).

P.9 SECTION 6-1-330: LOCAL FEE IMPOSITION LIMITATIONS

EDITOR'S NOTE: Act No. 75 of 2009 added section (D) prohibiting counties from imposing a fee on agricultural lands, forest lands, or undeveloped lands for a storm water, sediment, or erosion control program unless Chapter 14, Title 48, allows for the imposition of this fee on these lands. However, any fee imposed as of June 16, 2009 may continue to be imposed under the same terms, conditions, and amounts.

§6-1-330. Local fee imposition limitations.

(A) A local governing body, by ordinance approved by a positive majority, is authorized to charge and collect a service or user fee. A local governing body must provide public notice of any new service or user fee being considered and the governing body is required to hold a public hearing on any proposed new service or user fee prior to final adoption of any new service or user fee. Public comment must be received by the governing body prior to the final reading of the ordinance to adopt a new service or user fee. A fee adopted or imposed by a local governing body prior to December 31, 1996, remains in force and effect until repealed by the enacting local governing body, notwithstanding the provisions of this section.

(B) The revenue derived from a service or user fee imposed to finance the provision of public services must be used to pay costs related to the provision of the service or program for which the fee was paid. If the revenue generated by a fee is five percent or more of the imposing entity's prior fiscal year's total budget, the proceeds of the fee must be kept in a separate and segregated fund from the general fund of the imposing governmental entity.

(C) If a governmental entity proposes to adopt a service or user fee to fund a service that was previously funded by property tax revenue, the notice required pursuant to Section 6-1-80 must include that fact in the text of the published notice.

(D) The governing body of a county may not impose a fee on agricultural lands, forestlands, or undeveloped lands for a stormwater, sediment, or erosion control program unless Chapter 14, Title 48 allows for the imposition of this fee on these lands; provided, that any county which imposes such a fee on these lands on the effective date of this subsection may continue to impose that fee under its same terms, conditions, and amounts.

HISTORY: 1997 Act No. 138, §7; 2009 Act No. 75, §2.

ATTORNEY GENERAL'S OPINIONS

In reading §6-1-330 in conjunction with the authority previously given to counties in §4-9-30, we believe with respect to §6-1-330, the Legislature intended to prescribe a particular methodology by which a county may impose a service or user fee, rather than giving counties the authority they already possessed under §4-9-30. In light of Brown v. County of Horry, 308 S.C. 180, 417 S.E.2d 565 (1992), a county has the authority to impose a road maintenance fee. Unpublished Op. Atty. Gen. Dated February 16, 2007 (2007 WL 655612).

A county has the authority to impose a fee for fire and rescue protection, however, the validity of a fire and rescue protection fee of \$.50 an acre levied upon each acre of land would be dependent upon questions of fact and would have to be decided based upon the four-prong test outlined in CR Campbell Construction Co. v. City of Charleston, 325 S.C. 235, 481 S.E. 2d 437 (1997). Unpublished Op. Atty. Gen. Dated March 10, 2008 (2008 WL 903973).

ARTICLE 7: LOCAL HOSPITALITY TAX ACT

P.18 SECTION 6-1-730: USE OF LOCAL HOSPITALITY TAX REVENUE

ATTORNEY GENERAL'S OPINIONS

[Editor's Note: The Town of Cheraw asked the Attorney General's Office if school athletic facilities would meet the definition of "tourism-related" uses and be eligible for funding through the local hospitality fund.]

We imagine that the field house and athletic field improvements described are solely used by the students and staff of the school, rather than by tourists as would a civic center. We do not believe a court would find them appropriate for funding with hospitality revenues. Unpublished Op. Atty. Gen. Dated December 20, 2006 (2006 WL 3877521).

We do not believe a county may use hospitality tax revenues to fund its transit system. Unpublished Op. Atty. Gen. Dated November 4, 2008 (2008 WL 5120764).

ARTICLE 9: DEVELOPMENT IMPACT FEE ACT

P. 21 SECTION 6-1-910: SHORT TITLE

ATTORNEY GENERAL’S OPINION

It is well established that counties possess authority to impose development impact fees. Unpublished Op. Atty. Gen. Dated February 20, 2008 (2008 WL 608962).

P. 21 SECTION 6-1-920: DEFINITIONS

ATTORNEY GENERAL’S OPINIONS

In order for a local housing trust fund to be funded with proceeds from a development impact fee, the General Assembly would need to amend the SC Development Impact Fee Act to include affordable housing as a public facility. Unpublished Op. Atty. Gen. Dated January 11, 2006 (2006 WL 148716).

It is our opinion that school facilities development impact fees are not authorized by the South Carolina Development Impact Fee Act. As we have previously concluded, the purposes for which proceeds of development impact fees may be used are expressly enumerated in the Act. Such Act does not include schools or school facilities. Unpublished Op. Atty. Gen. Dated February 20, 2008 (2008 WL 608962).

P. 34 SECTION 6-1-1060: GRANDFATHERING OF EXISTING IMPACT FEE ORDINANCES

ATTORNEY GENERAL’S OPINION

Our reading of the grandfather clause [§6-1-1060] is that it is ambiguous and subject to alternative constructions. While we believe the better reading is that the grandfather provision protects the 2003 and 2005 ordinances, because these ordinances do not constitute “subsequent changes or reenactment” of the development impact “fee,” such a construction is not free from doubt. Alternatively, the provision can be credibly read as encompassing *any* amendment to the development impact fee ordinances following enactment of the Development Impact Fee Act. Thus, we recommend a declaratory judgment to determine the validity of the ordinances in question. Unpublished Op. Atty. Gen. Dated February 20, 2008 (2008 WL 608962).

P. 36 CHAPTER 35, TITLE 4: COUNTY PUBLIC WORKS IMPROVEMENT ACT

SECTION 4-35-10: SHORT TITLE

EDITOR’S NOTE: Entitles this the “County Public Works Improvement Act.”

§4-35-10. Short title; counties authorized to exercise powers and provisions.

This chapter may be cited as the "County Public Works Improvement Act". A county may exercise the powers and provisions of this chapter.

HISTORY: 1993 Act No. 99, §1.

SECTION 4-35-20: AUTHORIZATION DOES NOT LIMIT OR RESTRICT OTHER COUNTY POWERS

EDITOR'S NOTE: This section establishes that the County Public Works Improvement Act is not intended to restrict any other power of a county.

§4-35-20. Authorizations constitute cumulative and alternative powers.

Nothing contained in this chapter may be construed to limit or restrict the powers of a county. The authorization provided in this chapter is cumulative to those powers and is provided as an alternate means for the provision of public works projects.

HISTORY: 1993 Act No. 99, §1.

SECTION 4-35-30: DEFINITIONS

EDITOR'S NOTE: This section provides definitions for terms contained in the County Public Works Improvement Act. Notice that school buildings, although not specifically included in the definition of improvement, likely fall within the definition of "building or other facilities for public use." Section 6-21-50, referenced in the definition of improvements, authorizes a municipality to purchase the following:

“a waterworks system, water supply system, sewer system, sanitary disposal equipment and appliances, garbage and trash disposal systems including plants for solid waste transfer, reduction and recycling, light plant or system, natural gas system, ice plants, power plants and distribution systems, gas plants, incinerator plants, hospitals, nursing home and care facilities, piers, docks, terminals, airports, toll bridges, ferries, drainage systems, city halls, courthouses, armories, fire stations and fire fighting vehicles, auditoriums, hotels, municipal buildings, theatres, community auditoriums and hotels, city halls and hotels, public markets, public recreation parks, swimming pools, golf courses, stadiums, school auditoriums, gymnasiums or teacherages, cemeteries, parking buildings, parking lots, curb markets or other public buildings or structures. . .”

Also notice that subsection (6), added by Act No. 389 of 1998 defines governing body as the governing body of a county.

§4-35-30. Definitions.

As used in this chapter:

(1) "Assessment" means an assessment voluntarily agreed upon by a majority of the owners of real property within an improvement district and representing at least sixty-six percent of the assessed value of all real property within the improvement district. The assessment must be made upon all real property located within the district, other than property constituting improvements within the meaning of this section, and based upon assessed value, front footage, area, per parcel basis, the value of improvements to be constructed within the district, or a combination of them, as the basis is determined by the governing body of the county. An assessment imposed upon real property with the consent of the owner remains valid and enforceable in accordance with the provisions of this chapter even if there is a later subdivision and transfer of the property or a part of it. An improvement plan may provide for a change in the basis of assessment upon the subdivision and transfer of real property.

(2) "Improvements" means recreational facilities, pedestrian facilities, sidewalks, storm drains, or water course facilities or improvements, the relocation, construction, widening, and paving of roads and streets, any building or other facilities for public use, any public works eligible for financing pursuant to Section 6-21-50, and may include the acquisition of necessary easements and land and all things incidental to the provision of the above. These improvements may be designated by the governing body as public works eligible for revenue bond financing pursuant to Section 6-21-50, and the improvements, taken in the aggregate, may be designated by the governing body as a "system" of related projects within the meaning of Section 6-21-15.

(3) "Improvement district" means an area within the county designated by the governing body pursuant to the provisions of this chapter and within which an improvement plan is to be accomplished.

(4) "Improvement plan" means the overall plan by which the governing body proposes to effect improvements within an improvement district to preserve property values, prevent deterioration, and preserve the tax base.

(5) "Owner" means a person twenty-one years of age or older, or the proper legal representative for a person younger than twenty-one years of age, and a firm or corporation, who or which owns legal title to a present possessory interest in real estate equal to a life estate or greater (expressly excluding leaseholds, easements, equitable interests, inchoate rights, and future interest) and who owns, at the date of the petition or written consent, at least an undivided one-tenth interest in a single tract and whose name appears on the county tax records as an owner of real estate, and a duly organized group whose tax interest is at least equal to a one-tenth interest in a single tract. If a firm or person has a leasehold interest requiring it or him to pay all county taxes, the agreement is not applicable to charges of the assessment of the district as only the owner has the right to petition on the assessment charge for the improvement district.

(6) "Governing body" means the governing body of a county.

HISTORY: 1993 Act No. 99, §1; 1998 Act No. 389 §§1, 5.

SECTION 4-35-40: FINANCING OF IMPROVEMENTS

EDITOR'S NOTE: A county may use special district bonds, general obligation bonds, revenue bonds, general revenues, or a combination of funding sources to finance the proposed improvements under the improvement plan.

§4-35-40. Powers of governing body with respect to improvements; means of financing.

The governing body is authorized to acquire, own, construct, establish, enlarge, improve, expand, operate, maintain and repair, and sell, lease, and otherwise dispose of an improvement and to finance the acquisition, construction, establishment, enlargement, improvement, expansion, operation, maintenance and repair, in whole or in part, by the imposition of assessments in accordance with this chapter and through the issuance of special district bonds, general obligation bonds of the county, or revenue bonds of the county, from general revenues from any source not restricted from that use by law, or by a combination of the funding sources.

HISTORY: 1993 Act No. 99, §1; 1998 Act No. 389 §2.

SECTION 4-35-50: FINDINGS AND APPROVALS REQUIRED TO ESTABLISH A DISTRICT

EDITOR'S NOTE: This section sets forth the findings required to set up an improvement district. A district requires the written approval of a majority of the owners of the district and approval of those persons owning at least 66% of the assessed value of all real property within the district.

§4-35-50. Requisites for establishment of improvement district; power to implement and finance improvement plan.

(A) If the governing body finds that (1) improvements may be beneficial within a designated improvement district, (2) the improvements may preserve property values within the district, (3) in the absence of the improvements, property values within the area would likely depreciate, (4) it would be fair and equitable to finance all or part of the cost of the improvements by an assessment upon the real property located within the district, and (5) written consent for the creation of the improvement district from a majority of the owners of real property within the district and having an aggregate assessed value in excess of sixty-six percent of the assessed value of all real property within the improvement district has been obtained, the governing body may establish the area as an improvement district and implement and finance, in whole or in part, an improvement plan in the district in accordance with the provisions of this chapter.

(B) Instead of items (A)(2) and (A)(3), the governing body may find that the improvements are likely significantly to improve property values within the district by promoting the development of the property.

HISTORY: 1993 Act No. 99, §1; 1998 Act No. 389 §3.

SECTION 4-35-60: RESOLUTION DESCRIBING IMPROVEMENT DISTRICT AND PLAN

EDITOR’S NOTE: This section requires county council, by resolution, to describe the improvement district and plan. It additionally requires county council to establish the time and place of a public hearing on the district and plan, to be held between 30 and 45 days after the adoption of the resolution.

§4-35-60. Resolution describing improvement district and plan, including costs, assessments, etc.; establishing time and place of hearing.

The governing body, by resolution, shall describe the improvement district and the improvement plan to be affected in it, including property within the improvement district to be acquired and improved, the projected time schedule for the accomplishment of the improvement plan, the estimated cost and the amount of the cost to be derived from assessments, bonds, or other general funds, together with the proposed basis and rates of assessments to be imposed within the improvement district. The resolution also must establish the time and place of a public hearing to be held but the public hearing may not take place sooner than thirty days nor more than forty-five days following the adoption of the resolution.

HISTORY: 1993 Act No. 99, §1.

SECTION 4-35-70: PUBLICATION AND NOTICE OF A PUBLIC HEARING

EDITOR’S NOTE: This section requires the resolution described in §4-35-60 to be published once a week for three successive weeks. Final publication must be at least 10 days before the date of the public hearing.

§4-35-70. Publication of resolution providing for improvement district; public hearing.

A resolution providing for an improvement district, when adopted, must be published once a week for three successive weeks in a newspaper of general circulation within the county and the final publication must be at least ten days before the date of the scheduled public hearing. At the public hearing and at any adjournment of it, all interested persons may be heard either in person or by their designees.

HISTORY: 1993 Act No. 99, §1.

SECTION 4-35-80: RESOLUTION MAY PROVIDE FOR SOURCE OF FINANCING

EDITOR’S NOTE: This section is very similar to §4-35-40, authorizing the county governing body to provide by resolution to pay for the improvements and facilities in the district by assessments, special district bonds, general obligation bonds, revenue bonds, general revenues, or a combination of funding sources.

§4-35-80. Improvements financed through assessments, bonds, general revenues, or combination of sources.

The governing body may provide by the resolution for the payment of the cost of the improvements and facilities to be constructed within the improvement district by assessments on the property as defined in Section 4-35-30, by the issuance of special district bonds, revenue bonds, or general obligation bonds of the county, from general revenues from a source not restricted from that use by law, or from a combination of the financing sources as may be provided in the improvement plan. The governing body may use the provisions of Chapter 21, Title 6 to issue revenue bonds, and any assessments authorized by this chapter are revenues of the system for that purpose.

HISTORY: 1993 Act No. 99, §1; 1998 Act No. 389 §4

SECTION 4-35-90: FINANCING OF DISTRICT IS DISCRETIONARY AND RATES MAY VARY

EDITOR'S NOTE: This section states that the financing of the improvements within the district are at the discretion of the county council. Additionally, the rates of assessment within the district may vary depending on the proximity of an improvement to a property owner.

§4-35-90. Financing discretionary with governing body; assessment rates may vary.

The financing of improvements by assessment, bonds, or other revenues, and the proportions of them, must be in the discretion of the governing body, and the rates of assessments upon property owners within the improvement district need not be uniform but may vary in proportion to improvements made immediately adjacent to or abutting upon the property of each owner in the district as well as other bases as provided in Section 4-35-30.

HISTORY: 1993 Act No. 99, §1.

SECTION 4-35-100: THE GOVERNING BODY MUST PREPARE AN ASSESSMENT ROLL

EDITOR'S NOTE: This section is self explanatory.

§4-35-100. Preparation of assessment roll.

If all or a part of improvements and facilities within the district are to be financed by assessments on property in it, the governing body shall prepare an assessment roll in which there must be entered the names of the persons whose properties are to be assessed and the amount assessed against their respective properties with a brief description of the lots or parcels of land assessed.

HISTORY: 1993 Act No. 99, §1.

SECTION 4-35-110: NOTICE OF IMPROVEMENT AND ASSESSMENT; OBJECTIONS

EDITOR'S NOTE: After creating the assessment roll pursuant to §4-35-100, the county must send to the owner of each lot upon which an assessment is being levied a notice stating the nature and cost of the improvement, the amount to be assessed and the basis upon which the assessment is made, and how to pay the assessment. The notice must state the time and place for the hearing of objections to the assessment. A property owner who fails to file with the county council a written objection to the assessment against his property within the time provided for hearing the objections is considered to have consented to the assessment.

§4-35-110. Notice of improvement and assessment; statement of lien; time and place for hearing; opportunity to file written objection; failure to file objection constitutes consent.

As soon as practicable after the completion of the assessment roll provided in Section 4-35-100, the governing body shall mail by registered or certified mail, return receipt requested, to the owner or owners of each lot or parcel of land against which an assessment is to be levied, at the address appearing on the records of the county treasurer, a notice stating the nature of the improvement, the total proposed cost of it, the amount to be assessed against the particular property, and the basis upon which the assessment is made, together with the terms and conditions upon which the assessment may be paid. The notice must contain a brief description of the particular property involved, together with a statement that the amount assessed constitutes a lien against the property superior to all other liens except property taxes. The notice also must state the time and place fixed for the hearing of objections in respect to the assessment. A property owner who fails to file with the county council a written objection to the assessment against his property within the time provided for hearing the objections is considered to have consented to the assessment, and the published and written notices prescribed in this chapter shall so state.

HISTORY: 1993 Act No. 99, §1.

SECTION 4-35-120: OBJECTIONS TO AND COLLECTION OF ASSESSMENTS

EDITOR'S NOTE: Section 4-35-120 states that the county council is to hear objections to the assessments levied for the improvement plan. Council may confirm the assessment or make corrections to assessments and then confirm them. Upon confirmation of an assessment a copy must be filed in the office of the clerk of court, and from the time of filing the assessment impressed in the assessment roll becomes a lien on the real property.

§4-35-120. Hearing of objections and supporting proof; corrections to assessment; confirmation of roll; filing of copy; lien created; assessment and collection together with property taxes.

The governing body shall hear the objection as provided in this chapter of all persons who file written notice of objection within the time prescribed and who may appear and make proof in relation to the objection, either in person or by their attorney. The governing body, at the sessions

held to make final decisions on objections, may make corrections in the assessment roll as it considers proper and confirm them, or set it aside and provide for a new assessment. Whenever the governing body confirms an assessment, either as originally prepared or as corrected later, a copy of it must be filed in the office of the clerk of court, and from the time of filing the assessment impressed in the assessment roll constitutes and is a lien on the real property against which it is assessed superior to all other liens and encumbrances, except the lien for property taxes, and must be annually assessed and collected with the property taxes on it.

HISTORY: 1993 Act No. 99, §1.

SECTION 4-35-130: CONFIRMATIONS OF AND APPEALS OF ASSESSMENTS

EDITOR'S NOTE: Section 4-35-130 requires the county to mail a notice confirming the assessment for the improvements plan to all persons who filed an objection pursuant to §4-35-110. A property owner may appeal this assessment if he gives written notice of his intent to appeal to the court of common pleas twenty days after the mailing. This appeal does not delay or stay the construction of improvements or affect the validity of the assessments confirmed.

§4-35-130. Mailing of notice of confirmation to persons who filed objections; appeal to court; hearing; effect.

Upon the confirmation of an assessment, if any, the governing body shall mail a written notice to all persons who have filed written objections as provided in this chapter of the amount of the assessment finally confirmed. The property owner may appeal the assessment only if he, within twenty days after the mailing of the notice to him confirming the assessment, gives written notice to the governing body of his intent to appeal his assessment to the court of common pleas of the county in which the property is situate, but no such appeal delays or stays the construction of improvements or affect the validity of the assessments confirmed and not appealed. Appeals must be heard and determined on the record in the manner of appeals from administrative bodies in this State.

HISTORY: 1993 Act No. 99, §1.

SECTION 4-35-140: CREATION OF IMPROVEMENT DISTRICT

EDITOR'S NOTE: This section provides that 10 days following the conclusion of the public hearing a county may by ordinance provide for the creation of the improvement district as originally proposed or with any changes the governing body wants to make to the original plan. A county could obtain 1st and 2nd reading prior to the public hearing required pursuant to §4-35-60, and thus be ready to create the improvement district. The ordinance must be acted upon within 120 days following the conclusion of the public hearing.

§4-35-140. Creation of improvement district by ordinance; filing.

Not sooner than ten days nor more than one hundred twenty days following the conclusion of the public hearing provided in Section 4-35-60, the governing body, by ordinance, may provide for the creation of the improvement district as originally proposed or with changes and modifications the governing body may determine, and provide for the financing by assessment, bonds, or other revenues as provided in this chapter. The ordinance may incorporate by reference plats and engineering reports and other data on file in the office of the county. The place of filing and reasonable hours for inspection must be made available to all interested persons.

HISTORY: 1993 Act No. 99, §1.

SECTION 4-35-150: IMPROVEMENTS MUST BE OWNED BY PUBLIC ENTITY

EDITOR'S NOTE: This section requires that the improvements must be owned by a public entity for the benefit of the citizens and residents of the improvement district or the benefit of the public entity owning the improvement.

§4-35-150. Improvement ownership, removal, additions and alterations; special assessments.

The improvements as defined in Section 4-35-30 must be owned by the county, the State, or another public entity for the benefit of the citizens and residents of the improvement district or the entity owning the improvement, and at any time may be removed, altered, changed, or added to, as the governing body of the owner may determine except that during the continuance or maintenance of the improvements, the special assessments on property may be utilized for the preservation, operation, and maintenance of the improvements and facilities provided in the improvement plan, for the management and operation of the improvement district as provided in the improvement plan, and for payment of indebtedness incurred.

HISTORY: 1993 Act No. 99, §1; 1999 Act No. 114, §6.

SECTION 4-35-160: ABOLITION OF DISTRICT

EDITOR'S NOTE: This section provides the mechanism to abolish a County Public Works District. §4-35-160. Abolition of district; notice and hearing.

The governing body may by ordinance abolish the improvement district if there is no outstanding public debt for which assessments have been imposed on property within the improvement district for the payment of the debt. The governing body must first conduct a public hearing. Notice of the hearing must appear in a newspaper of general circulation in the improvement district two weeks before the hearing is held.

HISTORY: 1993 Act No. 99, §1.

P. 36 CHAPTER 35, TITLE 6: RESIDENTIAL IMPROVEMENT DISTRICT ACT

SECTION 6-35-10: SHORT TITLE

EDITOR’S NOTE: Entitles this the “South Carolina Residential Improvement District Act.”

§6-35-10. Short Title

This chapter may be cited as the 'South Carolina Residential Improvement District Act'.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-20: DEFINITIONS

EDITOR’S NOTE: Notice that unlike the SC Development Impact Fee Act, improvements include the construction of a new public school and the renovation and expansion of an existing public school. Additionally, the definition of improvements in the Residential Improvement District Act includes all authorizations contained in the County Public Works Improvement Act (Chapter 35, Title 4), the Municipal Improvement Act of 1999 (Chapter 37, Title 5), and Section 6-21-50, which authorizes a municipality to purchase:

“a waterworks system, water supply system, sewer system, sanitary disposal equipment and appliances, garbage and trash disposal systems including plants for solid waste transfer, reduction and recycling, light plant or system, natural gas system, ice plants, power plants and distribution systems, gas plants, incinerator plants, hospitals, nursing home and care facilities, piers, docks, terminals, airports, toll bridges, ferries, drainage systems, city halls, courthouses, armories, fire stations and fire fighting vehicles, auditoriums, hotels, municipal buildings, theatres, community auditoriums and hotels, city halls and hotels, public markets, public recreation parks, swimming pools, golf courses, stadiums, school auditoriums, gymnasiums or teacherages, cemeteries, parking buildings, parking lots, curb markets or other public buildings or structures. . .”

Note that the SC Residential Improvement District Act defines governing body to include counties and municipalities. The County Public Works Improvement Act defines governing body to only include counties.

§6-35-20. Definitions.

As used in this chapter:

(1) 'Assessment' means a charge against the real property belonging to an owner within an improvement district created pursuant to this chapter. The assessment must be made upon real property located within the district, other than property constituting improvements within the meaning of this section, and may be based upon assessed value, front footage, area per parcel basis,

the value of improvements to be constructed within the district, or a combination of them, or another basis agreed to between the owner and the governing body, as the basis is determined by the governing body of the county. An assessment imposed under this chapter remains valid and enforceable in accordance with the provisions of this chapter even if there is a later subdivision and transfer of the relevant property or a part of it. An improvement plan may provide for a change in the basis of assessment upon the subdivision or transfer of real property, or upon such other event as may be deemed appropriate by the governing body. The rates of assessments within a district need not be uniform. The owner and the governing body shall agree upon the rates of assessment across different sections of, or uses within, the district.

(2) 'Improvements' include, but are not limited to, public infrastructure improvements, such as a parkway, park, and playground; a recreation facility, athletic facility, and pedestrian facility; sidewalk; parking facility ancillary to another public facility; facade redevelopment; storm drain; the relocation, construction, widening, and paving of a street, road, and bridge including demolition of them; underground utility dedicated or to be dedicated to public use; all improvements permitted under Chapter 35, Title 4 and Chapter 37, Title 5; a building or other facility for public use; public works eligible for financing under the provisions of Section 6-21-50; and things incidental to an improvement including, but not limited to, planning, engineering, promotion, marketing, administrative fees, and acquisition of necessary easements and land, and may include a facility for lease or use by a private person, firm, or corporation. Improvements also include the construction of a new public school and the renovation and expansion of an existing public school. However, except as otherwise provided in this item, maintenance and an operational expense are not considered to be improvements. The construction of the improvements must comply with applicable state and federal law and regulations governing the construction of similar public improvements installed or constructed by a private entity. Improvements may be designated by the governing body as public works eligible for revenue bond financing pursuant to Section 6-21-50, and these improvements, taken in the aggregate, may be designated by the governing body as a 'system' of related projects within the meaning of Section 6-21-40. The governing body, after due investigation and study, may determine that improvements located outside the boundaries of a district confer a benefit upon property inside a district or are necessary to make improvements within the district effective for the benefit of property inside the district. Improvements must service primarily an owner of the property within the district. This requirement is met if the improvements are situated within:

- (a) the district; or
- (b) a designated service area that benefits the district.

(3) 'Improvement plan' means an overall plan by which the governing body proposes and the owner accepts to effect improvements within a district and service area to preserve property values, prevent deterioration of urban areas, and preserve the tax base, and includes an overall plan by which the governing body proposes to effect improvements within an improvement district in order to encourage and promote private or public development within the improvement district.

(4) 'District' means an area within the county or municipality designated by the governing body and proposed by petition and approved by the governing body pursuant to the provisions of this chapter and within which an improvement plan is to be accomplished. A district may be comprised of noncontiguous parcels of land. A district may be made up of varying proposed land uses

including, but not limited to, residential, commercial, industrial, institutional, or a combination of some or all of those. A district may not include the grounds of the State House in the City of Columbia. Multiple districts may not be formed over the same property at the same time.

(5) 'Governing body' means, as appropriate, the county council or the municipal council or councils with authority over the geographic area in which the district lies and acting under this chapter. School boards are not included within the definition of governing body under this chapter.

(6) 'Government entity' means the county or municipality in which the district is located and the governing body of which acts under this chapter to create such district and impose assessments therein.

(7) 'Owner' means any person eighteen years of age, or older, or the proper legal representative for any person younger than eighteen years of age or otherwise incapacitated person as defined in Section 62-5-101(1), and any firm or corporation, who or which owns legal title to a present possessory interest in real estate equal to a life estate or greater, expressly excluding leaseholds, easements, equitable interests, inchoate rights, dower rights, and future interests, and who owns, at the date of the petition required by Section 6-35-118, at least an undivided one-tenth interest in a single tract and whose name appears on the county tax records as an owner of real estate, and any duly organized group whose total interest is equal to at least a one-tenth interest in a single tract.

(8) 'Service area' means, based on sound planning or engineering principles, or both, a defined geographic area served by a particular improvement. A provision in this chapter may not be interpreted to alter, enlarge, or reduce the service area or boundaries of a political subdivision that is authorized or set by law. A service area may consist of tracts in more than one state, county, or municipality, provided that each relevant governing body approves the creation of the service area and the district. Each improvement may have its own specific service area.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-30: EXERCISE OF POWERS GRANTED IN THE CHAPTER

EDITOR'S NOTE: This section grants the powers of this chapter to counties or municipalities with the approval of all owners of real property within a proposed district. Compare this with §4-35-50 of the County Public Works Improvement Act which requires the written approval of a majority of the owners of the district and approval of those persons owning at least 66% of the assessed value of all real property within the district.

§6-35-30. Exercise of Powers

A county or municipality, only with the approval of the owners of all real property situated within a proposed district, as further provided in Section 6-35-118, may exercise the powers and provisions of this chapter.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-40: AUTHORIZATION DOES NOT LIMIT OTHER POWERS

EDITOR’S NOTE: This section establishes that the SC Residential Improvement District Act is not intended to restrict any other power of an owner, county, municipality, or local school board.

§6-35-40. Authorizations constitute cumulative and alternative powers.

Nothing contained in this chapter may be construed to limit or restrict the existing powers of an owner, county, municipality, or local school board. The authorization contained in this chapter is in addition to their powers and is provided as an additional means for the provision of infrastructure and improvements related to new development and redevelopment.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-50: IMPOSITION AND COLLECTION OF AN ASSESSMENT

EDITOR’S NOTES: This section sets forth the criteria a local governing body must meet before imposing an assessment to finance the improvement contemplated in a district. The amount of the assessment must be based on actual costs or reasonable estimates of the costs of the improvements. A governing body that has not adopted a comprehensive plan may not impose an assessment. An annual report describing the amount of all assessments collected, appropriated, or spent during the preceding year must be published. Assessments may not be charged to property located outside of the district.

§6-35-50. Imposition and collection of an assessment.

(A)(1) An assessment may be imposed and collected by the governing body only upon compliance with the procedures set forth in this chapter.

(2) The amount of the assessment must be based on actual costs of the improvements or reasonable estimates of those costs, to include, but not be limited to, interest expense, bond issuance costs, architectural and engineering costs, furniture, fixtures and equipment costs, and costs associated with the administration of the district.

(B) A governing body that has not adopted a comprehensive plan pursuant to Chapter 29 of this title may not impose an assessment. A governing body that has adopted a comprehensive plan may only impose an assessment pursuant to this chapter.

(C) A governing body shall prepare and publish an annual report describing, for each district, the amount of all assessments collected, appropriated, or spent during the preceding year. An annual summary must be made publicly available at the time that property tax bills are disseminated to property owners within the district.

(D) Payment of an assessment may result in an incidental benefit to property owners or residents within the service area other than the payor. Under no circumstances shall assessments or the burden of funding an improvement be charged to any property located outside of the district. The

provisions of this section do not apply to projects or undertakings designated by a governing body as a 'system' under Section 6-21-40.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-60: FINANCING OF IMPROVEMENTS

EDITOR'S NOTES: This section allows a governing body to acquire and finance the improvements in the district by assessments, special district bonds, and revenue bonds. The full faith and credit of the county or municipality may not be pledged as security for the improvement. The proceeds of the assessments authorized under the SC Residential Improvement District Act may be pledged as security for bonds pursuant to this section.

§6-35-60. Powers of governing body with respect to improvements; means of financing.

The government entity is authorized to acquire, own, construct, establish, install, enlarge, improve, and expand any improvement and to finance the acquisition, construction, establishment, installation, enlargement, improvement, expansion, in whole or in part, by the imposition of assessments in accordance with this chapter, the issuance of special district bonds, or any other method of financing, provided that the full faith and credit of the applicable county or municipality is not pledged as security for it. In addition to any other authorization provided herein or by other law, the governing body of a government entity may issue its special district bonds or revenue bonds of the government entity under such terms and conditions as the governing body may determine by ordinance subject to the following: such bonds may be sold at public or private sale for such price as is determined by the governing body; such bonds may be secured by a pledge of and be payable from the assessments authorized herein or any other source of funds not constituting a general tax as may be available and authorized by the governing body; such bonds may be issued pursuant to and secured under the terms of a trust agreement or indenture with a corporate trustee and the ordinance authorizing such bonds or trust agreement or indenture pertaining thereto may contain provisions for the establishment of a reserve fund, and such other funds or accounts as are determined by the governing body to be appropriate to be held by the governing body or the trustee. The proceeds of any bonds may be applied to the payment of the costs of any improvements, including capitalized interest, expenses associated with the issuance and sale of the bonds, and any costs for planning and designing the improvements or planning or arranging for the financing, and any engineering, architectural, surveying, testing, or similar costs or expenses necessary or appropriate for the planning, designing, and construction or implementation of any plan in connection with the improvements.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-70: EXCLUSION OF BONDS FROM CONSTITUTIONAL DEBT LIMIT

EDITOR’S NOTES: Bonds issued pursuant to the SC Residential Improvement District Act do not count towards the 8% bonded debt limit.

§6-35-70. Bonds do not count toward bond-borrowing limit

Bonds issued by the county or municipality pursuant to this chapter do not count for the purposes of calculating the bond-borrowing limit pursuant to Article X of the Constitution of this State.

HISTORY: 2008 Act No. 350, §1.

SECTION: 6-35-90: IMPROVEMENTS CONSTRUCTED OR UNDER CONSTRUCTION

EDITOR’S NOTE: This section allows an owner to include within the proposed district improvements that have been constructed or are under construction.

§6-35-90. Improvements constructed or under construction.

The owner may include within a proposed district improvements that have been constructed or are under construction at the time of the establishment of the district.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-95: DISCLOSURE BY OWNER OR DEVELOPER OF THE REAL PROPERTY TO PROSPECTIVE PURCHASERS

EDITOR’S NOTE: This section requires owners of real property in a residential improvement district to disclose to prospective purchasers that the property is subject to an assessment.

§6-35-95. Required disclosure by owner or developer of the real property that property is subject to an assessment.

The owner or developer of the real property in a residential improvement district must disclose to prospective purchasers of residential real property in the improvement district that the property is subject to an assessment under the provisions of this chapter and the maximum annual amount and duration of the assessments.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-100: IMPROVEMENT FEE

EDITOR'S NOTE: This section requires a governing body to collect, upon issuance of obligation secured by assessments, an improvement fee in an amount equal to four percent of the aggregate par value of such obligations. The improvement fee must be used to construct improvements or collective improvements.

§6-35-100. Improvement Fee.

The governing body shall collect from the owner, upon the issuance of any obligations secured by assessments, an improvement fee in an amount equal to four percent of the aggregate par value of such obligations. The improvement fee must be used to construct improvements or collective improvements, as described in Section 6-35-110, in a service area that is related to and serves the district. The governing body may contract with the owner, or with a third party, for the construction of the improvements. The improvements must be part of the improvement plan. A governing body imposing an improvement fee must not impose any additional fee upon properties located within a district to recover any capital costs paid for from assessments which are imposed upon properties located within a district as provided in this chapter.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-110: IMPROVEMENTS FUNDED BY MULTIPLE DISTRICTS

EDITOR'S NOTES: Section 6-35-110 allows an owner and governing body to agree to designate the improvement fee for the construction of improvements funded by multiple districts ('collective improvements').

§6-35-110. Collective Improvements

(A) The owner may include improvements that are proposed to be funded by multiple districts, known as a 'collective improvement'. The owner and the governing body may agree to designate all or part of the improvement fee for the construction of the collective improvement. If this occurs and if the collective improvement has not been identified previously in an improvement plan for another district, then the improvement plan must include:

- (1) a description of the collective improvement;
- (2) the estimated cost of it;
- (3) a deadline by which the collective improvement must be initiated; and
- (4) provisions for alternative uses of the improvement fee to defray the cost of other improvements within the same service area if the collective improvement is not initiated within the approved timeline.

(B) The improvement fee or portion allocated to a specific collective improvement must be deposited into a trust account maintained by a bank serving as trustee in connection with bonds or other obligations secured by assessments. This trust account is to be maintained only for the purpose

of funding a specific collective improvement. Funds from multiple districts, including districts that are created after the creation of the trust fund and the identification of the collective improvement, may be commingled in these trust accounts for the purpose of funding the collective improvement.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-115: CONSTRUCTION OR ADDITIONS TO SCHOOLS

EDITOR'S NOTE: If an improvement relates to the construction of a school this section requires approval by the governing body of a school district prior to the adoption of the resolution required by §6-35-120.

§6-35-115. Improvements Pertaining to Schools.

If an improvement or a collective improvement is, or directly pertains to, a school including, but not limited to, new construction or additions to existing construction, then the proposed improvement or the collective improvement must be approved by the governing body of the school district prior to the adoption of the resolution required by Section 6-35-120.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-118: PETITION TO CREATE A DISTRICT

EDITOR'S NOTE: Section 6-35-118 allows the owners of real property in a district to petition to the governing body for the creation of a residential improvement district.

§6-35-118. Petition to create a district.

Only the owner of real property may request by petition the governing body to create a district consisting of such real property and to impose assessments therein to defray the cost of improvements. The petition must:

- (1) be signed by owners of all real property within the proposed district as of the date of submission of the petition;
- (2) contain a legal description of such real property; and
- (3) contain:
 - (a) an improvement plan;
 - (b) the projected time schedule for the accomplishment of the improvement plan;
 - (c) the estimated cost; and
 - (d) the amount of the cost to be derived from assessments or from bonds or other obligations secured by assessments, together with the proposed basis and rates of assessments to be imposed within the district.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-120: RESOLUTION PROPOSING THE RESIDENTIAL IMPROVEMENT DISTRICT

EDITOR’S NOTE: This section sets forth the resolution required to propose the residential improvement district. The resolution should describe the proposed district and the improvement plan, the time schedule for the accomplishment of the plan, the cost and how much of the cost is to be derived from assessments or obligations secured by assessments, and the time and place of the public hearing on the improvement plan. If the public hearing is in a county the public hearing must take place no earlier than thirty days nor more than forty-five days following the adoption of the resolution. If the public hearing is in a municipality the public hearing must take place no earlier than twenty days nor more than forty days following the adoption of the resolution.

§6-35-120. Resolution required to describe the proposed district and improvement plan; public hearing required.

(A) The governing body, by resolution, shall describe the proposed district and the improvement plan; the projected time schedule for the accomplishment of the improvement plan; the estimated cost; and the amount of the cost to be derived from assessments or from bonds or other obligations secured by assessments, together with the proposed basis and rates of assessments to be imposed within the district.

(B) The governing body may provide by the resolution for the payment of the cost of the improvements and facilities to be constructed within the service area by assessments, by the issuance of special district bonds or other obligations secured by assessments, from general revenues from any source not restricted from such use by law, or from any combination of such financing sources as may be provided in the improvement plan.

(C) The resolution also must establish the time and place of a public hearing to be held. The public hearing must take place:

(1) in a county, no earlier than thirty days nor more than forty-five days following the adoption of the resolution; or

(2) in a municipality, no earlier than twenty days nor more than forty days following the adoption of the resolution.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-130: NOTICE OF THE PUBLIC HEARING

EDITOR’S NOTE: This section outlines the notification procedure after a governing body has adopted a resolution

§6-35-130. Notice

(A) Notice of a public hearing must be published:

(1) once a week for two successive weeks in a newspaper of general circulation within the relevant incorporated municipality; or

(2) once a week for two successive weeks in a newspaper of general circulation within the relevant county.

(B) The notice of public hearing must describe in general terms the location of the proposed district, contain a general description of the proposed improvements, identify each owner of twenty-five percent or more by acreage of the real property situated in the area of the proposed district, and state the date, time, and place of the public hearing.

(C) The final publication must be at least ten days before the date of the scheduled public hearing. At the public hearing and at any adjournment of the meeting, all interested persons may be heard either in person or by attorney.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-160: IMPROVEMENTS ARE TO BECOME THE PUBLIC PROPERTY

EDITOR'S NOTE: This section states that improvements are to become the property of a public or quasi-public entity. Public or quasi-public entity may lease these improvements to other public, quasi-public, or nonpublic entities.

Section 6-35-160. Improvements are to become the property of a public or quasi-public entity.

The improvements are to be or become the property of the municipality, county, State, special purpose district, school district, or other public or quasi-public entity and may at any time be removed, altered, changed, or added to, as the governing body may in its discretion determine. The public or quasi-public entity may lease these improvements to other public, quasi-public, or nonpublic entities.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-170: CREATION OF DISTRICT BY ORDINANCE AND CHALLENGES

EDITOR'S NOTE: Section 6-35-170 states that seven days after the public hearing conducted pursuant to §6-35-130 the governing body may create a district by ordinance. A county could obtain 1st and 2nd reading prior to the public hearing required pursuant to §6-35-130, and thus be ready to create the improvement district. The ordinance creating the district must contain findings related to the potential benefits of the improvements, the potential services that the improvements may provide, the methodology used for the imposing of assessments, and the expected impact upon school enrollments of development within the proposed district. Notice of adoption of the ordinance must be published once a week for two consecutive weeks. Any person affected by the action of the governing body may challenge the ordinance in the court of common pleas for the county in which the district is located within twenty days following the last publication of notice.

§6-35-170. Creation of district by ordinance; findings required; notice required; challenges.

(A) Not less than seven days after the public hearing, the governing body may proceed to create the district by enactment of an ordinance. The ordinance may provide for the creation of the district as originally proposed or with such changes and modifications as the governing body may determine. The ordinance may further provide for the financing of the improvements by assessments, bonds, or other obligations.

(B) An ordinance enacted under this section must contain the following findings:

(1) the proposed improvements may benefit the proposed district and the proposed service area;

(2) the improvements may preserve or increase property values within the district;

(3) in the absence of the improvements, property values within the district are likely to depreciate, or that the proposed improvements are likely to encourage development in the improvement district;

(4) the general welfare and tax base of the government entity would be maintained or likely improved by creation of an improvement district in the government entity;

(5) it would be fair and equitable to finance all or part of the cost of the improvements by an assessment upon the real property within the district, and the governing body may establish the area as an improvement district and implement and finance, in whole or in part, an improvement plan in the district in accordance with the provisions of this chapter;

(6) the improvements are located within the district or within the relevant service area; and

(7) in circumstances where the district is proposed to consist of noncontiguous parcels, all parcels that comprise the district are situated within the relevant service area for each improvement.

(C) An ordinance authorizing the creation of a district must:

(1) include a description of potential levels of service resulting from improvements;

(2) provide a methodology for the imposition, apportionment, adjustment, and termination of the assessment; and

(3) include the expected impact upon school enrollments of development within the proposed district.

(D) Notice of adoption of the ordinance shall be published in a newspaper of general circulation in the district once a week for two consecutive weeks. Any person affected by the action of the governing body may, by action de novo instituted in the court of common pleas for the county in which the district is located, within twenty days following the last publication of notice prescribed by this section, but not afterwards, challenge the action of the governing body.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-180: PREPARATION OF ASSESSMENT ROLL, OBJECTIONS, APPEALS

EDITOR'S NOTES: If the improvements are going to be financed by assessments, an assessment roll must be prepared with the names of the persons whose properties are to be assessed, the amount to be assessed, and a description of the property. A copy of the assessment roll must be available at the office of the government entity for inspection. After creating the assessment roll the governing body must send to the owner of each lot upon which an assessment is being levied a notice stating the nature and cost of the improvement, the maximum amount to be assessed, the basis upon which

the assessment is made, and how to pay the assessment. The notice must state the time and place for the hearing of objections to the assessment. After these notifications are mailed, the availability of the assessment roll and the time fixed for objections must be published in a newspaper of general circulation. At least 10 days notice of the time fixed for objections must be given. Any property owner who fails to file with the governing body a written objection to the assessment against his property within the time provided for hearing such objections shall be deemed to have consented to such assessment. The governing body, a panel of the governing body, or a hearing officer or officers as designated by the governing body shall hear the objections of all persons who have filed a written notice of objection, however, the final decision on each such objection shall be made by vote of the governing body at a public session. The governing body may confirm the assessment or make corrections to assessments and then confirm them. Upon confirmation of an assessment a copy must be filed in the office of the clerk of court, and from the time of filing the assessment impressed in the assessment roll becomes a lien on the real property. The governing body must mail a notice confirming the assessment for the district to any person who filed an objection. A property owner may appeal this assessment if he gives written notice of his intent to appeal to the court of common pleas twenty days after the mailing. This appeal does not delay or stay the construction of improvements or affect the validity of the assessments confirmed.

§6-35-180. Preparation of assessment roll; notice of assessment; objections; confirmation of assessment; waiver.

(A) In the event all or any part of improvements and facilities within the district are to be financed by assessments on property therein, the governing body shall prepare an assessment roll in which there shall be entered the names of the owners whose properties are to be assessed and the amount assessed against their respective properties with a brief description of the lots or parcels of land assessed. Immediately after such assessment roll has been completed the governing body shall cause one copy thereof to be deposited in the offices of the government entity for inspection by interested parties, and shall cause to be published at least once in a newspaper of general circulation within the district a notice of completion of the assessment roll setting forth a description in general terms of the improvements and providing at least ten days' notice of the time fixed for hearing of objections in respect to such assessments. Hearings may be conducted by one or more members of the governing body, but the final decision on each such objection shall be made by vote of the governing body at a public session.

(B) As soon as practicable after the completion of the assessment roll and prior to the publication of the notice provided in the preceding paragraph, the governing body shall mail by registered or certified mail, return receipt requested, to the owner or owners of each lot or parcel of land against which an assessment is to be levied, at the address appearing on the records of the city or county treasurer, a notice stating the nature of the improvements, the maximum total proposed cost thereof, and the maximum amount to be assessed against the particular property. The notice shall contain a brief description of the particular property involved, together with a statement that the amount assessed shall constitute a lien against the property superior to all other liens except property taxes. The notice also shall state the time and place fixed for the hearing of objections with respect to the assessment. Any property owner who fails to file with the governing body a written

objection to the assessment against his property within the time provided for hearing such objections shall be deemed to have consented to such assessment, and the published and written notices prescribed in this chapter shall so state.

(C) The governing body, a panel of the governing body, or a hearing officer or officers as designated by the governing body shall hear the objections as provided herein of all persons who have filed written notice of objection within the time prescribed and who may appear and make proof in relation thereto either in person or by their attorney. The governing body, at the sessions held to make final decisions on objections, may thereupon make such corrections in the assessment roll as it may deem proper and confirm the same or set it aside and provide for a new assessment. Whenever the governing body shall confirm an assessment, either as originally prepared or as thereafter corrected, a copy thereof, certified by the clerk of the government entity, shall be filed in the office of the clerk of court, register of deeds, or register of mesne conveyances of the county in which the government entity is situate, and from the time of such filing the assessment impressed in the assessment roll shall constitute and be a lien on the real property against which it is assessed superior to all other liens and encumbrances, except the lien for property taxes, and shall be annually assessed and collected with the property taxes.

(D) Upon the confirmation of an assessment, if any, the governing body shall mail a written notice of the amount of the assessment finally confirmed to all persons who have filed written objections as hereinabove provided. Such property owner may appeal such assessment only if he shall, within twenty days after the mailing of the notice to him confirming the assessment, give written notice to the governing body of his intent to appeal his assessment to the court of common pleas of the county in which the property is situate; but no such appeal shall delay or stay the construction of improvements or affect the validity of the assessments confirmed and not appealed. Appeals shall be heard and determined on the record in the manner of appeals from administrative bodies in this State.

(E) Following the completion of the assessment roll, the requirements of this section as to notice and hearing may be waived upon the filing with the governing body of a waiver signed by all owners of property within the district as of the date of filing of such waiver. Such waiver shall for each parcel in the district state the maximum assessment to be imposed thereupon and all owners of such parcel. Such waiver shall contain a statement that the persons signing the waiver intend thereby to waive all rights to notice, hearing, and appeal otherwise available under Section 6-35-180.

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-190: ABOLITION OF DISTRICT

EDITOR'S NOTE: This section provides the mechanism to abolish a district.

§6-35-190. Abolition of district; notice and hearing.

The governing body may abolish the district if there are no outstanding bonds or other obligations secured by assessments. The governing body must first conduct a public hearing. Notice

of the hearing must appear in a newspaper of general circulation in the district two weeks before the hearing is held.

HISTORY: 2008 Act No. 350, §1.

PART II

LOCAL SALES AND USE TAXES

ARTICLE 3: CAPITAL PROJECTS SALES TAX ACT

P. 51 SECTION 4-10-310: THE COUNTY GOVERNING BODY MAY IMPOSE A SALES AND USE TAX

EDITOR'S NOTE: Act No. 49 of 2009 amended this section, deleting the requirement that a limited amount of money could be collected under the Act.

§4-10-310. Imposition of tax.

Subject to the requirements of this article, the county governing body may impose a one percent sales and use tax by ordinance, subject to a referendum, within the county area for a specific purpose or purposes and for a limited amount of time. The revenues collected pursuant to this article may be used to defray debt service on bonds issued to pay for projects authorized in this article. However, at no time may any portion of the county area be subject to more than one percent sales tax levied pursuant to this article, pursuant to Chapter 37, Title 4, or pursuant to any local law enacted by the General Assembly.

HISTORY: 1997 Act No. 138, §3, 2009 Act No. 49 §1.

P. 53 SECTION 4-10-330: BALLOT QUESTION AND USE OF TAX REVENUE

EDITOR'S NOTE: This section was substantially amended by Act No. 49 of 2009. "Educational facilities under the direction of an area commission for technical education" was added to the list of purposes for which the proceeds of the tax may be used in subsection (A)(1)(b). Additionally the maximum amount of time that is to be advertised in the referendum question (§4-10-330(A)(2)) was changed from a period up to 7 years to "two-year increments not to exceed eight years from the date of imposition, or in the case of a reimposed tax, a period ending on April thirtieth of an odd-numbered year, not to exceed seven years." Finally, subsection (C) was amended to allow the reimposition referendum for a Capital Project Sales Tax implemented prior to June 1, 2009 to be held at a time to permit the tax to be reinstated and continue without interruption. Imposition and reimposition of a Capital Project Sales Tax imposed after June 1, 2009 must be held at the time of the general election.

§4-10-330. Contents of ballot question; purpose for which proceeds of tax to be used.

(A) The sales and use tax authorized by this article is imposed by an enacting ordinance of the county governing body containing the ballot question formulated by the commission pursuant

to subsection 4-10-320(C), subject to referendum approval in the county. The ordinance must specify:

(1) the purpose for which the proceeds of the tax are to be used, which may include projects located within or without, or both within and without, the boundaries of the local governmental entities, including the county, municipalities, and special purpose districts located in the county area, and may include the following types of projects:

(a) highways, roads, streets, bridges, and public parking garages and related facilities;

(b) courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, educational facilities under the direction of an area commission for technical education, or any combination of these projects;

(c) cultural, recreational, or historic facilities, or any combination of these facilities;

(d) water, sewer, or water and sewer projects;

(e) flood control projects and stormwater management facilities;

(f) beach access and beach renourishment;

(g) jointly operated projects of the county, a municipality, special purpose district, and school district, or any combination of those entities, for the projects delineated in subitems (a) through (f) of this item;

(h) any combination of the projects described in subitems (a) through (g) of this item;

(2) the maximum time, in two-year increments not to exceed eight years from the date of imposition, or in the case of a reimposed tax, a period ending on April thirtieth of an odd-numbered year, not to exceed seven years, for which the tax may be imposed;

(3) (a) If the county proposes to issue bonds to provide for the payment of any costs of the projects, the maximum amount of bonds to be issued, whether the sales tax proceeds are to be pledged to the payment of the bonds and, if other sources of funds are to be used for the projects, specifying the other sources;

(b) the maximum cost of the project or facilities or portion of the project or portion of the facilities, to be funded from proceeds of the tax or bonds issued as provided in this article and the maximum amount of net proceeds expected to be used to pay the cost or debt service on the bonds, as the case may be; and

(4) any other condition precedent, as determined by the commission, to the imposition of the sales and use tax authorized by this article or condition or restriction on the use of sales and use tax revenue collected pursuant to this article.

(B) When the tax authorized by this article is imposed for more than one purpose, the enacting ordinance must set forth the priority in which the net proceeds are to be expended for the purposes stated. The enacting ordinance may set forth a formula or system by which multiple projects are funded simultaneously.

(C) Upon receipt of the ordinance, the county election commission must conduct a referendum on the question of imposing the sales and use tax in the area of the county that is to be subject to the tax. The referendum for imposition or reimposition of the tax must be held at the time of the general election unless the vote is to reimpose a tax in effect on or before June 1, 2009, and in existence at the time of such vote, in which case the referendum may be held on a general election day or at a time the governing body of the county and the Department of Revenue determine necessary to permit the tax to be reinstated and continue without interruption. The choice of election times rests with the governing body of the county. However, a referendum to reimpose an existing tax as permitted above may only be held once whether or not the referendum is held on a general election day or at another time. Two weeks before the referendum the election commission must publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of projects and the cost of the projects. If the proposed question includes the use of sales taxes to defray debt service on bonds issued to pay the costs of any project, the notice must include a statement indicating that principal amount of the bonds proposed to be issued for the purpose and, if the issuance of the bonds is to be approved as part of the referendum, stating that the referendum includes the authorization of the issuance of bonds in that amount. This notice is in lieu of any other notice otherwise required by law.

(D) The referendum question to be on the ballot must read substantially as follows:

‘Must a special one percent sales and use tax be imposed in (county) for not more than (time) to raise the amounts specified for the following purposes?’

(1) \$ _____ for _____

(2) \$ _____ for _____

(3) etc.

Yes

No

If the referendum includes the issuance of bonds, the question must be revised to include the principal amount of bonds proposed to be authorized by the referendum and the sources of payment of the bonds if the sales tax approved in the referendum is inadequate for the payment of the bonds.

(E) All qualified electors desiring to vote in favor of imposing the tax for the stated purposes shall vote ‘yes’ and all qualified electors opposed to levying the tax shall vote ‘no’. If a majority of the votes cast are in favor of imposing the tax, then the tax is imposed as provided in this article and the enacting ordinance. A subsequent referendum on this question must be held on the date prescribed in subsection (C). The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the result no later than November

thirtieth to the county governing body and to the Department of Revenue. Expenses of the referendum must be paid by the governmental entities that would receive the proceeds of the tax in the same proportion that those entities would receive the net proceeds of the tax.

(F) Upon receipt of the returns of the referendum, the county governing body must, by resolution, declare the results thereof. In such event, the results of the referendum, as declared by resolution of the county governing body, are not open to question except by a suit or proceeding instituted within thirty days from the date such resolution is adopted.

HISTORY: 1997 Act No. 138, §3; 1999 Act No. 93, §2; 2002 Act No. 334, §§22A, 22B and 22E; 2004 Act No. 244, §2; 2004 Act No. 292 §2; 2009 Act No. 49 §2.

ATTORNEY GENERAL'S OPINIONS

If a county seeks to use the revenue from the imposition of a capital projects sales and use tax to fund the county's construction, purchase, or operation of a water system, it must first hold a referendum pursuant to Article VIII, §16 of the SC Constitution. However, if the county itself does not construct, purchase, or operate the water system, but is simply appropriating funds to other entities providing such services to the county's residents, we do not believe a referendum is required.

If a referendum is required by Article VIII, §16 in addition to a referendum required under the Capital Projects Sales Tax Act, we believe the County may use a joint referendum.

Providing water service fulfills a public purpose as it is certainly within the county's authority. Thus, we believe the county generally may appropriate county funds to other entities to facilitate providing water service to its residents. Unpublished Op. Atty. Gen. Dated June 25, 2008 (2008 WL 2614989).

P. 57 SECTION 4-10-340: TAX IMPOSITION AND TERMINATION

EDITOR'S NOTE: Act No. 49 of 2009 made several changes to this section. Perhaps most importantly, the section no longer provides for the termination of the tax if no more bonds approved in the referendum question remain outstanding. If excess funds are collected by the sales tax, all projects for which the tax was imposed are completed, and a referendum reimposing the tax passes, then these monies are applied to fund projects approved in the reimposition referendum. If the tax is not reimposed, then these excess funds would be spent on projects which meet the requirements of §4-10-330(A)(1) and specified in a ordinance adopted by the county governing body. Previously, §4-10-340 required excess funds to be credited to the general fund of the governmental entities receiving the proceeds of the tax, in the proportion which they received the net proceeds of the tax while it was imposed. Act No. 49 of 2009 also amended this section to state that a reimposed tax terminates on the thirtieth of April in an odd-numbered year, not to exceed seven years from the date of reimposition.

§4-10-340. Tax imposition and termination.

(A) If the sales and use tax is approved in the referendum, the tax is imposed on the first of May following the date of the referendum. If the reimposition of an existing sales and use tax imposed pursuant to this article is approved in the referendum, the new tax is imposed immediately following the termination of the earlier imposed tax and the reimposed tax terminates on the thirtieth of April in an odd-numbered year, not to exceed seven years from the date of reimposition. If the certification is not timely made to the Department of Revenue, the imposition is postponed for twelve months.

(B) The tax terminates the final day of the maximum time period specified for the imposition.

(C)(1) Amounts collected in excess of the required net proceeds must first be applied, if necessary, to complete a project for which the tax was imposed.

(2) If funds still remain after first using the funds as described in item (1) and the tax is reimposed, the remaining funds must be used to fund the projects approved by the voters in the referendum to reimpose the tax, in priority order as the projects appeared on the enacting ordinance.

(3) If funds still remain after first using the funds as described in item (1) and the tax is not reimposed, the remaining funds must be used for the purposes set forth in Section 4-10-330(A)(1). These remaining funds only may be expended for the purposes set forth in Section 4-10-330(A)(1) following an ordinance specifying the authorized purpose or purposes for which the funds will be used.

HISTORY: 1997 Act No. 138, §3; 2002 Act No. 334, §§22C and 22F; 2009 Act No. 49 §3.

P. 57 SECTION 4-10-350: DEPARTMENT OF REVENUE TO ADMINISTER AND COLLECT

EDITOR'S NOTE: Section 4-10-350(B) was amended by Act No. 49 of 2009 to exempt unprepared food items eligible for purchase with United States Department of Agriculture food coupons from the Capital Projects Sales Tax. This exemption applies to Capital Project Sales taxes imposed or reimposed after June 3, 2009.

§4-10-350. Department of Revenue to administer and collect local tax.

(A) The tax levied pursuant to this article must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected. The department may prescribe amounts that may be added to the sales price because of the tax.

(B) The tax authorized by this article is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36, Title 12 and the enforcement provisions of Chapter 54, Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 are exempt from the tax imposed by this article. Unprepared food items eligible for purchase with United States Department of

Agriculture food coupons are exempt from the tax imposed pursuant to this article. The tax imposed by this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36, Title 12.

(C) A taxpayer required to remit taxes under Article 13, Chapter 36 of Title 12 must identify the county in which the personal property purchased at retail is stored, used, or consumed in this State.

(D) A utility is required to report sales in the county in which the consumption of the tangible personal property occurs.

(E) A taxpayer subject to the tax imposed by Section 12-36-920, who owns or manages rental units in more than one county, must report separately in his sales tax return the total gross proceeds from business done in each county.

(F) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under this article in a county, either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the sales and use tax provided in this article if a verified copy of the contract is filed with the Department of Revenue within six months after the imposition date of the sales and use tax provided for in this article.

(G) Notwithstanding the imposition date of the sales and use tax authorized pursuant to this chapter, with respect to services that are billed regularly on a monthly basis, the sales and use tax authorized pursuant to this article is imposed beginning on the first day of the billing period beginning on or after the imposition date.

HISTORY: 1997 Act No. 138, §3; 1999 Act No. 93, §3; 2009 Act No. 49 §4.

ARTICLE 7: LOCAL OPTION SALES AND USE TAX FOR LOCAL PROPERTY TAX CREDITS

P. 75 SECTION 4-10-810: EIA LOCAL EFFORT

ATTORNEY GENERAL'S OPINIONS

The fact that the legislature specifically notes the impact of the local option sales and use taxes on §59-21-1030 provides further evidence that the Legislature did not intend to repeal the EIA local maintenance of effort with its enactment of the Act. Unpublished Op Atty. Gen. Dated June 13, 2007 (2007 WL 1934795).

CHAPTER 37, TITLE 4: OPTIONAL METHODS FOR FINANCING TRANSPORTATION FACILITIES

P.78 SECTION 4-37-30: SALES TAXES OR TOLLS AS REVENUE

ATTORNEY GENERAL'S OPINIONS

The county has broad discretion as to how to appropriate revenue generated by a sales and use tax imposed under Chapter 37 of Article 4. We do not find a provision contained among these statutes requiring a county to include the criteria it intends to use in appropriating these funds in the referendum submitted to the electorate. By considering whether the town must employ its eminent domain powers to accomplish a project for which it seeks an appropriation by the county of sales and use tax revenues, the county does not usurp the town's statutory authority to use its eminent domain power. Unpublished Op. Atty. Gen. Dated February 16, 2007 (2007 WL 655622).

P.87 SECTION 4-37-40: LIMITATION ON SALES TAX RATE

ATTORNEY GENERAL'S OPINIONS

Based on our reading of both the local legislation allowing Lexington County to impose a one percent local sales and use tax and the statutes governing local transportation taxes, we find the provisions of both bodies of law allow for the imposition of both taxes. However §4-37-40 limits the transportation tax imposed by requiring such tax, when combined with taxes imposed pursuant to local legislation, not to exceed one percent. Because the local option sales tax imposed under the Act is one percent, we do not believe Lexington County currently has the ability to impose a transportation tax. Unpublished Op. Atty. Gen. Dated April 21, 2008 (2008 WL 1960285).

Because Richland County levied its current sales tax pursuant to Article 1 of Chapter 10 of Title 4 (the Local Option Sales Tax), and not Chapter 37 of Title 4 (the Transportation Sales Tax), Article 3 of Chapter 10 of Title 4 (the Capital Projects Sales Tax), or pursuant to special legislation passed by the General Assembly, the county is not prevented from also levying a transportation sales and use tax pursuant to Chapter 37 of Article 4. Richland County may also levy an additional sales tax pursuant to Article 3 of Chapter 10 of Title 4 (Capital Projects), Article 5 of Chapter 10 of Title 4 (which provides for a sales tax to offset a property tax exemption for personal property) and Article 7 of Chapter 10 of Title 4 (which provides a credit against county operating property tax, school operating property tax, or both.) Unpublished Op. Atty. Gen. Dated May 21, 2008 (2008 WL 2324797).

PART III

OTHER REVENUE SOURCES

ARTICLE 27, CHAPTER 21, TITLE 12: THE TOURISM INFRASTRUCTURE ADMISSIONS TAX ACT

P.90 SECTION 12-21-6520: DEFINITIONS

EDITOR'S NOTE: This section defines the important terms contained in the Tourism Infrastructure Admissions Tax Act. Note that a "Major tourism or recreation area" or a "Major tourism or recreation facility" requires an aggregate investment in land and capital assets of at least twenty million dollars be made in the designated development area or facility.

§12-21-6520. Definitions.

As used in this article:

(1) "Additional infrastructure improvement" means a road or pedestrian access way, a right-of-way, a bridge, a water or sewer facility, an electric or gas facility, a landfill or waste treatment facility, a hospital or medical facility, a fire station, a school, a transportation facility, a telephone or communications system, or any similar infrastructure facility and facilities ancillary thereto. This improvement must be owned by the State or a political subdivision. For purposes of this section, it includes a publicly-owned tourism or recreation facility.

(2) "Benefit period" means a fifteen-year period commencing on the first day of the first month after the date on which the department approves the certification application.

(3) "Certification application" means an application submitted by a county or municipality to the department requesting that the department approve a major tourism or recreation facility or a major tourism or recreation area for the benefits available under Sections 12-21-6530 and 12-21-6540.

(4) "Council" means the Advisory Coordinating Council for Economic Development.

(5) "Department" means the South Carolina Department of Revenue.

(6) "Designated development area" means a contiguous area set aside by municipal or county ordinance in which one or more tourism or recreation facilities will be located. The term includes a downtown or waterfront redevelopment area, a local historic district, redevelopment of a closed military facility, or a newly designated economic development site.

(7) "Establishment" means either a major tourism or recreation facility or a tourism or recreation facility located within a major tourism or recreation area.

(8) "Fund" means the special tourism infrastructure development fund.

(9) “Grant application” means the application submitted to the council whereby a local government may apply to receive a grant from the fund.

(10) “Investment period” means any consecutive sixty-month period, however, the same investment may not be counted more than once in determining whether the appropriate amount of investment has been made within any consecutive sixty-month period.

(11) “Major tourism or recreation area” means a designated development area with one or more tourism or recreation facilities located therein in which an aggregate investment in land and capital assets of at least twenty million dollars is made in the designated development area for tourism or recreation facilities, or as otherwise provided in Section 12-21-6560, within the investment period. The full twenty million dollars must be invested before the certification application can be filed.

(12) “Major tourism or recreation facility” means a tourism or recreation facility in which an aggregate investment in land and capital assets of at least twenty million dollars is made at the facility, or as otherwise provided in Section 12-21-6560, within the investment period. The full twenty million dollars must be invested before the certification application can be filed.

(13) “Tourism or recreation facility” means a theme park, amusement park, historical, educational or trade museum, botanical or zoological garden, aquarium, cultural center, theater, motion picture production studio, convention center, arena, coliseum, auditorium, golf course, spectator or participatory sports facility or any other facility which is subject to collecting and remitting the tax on admissions.

(14) “Tourism or recreational facility” also means an aquarium or natural history exhibit or museum located within or directly contiguous to an extraordinary retail establishment as defined below. An extraordinary retail establishment is a single store located in South Carolina within two miles of an interstate highway or in a county with at least three and one-half million visitors a year, and it must be a destination retail establishment which attracts at least two million visitors a year with at least thirty-five percent of those visitors traveling at least fifty miles to the establishment. The extraordinary retail establishment must have a capital investment of at least twenty-five million dollars including land, buildings and site preparation costs, and one or more hotels must be built to service the establishment within three years of occupancy. Only establishments which receive a certificate of occupancy after July 1, 2006, qualify. The Department of Parks, Recreation and Tourism shall determine and annually certify whether a retail establishment meets these criteria and its judgment is conclusive. The extraordinary retail establishment annually must collect and remit at least two million dollars in sales taxes but is not required to collect or remit admission taxes.

HISTORY: 1997 Act No. 109, §1; 2006 Act No. 384, §22C; 2006 Act No. 386, §48C; 2007 Act No. 116 §3A.

P.93 SECTION 12-21-6540: THE SPECIAL TOURISM INFRASTRUCTURE DEVELOPMENT FUND AND DISTRIBUTION

EDITOR’S NOTE: Act No. 116 of 2007 adds the exception language, “except as otherwise provided in Section 12-21-6590.” Section 12-21-6590 was amended to provide that if an applicant obtains a conditional certification as an extraordinary retail establishment and complies with both the

conditional certification and §12-21-6520(14) then ½ of the sales tax will be paid by the department to the county or municipality in which the establishment is located to be used directly or indirectly for additional infrastructure improvements.

§12-21-6540. Portion of tax to be transferred to State Treasurer for deposit in special tourism infrastructure development fund; applications for grants; review of applications; guidelines.

(A) During the benefit period, in addition to the amount described in Section 12-21-6530, except as otherwise provided in Section 12-21-6590, an additional amount equal to one-fourth of the license tax paid on admissions to an establishment must be transferred by the department to the State Treasurer to be deposited into the fund and distributed pursuant to the approval of the council.

(B) Deposits into the fund must be separated into special accounts based on which establishment generated the admissions tax subject to this section.

(C) Counties or municipalities within five miles of the major tourism or recreation facility or major tourism or recreation area may apply to the council for grants from the fund by submitting a grant application.

(D) Upon review of the grant application, the council shall determine the amount of monies to be received by each of the eligible counties or municipalities. All monies must be used directly or indirectly for additional infrastructure improvements. If more than one grant application is being reviewed at the same time, preference must be given to grant applications for infrastructure which directly or indirectly serve the establishment that generates the admissions tax or other development occurring as a result of the creation or expansion of the major tourism or recreation facility or major tourism or recreation area. One year after the end of the benefit period, the council, after consultation with the Department of Parks, Recreation and Tourism, may use these funds for any infrastructure in the State which it determines will aid tourism.

(E) Grants may run for more than one year and may be based upon a specified dollar amount or a percentage of the monies deposited annually into the fund. After approval of a grant application, the council may approve the release of monies to eligible counties and municipalities.

(F) The council shall adopt guidelines to administer the fund including, but not limited to, grant application criteria for review and approval of grant applications. Expenses incurred by the council in administering the fund may be paid from the fund.

HISTORY: 1997 Act No. 109, §1; 2007 Act No. 116, §4.

P.98 SECTION 12-21-6590: EXTRAORDINARY RETAIL ESTABLISHMENTS

EDITOR'S NOTE: Act No. 116 of 2007 amended this section to allow a county to request, and PRT to grant, conditional certification to the entity as an extraordinary retail establishment based on reasonable projections that the facility will meet the requirements of §12-21-6520(14) within three years of the certificate of occupancy. If an applicant obtains a conditional certification as an extraordinary retail establishment and complies with both the conditional certification and §12-21-6520(14) then ½ of the sales tax will be paid by the department to the county or municipality in which the establishment is located to be used directly or indirectly for additional infrastructure

improvements. Notice that this section provides a different definition of “additional infrastructure improvement” than §12-25-6510(1).

§12-21-6590. Designation of extraordinary retail establishments.

(A) The Department of Parks, Recreation and Tourism may designate no more than four extraordinary retail establishments as defined in Section 12-21-6520(14), and for purposes of this section, sales taxes must be substituted for admissions taxes wherever admission tax appears in this Tourism Infrastructure Admissions Tax Act. For purposes of this section, additional infrastructure improvements include any aquarium or natural history exhibits or museum located within or directly contiguous to the extraordinary retail establishment which are dedicated to public use and enjoyment under such terms and conditions as may be required by the municipality or county in which they are located. Additional infrastructure improvements also shall include site prep, construction of real or personal property, parking, roadways, ingress and egress, utilities, and other expenditures on the extraordinary retail establishment which directly support or service the aquarium or natural history museum or exhibits. The certification application made under this section must be executed by both the extraordinary retail establishment as well as the county or municipality.

(B) Prior to the completion of an extraordinary retail establishment, an entity may request that the county or municipality in which the facility is located provide an application for conditional certification to the Department of Parks, Recreation and Tourism. The Department of Parks, Recreation and Tourism may grant conditional certification to the entity as an extraordinary retail establishment based on reasonable projections that the facility will meet the requirements of Section 12-21-6520(14) within three years of the certificate of occupancy. If the Department of Parks, Recreation and Tourism grants the conditional certification to the entity as an extraordinary retail establishment, it shall forward the approval for conditional certification to the department. The department shall notify the entity and either the county or the municipality, as applicable, of the approval.

An applicant obtaining conditional certification as an extraordinary retail establishment under this section and satisfying the requirements of conditional certification by the dates provided therein, shall be deemed to satisfy all of the requirements of this article pertaining to qualification as an extraordinary retail establishment for the duration of the benefit period. The entity shall be deemed to constitute a major tourism or recreation facility under Section 12-21-6520(12) and shall be entitled to all of the benefits of this article for the duration of the benefit period without any further certification requirements. This subsection shall not be construed to allow an applicant to receive the benefits provided in this article prior to satisfying the requirements of the conditional certification and of Section 12-21-6520(14).

The Department of Parks, Recreation and Tourism shall develop application forms and adopt guidelines governing the conditional certification process.

(C) If an applicant obtains conditional certification and complies with both the conditional certification and Section 12-21-6520(14), then one-half shall be substituted for one-fourth in Section 12-21-6530(A), and no funds will be transferred to the council pursuant to Section 12-21-6540.

HISTORY:2006 Act No. 384, §22D; 2006 Act No. 386, §48D; 2007 Act No. 116, §3B.

ATTORNEY GENERAL'S OPINION

[Editor's Note: Section 12-21-6510(1) defines "Additional infrastructure improvement" for the purposes of The Tourism Infrastructure Admission Tax Act. The act provides that 50% of the license tax paid on admission to a qualifying establishment may be used directly or indirectly for additional infrastructure improvements (25% paid to and used by the county or municipality in which the establishment is located, 25% from the Special Tourism Infrastructure Development Fund.) Section 12-21-6510(1) requires that an additional infrastructure improvement must be owned by the State or a political subdivision. Section 12-21-6590(A) states "For purposes of this section, additional infrastructure improvements include any aquarium or natural history exhibits or museum located within or directly contiguous to the extraordinary retail establishment which are dedicated to public use and enjoyment." It does not require the additional infrastructure improvement to be owned by the State or a political subdivision. The Department of Parks, Recreation and Tourism must certify qualification as an extraordinary retail establishment, entitling the use of sales tax revenues for the expansion or improvement of facilities and infrastructure. The Attorney General was asked "whether the additional infrastructure improvements cited in §12-21-6590 have to be owned by the State or a political subdivision to qualify for certification?"]

The requirement that the "improvement must be owned by the State or a political subdivision" does not apply to additional infrastructure improvements associated with extraordinary retail establishments. The definitions contained in §§12-21-6520 and 12-21-6590 are separate from one another and §12-21-6590 does not contain a requirement that additional infrastructure improvements be owned by the State or one of its political subdivisions. If the Legislature intended for such improvements to be owned by the State or one of its political subdivisions, it would not be necessary for it to require that such improvements be dedicated for public use, as all property owned by the State or its political subdivisions is presumably dedicated for public use. Moreover, if the Legislature intended for the State or a political subdivision to maintain ownership, we do not believe the municipality or county would need for the public use and enjoyment to be under its terms and conditions.

We are concerned with the constitutionality of §12-21-6590. A court may conclude that allowing public funds to be used to provide the additional infrastructure improvements, as defined in §12-21-6510, fails to satisfy the public purpose requirement of the South Carolina Constitution, especially considering that such funds could be used for improvements that will not be owned by the State or one of its political subdivisions. In addition, given the fact that the provisions of §12-21-6590, providing the use of sales tax revenue to aid private entities, is restricted to only four extraordinary retail establishments, a court would likely conclude that this provision constitutes special legislation in violation of the South Carolina Constitution. Unpublished Op. Atty. Gen. Dated February 20, 2009 (2009 WL 580561).

PART IV

STATE AID TO SUBDIVISIONS ACT

CHAPTER 27, TITLE 6: STATE AID TO SUBDIVISIONS ACT

P.102 SECTION 6-27-30: FUNDING THE LOCAL GOVERNMENT FUND

EDITOR'S NOTE: Provisos 86.8 and 90.14 in Act No. 23 of 2009 (The General Appropriations Act) suspend §6-27-30 for FY2009-2010.

P.102 SECTION 6-27-40: DISTRIBUTION AND USE OF THE LOCAL GOVERNMENT FUND

Cross references --

Withholding of portion of Local Government Fund allotted to counties for Medicaid services, see §44-6-146.

Withholding of state funds to counties which are delinquent in payments for insurance premiums due the State, see §11-9-75.

For allocations after portion of county annexed, see §6-1-75.

Hold harmless for those entities which were allocated and received by law minibottle tax revenues in fiscal year 2004-2005 for education, prevention, and other purposes, see §12-33-245(C).

P.103 SECTION 6-27-50: AMENDMENT BY SEPARATE ACT ONLY

EDITOR'S NOTE: R. 50, H.3581 of 2009 suspends §6-27-50 for FY2009-2010. Proviso 86.8 in Act No. 23 of 2009 (The General Appropriations Act) also suspends this section for FY2009-2010.