Revenue Resources For County Government

2016 Edition

South Carolina
Association of Counties

WHAT IS THE SOUTH CAROLINA ASSOCIATION OF COUNTIES?

The South Carolina Association of Counties, chartered on June 22, 1967, is the only organization dedicated to statewide representation and improvement of county government in South Carolina. A non-partisan, non-profit organization with a full time staff in Columbia, it represents county governments, not county employees. The Association is governed by a 29-member Board, which is selected by county officials at the annual conference.

PURPOSE:

- To promote more efficient county governments;
- To study, discuss and recommend improvements in government;
- To investigate and provide means for the exchange of ideas and experiences between county officials;
- To promote and encourage education of county officials;
- To collect, analyze and distribute information about county government;
- To cooperate with other organizations;
- To promote legislation which supports efficient administration of local government in South Carolina.

PREFACE

This publication is a compilation of statutes which relate to the revenue raising authority of the counties, other than the property tax and other mechanisms granted in the Home Rule Act, Chapter 9 of Title 4 of the South Carolina Code of Laws. The goal is to give county officials a readily available reference in your search for information and is not intended to be the final word on the law affecting revenue mechanisms available to counties. 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 in this area. It is important to consult your county attorney when you have a specific question on this or any other legal area.

The Editor's Notes have been added to summarize code sections, provide background or explain a complicated provision. The Editor's Notes do not appear in the Code of Laws and are not part of the law.

Many statutes also have case notes, summarizing relevant court decisions, and summaries of Attorney General's opinions which interpret the statute or supply information to help the reader. Some of those items appear in the Code of Laws, others from the Code have been left out, and still other items included here do not appear in the Code of Laws. We have attempted to include the most relevant items and omit those which may only be of historical interest. Finally, some of these items have Editor's Notes which appear in parentheses and contain additional information, which is not part of the source summarized.

A short subject heading given to each statute for use in this publication. This is in addition to the title or "catch line" which appears in the Code of Laws. The catch line from the Code do not carry the force of law, but sometimes act as a table of contents for a longer statute.

We hope this publication is helpful to you in your search for information. Please do not hesitate to contact the South Carolina Association of Counties staff if you have a general question or need data about county government. We are here to serve the counties of our state. You may call the Association of Counties at 1 (800) 922-6081, or email us at SCAC@SCAC.SC.

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PART I

GENERAL PROVISIONS AND TARGETED TAXES

All of the statutes contained in Part I modify the authority or powers granted to counties in Chapter 9 of Title 4. This reproduction of the statutes does not contain all of the statutes in Title 6, Chapter 1 of the Code of Laws which may affect county government operations.

It is important to note, Chapter 9 of Title 4 authorizes revenue sources other than the property tax to counties. For instance, §4-9-30(11) empowers the county governing body to grant franchises in the unincorporated area of the county "to provide for the orderly control of services and utilities affected with the public interest." Counties may not grant franchises for telephone, telegraph, gas and electric utilities or suppliers, or any utilities owned and operated by a municipality. Section 4-9-30(12) authorizes the uniform levy of a business license tax in the unincorporated areas of the county. Exempted from this tax are teachers, ministers insurance companies, telephone, telegraph, gas and electric utilities, suppliers or any other utility regulated by the Public Service Commission. An increase in the business license tax must be adopted by a positive majority vote of the county governing body (See §6-1-315 below). A thorough look at the statutes contained in Chapter 9 of Title 4 may be found in the SCAC publication Home Rule Handbook for County Government.

Articles 1 and 3 of Chapter 1, Title 6 of the South Carolina Code of Laws contain several restrictions and specific procedures which must be followed in order to exercise the fiscal authority of the county, including a prohibition on the use of real estate transfer fees, and a millage rate limitation.

Article 5, Sections 6-1-500 through 6-1-570, is the Local Accommodations Tax Act. The statutes granting this authority contain specific procedures governing the imposition, structure, and use of the local accommodations tax.

Article 7, Sections 6-1-700 through 6-1-770 is the Local Hospitality Tax Act. The statutes granting this authority contain specific procedures governing the imposition, structure, and use of the local hospitality tax.

Article 9, Sections 6-1-910 through 6-1-2010 is the Development Impact Fee Act. The statutes contain the restrictions and procedures involved in adopting, implementing and administering a development impact fee.

ARTICLE 1: GENERAL PROVISIONS

SECTION 6-1-50: FINANCIAL REPORTS

EDITOR'S NOTE: Counties and municipalities are required to submit a financial report to the Revenue and Fiscal Affairs Office. The Revenue and Fiscal Affairs Office is to determine the content and form of the report. The financial reports are due on 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 Revenue and Fiscal Affairs Office a financial report detailing their sources of revenue, expenditures by category, indebtedness, and other information as the Revenue and Fiscal Affairs Office requires. The Revenue and Fiscal Affairs Office 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 Revenue and Fiscal Affairs Office 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 Revenue and Fiscal Affairs Office may, for good cause, grant a local entity an extension of time to file the annual financial report. Notification by the Director of the Revenue and Fiscal Affairs Office 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 Revenue and Fiscal Affairs Office 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 §2.C; 2007 Act No. 57 §2.A.

SECTION 6-1-70: REAL ESTATE TRANSFER FEES PROHIBITED

EDITOR'S NOTE: This section contains a specific prohibition on the imposition of any tax or fee upon the transfer of real property.

§6-1-70. Prohibition on real estate transfer fees; exceptions.

(A) Except as provided in subsection (B), the governing body of each county, municipality, school district, or special purpose district may not impose any fee or tax of any nature or description on the transfer of real property unless the General Assembly has expressly authorized by general law the imposition of the fee or tax.

(B) A municipality that originally enacted a real estate transfer fee prior to January 1, 1991, may impose and collect a real estate transfer fee, by ordinance, regardless of whether imposition of

the fee was discontinued for a period after January 1, 1991.

HISTORY: 1994 Act No. 497, Part II, §132A; 1997 Act No. 138, §5; 1997 Act No. 155, Part II, §§71A and 72A.

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The General Assembly has eliminated the provision of §6-1-70 which requires the local governing body to remit to the State Treasurer the real estate transfer fees. The General Assembly has also eliminated the provision allowing the set-off from the State Aid to Subdivisions Act. Therefore, the question of deferring the deductions of State Aid to Subdivisions Act money in lieu of continued collection of real estate transfer fees has been resolved by the General Assembly's elimination of the aforementioned language of §6-1-70 and amendments thereto. Unpublished Op. Atty. Gen. dated March 23, 1998.

Because the predecessor statute to present §6-1-70 has already been upheld by the Court against a number of constitutional attacks, and was deemed by the Court to be well within the General Assembly's power to enact, legislation removing the prohibition on the imposition of a fee or tax on the transfer of real property would likely be constitutional. Unpublished Op. Atty. Gen. Dated May 6, 2003.

Although the City of Myrtle Beach has the legal ability to establish a local housing trust fund pursuant to its powers under §5-7-30 of the South Carolina Code, for the City to retain the revenues from a local option increase in the real estate transfer fee, the General Assembly must amend §6-1-70. Unpublished Op. Atty. Gen. Dated January 11, 2006. [Editor's Note: This opinion appears to address an earlier version of §6-1-70, however, analyzing current §6-1-70 would likely yield the same result.]

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).

CASE NOTES

Section 6-1-70, as it read prior to 1997, required local governments to remit proceeds collected from real estate transfer fees to the State Treasurer but suspended enforcement until January 1, 1997, and did not violate Article VIII of the S.C. Constitution. This law applied to all real estate transfer fees and related to only one subject. The purpose for which the fee was collected is not changed by requiring its remittance to the State Treasurer and §6-1-70 applies to all local governments similarly situated. The classification exempting certain local governments until a later date is not arbitrary because it protects those entities which relied on the fee in adopting their budgets and is reasonably related to a proper legislative purpose. Town of Hilton Head Island v.

Morris, 324 S.C. 30, 484 S.E.2d 104 (1997).

By enacting the Home Rule Act, Code §§5-7-10, et seq., the legislature intended to abolish the application of Dillon's Rule in South Carolina and restore autonomy to local government. Taken together, Article VIII and §5-7-30, bestow upon municipalities the authority to enact regulations for government services deemed necessary and proper for the security, general welfare and convenience of the municipality or for preserving health, peace, order and good government, obviating the requirement for further specific statutory authorization so long as such regulations are not inconsistent with the Constitution and general law of the state. Williams v. Town of Hilton Head Island, 311 S.C. 417, 429 S.E.2d, 802 (1993).

SECTION 6-1-80: PUBLIC NOTICE AND HEARING BEFORE BUDGET ADOPTION

EDITOR'S NOTE: This budget notice requirement supplants §4-9-130. The contents of this public notice are somewhat different than most in that it requires the publication of estimates and projections. This is difficult in the case of the millage. The notice must notify the public when a fee is being imposed to replace funding which was previously funded by property taxation. (See §6-1-330.)

§6-1-80. Budget adoption.

(A) A county, municipality, special purpose or public service district, and a school district shall provide notice to the public by advertising the public hearing before the adoption of its budget for the next fiscal year in at least one South Carolina newspaper of general circulation in the area. This notice must be given not less than fifteen days in advance of the public hearing and must be a minimum of two columns wide with a bold headline.

(B) The notice must include the following:
(1) the governing entity's name;
(2) the time, date, and location of the public hearing on the budget;
(3) the total revenues and expenditures from the current operating fiscal year's budget of the governing entity;
(4) the proposed total projected revenue and operating expenditures for the next fiscal year as estimated in next year's budget for the governing entity;
(5) the proposed or estimated percentage change in estimated operating budgets between the current fiscal year and the proposed budget;
(6) the millage for the current fiscal year; and
(7) the estimated millage in dollars as necessary for the next fiscal year's proposed budget.

(C) This notice is given in lieu of the requirements of Section 4-9-130.

HISTORY: 1995 Act No. 146, §9A.

Cross References --

Requirement of public notice when imposing a service or user fee, see §6-1-330.

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The term "public hearing" is not defined in the above statutes or, apparently, by South Carolina case law. An Ohio case does define this term as used in an Ohio statute to mean a hearing in which the ..."general public may speak and express views on governmental ... and policy considerations...." This definition appears to be consistent with the legislative intent of §6-1-80 in that the public receives notice of these hearings. Therefore, the public must be permitted this opportunity to speak and express its views at the budget hearings covered by §6-1-80. Unpublished Op. Atty. Gen. Dated August 21, 1996.

We did not discover a provision specifically pertaining to the Board or any general law applicable to school districts requiring a public announcement of a tax increase. However, §6-1-80 cited in full above, requires a public hearing prior to the adoption of the District's budget, as well as, notice of such a hearing in "a South Carolina newspaper of general circulation in the area" at least fifteen days prior to the hearing. Additionally, the notice must contain information regarding current year revenues and millage rates verses budgeted revenues and millage rates.

Although, we find neither the Board nor the Superintendent have a specific duty to inform the public of the specific tax consequences of the adoption of the District's 2005 budget, the Board must, pursuant to §6-1-80, hold a public hearing after proper notice prior to its adoption of the budget. Unpublished Op. Atty. Gen. Dated June 27, 2006.

Section 6-1-80 implies that a public hearing is required before a special purpose district adopts its budget. As to counties, if read narrowly, §6-1-80 would supplant only the notice provisions of §4-9-130, not supersede §4-9-130 in its entirety. While the plain language of §6-1-80 is limited to an entity's adoption of "its" budget, §4-9-130 contains no such limitation. Rather, §4-9-130 appears to be triggered by any action by county council to adopt a budget. As §6-11-260 provides that the county must "adopt" the district's budget, a court giving effect to both §§6-1-80 and 4-9-130 likely would find that each body must hold a public hearing prior to its adoption of the district budget. Op. Atty. Gen. Dated September 19, 2012 (2012 WL 4711426). [EDITOR'S NOTE: This opinion involved a special purpose fire district established by state law requiring their budget to be approved by county council. The opinion states that if the fire district wants to issue bonds then they must include debt service on those bonds in their budget and §6-1-80 requires both the county and district to hold public hearings before approving the district's budget.]

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

SECTION 6-1-300: DEFINITIONS

EDITOR'S NOTE: The definitions contained in this section apply when the terms defined below appear in this article, §§6-1-300 through 6-1-330. Of particular note is the concept of a "positive

majority vote," which is a majority of the entire membership of the local governing body. This contrasts with a simple majority, which is a majority of the members present and voting. This prevents the situation where, due to allowances for absences under the quorum concept, less than a majority of council can take action to impose or increase a tax or fee.

§6-1-300. Definitions.

As used in the article:

(1) "Consumer price index" means the consumer price index for all-urban consumers published by the U.S. Department of Labor. In the event of a revision of the consumer price index, the index that is most consistent with the consumer price index for all-urban consumers as calculated in 1996 must be used.

(2) "Intergovernmental transfer of funding responsibility" means an act, resolution, court order, administrative order, or other action by a higher level of government that requires a lower level of government to use its own funds, personnel, facilities, or equipment.

(3) "Local governing body"means the governing body of a county, municipality, or special purpose district. As used in Section 6-1-320 only, local governing body also refers to the body authorized by law to levy school taxes.

(4) "New tax" is a tax that the local governing body had not enacted as of December 31, 1996.

(5) "Positive majority" means a vote for adoption by the majority of the members of the entire governing body, whether present or not. However, if there is a vacancy in the membership of the governing body, a positive majority vote of the entire governing body as constituted on the date of the final vote on the imposition is required.

(6) "Service or user fee" means a charge required to be paid in return for a particular government service or program made available to the payer that benefits the payer in some manner different from the members of the general public not paying the fee. "Service or user fee" also includes "uniform service charges".

(7) "Specifically authorized by the General Assembly" means an express grant of power:

(a) in a prior act;

(b) by this act; or

(c) in a future act.

HISTORY: 1997 Act No. 138, §7.

SECTION 6-1-310: PROHIBITION ON NEW LOCAL TAXES

EDITOR'S NOTE: This provision restates the law applicable to local government taxing authority. Political subdivisions of the state have no inherent authority of their own. However, this section was adopted after concerns arose after the Williams v. Town of Hilton Head Island case which held that an enactment by municipality requires no specific statutory authorization so long as such regulations are not inconsistent with the Constitution and general law of the state.

§6-1-310. Prohibition on imposition of new local taxes.

A local governing body may not impose a new tax after December 31, 1996, unless specifically authorized by the General Assembly.

HISTORY: 1997 Act No. 138, §7.

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

EDITOR'S NOTE: This section of the Code modifies the grant of authority to levy a business license tax found in §4-9-30(12).

§6-1-315. Limitation on imposition or increase of business license and real estate professional and auctioneer fees.

(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.

SECTION 6-1-320: MILLAGE RATE LIMITATIONS AND EXCEPTIONS

EDITOR'S NOTE: The millage rate increase limitation is the percentage increase in the CPI over the previous year plus the percentage increase in the population of the entity over the previous year. Section 6-1-320 applies to counties, municipalities, school districts and special purpose districts. The annual population increase used in this Code section will be determined by the Office of Research and Statistics of the State Budget and Control Board. If the CPI is negative or the population shrinks, then that element of the formula is deemed to be zero. There is also a three year "carry forward" of authorized, but unused, millage rate raising capacity.

Section 6-1-320(F) exempts special tax districts created under §4-9-30(5) from the millage rate cap. The particular problem addressed is that the millage rate limitation in §6-1-320 states that the millage rate from the previous year may be increased by a percentage. When a new special tax district is created, the previous year's millage rate was zero and a 100% increase in the previous year's rate would still be zero. This change allows for the creation of new special tax districts funded by a property tax.

The millage rate cap may be exceeded upon a two-thirds vote of the entire governing body for the reasons listed in subsection (B). If items 1 - 5 are used to impose a millage rate increase, it must appear separately on the tax bill as a separate surcharge with an explanation and not included in the millage subject to the CPI plus population. The surcharge may only be continued for the years necessary to pay for the reason imposed and do not become part of the base millage, to which the increase percentage applies.

The millage rate limitation does not apply to fees, or revenue which is not the result of property tax millage and does not supercede any local act of the General Assembly, including Special Purpose Districts, which is more restrictive.

Rollback millage is calculated, pursuant to §12-37-251(E) by using the prior year property taxes levied, less abatements, plus additions as the numerator. The numerator is then divided by the adjusted total assessed value applicable in the year a reassessment program is implemented. The adjustments are to deduct assessments added for property or improvements not previously taxed, for new construction, for renovation of existing structures, and additional assessed value due to assessable transfers of interest. Rollback millage calculation for municipalities in more than one county is also addressed in §12-37-251(G).

§6-1-320. Millage rate increase limitation; exceptions.

(A)(1) 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 Revenue and Fiscal Affairs Office. 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.

(2) There may be added to the operating millage increase allowed pursuant to item (1) of this subsection any such increase, allowed but not previously imposed, for the three property tax years preceding the year to which the current limit applies.

(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 or national 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.

(F) The restriction contained in this section does not affect millage imposed to pay bonded indebtedness or operating expenses of a special tax district established pursuant to Section 4-9-30(5), but the special tax district is subject to the millage rate limitations in Section 4-9-30(5).

(G)(1) Notwithstanding the limitation upon millage rate increases contained in subsection (A), a fire district's governing body may adopt an ordinance or resolution requesting the governing body of the county to conduct a referendum to suspend the millage rate limitation for general

operating purposes of the fire district. If the governing body of the county agrees to hold the referendum and subject to the results of the referendum, the millage rate limitation may be suspended and the millage rate may be increased for general operating purposes of the fire district. The referendum must be held at the time of the general election, and upon a majority of the qualified voters within the fire district voting favorably in the referendum, the millage rate may be increased in the next fiscal year. The referendum must include the amount of the millage increase. The actual millage levy may not exceed the millage increase specified in the referendum.

(2) This subsection only applies to a fire district that existed on January 1, 2014, and serves less than seven hundred homes.

(H) Notwithstanding the limitation upon millage rate increases contained in subsection (A), the governing body of a county may adopt an ordinance, subject to a referendum, to suspend the millage rate limitation for the purpose of imposing up to six-tenths of a mill for mental health. The referendum must be held at the time of the general election, and upon a majority of the qualified voters within the county voting favorably in the referendum, this special millage may be imposed in the next fiscal year. The state election laws apply to the referendum mutatis mutandis. This special millage may be removed only upon a majority vote of the local governing body. The amounts collected from the increased millage:

(1) must be deposited into a mental health services fund separate and distinct from the county general fund and all other county funds;

(2) must be dedicated only to expenditures for mental health services in the county; and

(3) must not be used to supplant existing funds for mental health programs in the county.

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; 2011 Act No. 57 §2A; 2014 Act No. 249 §§1, 2; 2016 Act No. 276, §1.

ATTORNEY GENERAL'S OPINIONS

While §6-1-320 is ambiguous and appears to create a conflict between Subsections (B) and (E), a court would likely interpret §6-1-320(E) as prohibiting any millage increase in excess of that established by local legislation (i.e. 6 mills) except in the four extraordinary circumstances specified in §6-1-320(B). One of these extraordinary circumstances is to meet the "minimum local effort" requirement of §59-21-1030. Unpublished Op. Atty. Gen. dated September 17, 2003. [Editor's Note: This opinion was rendered before this section was amended in 2006 and 2007 and would not apply to the current version of this section.]

In accordance with §6-1-320(D), if these funds are used for the payment of bonded indebtedness, used to make payments on lease-purchase agreement, or used to fund a reserve account, the millage limitations set forth in 6-1-320(A) do not apply and the Board may set the millage as it deems appropriate.

Moreover, §6-1-320(C) allows the Board to override the millage rate limitations by a positive majority vote. The only requirement, other than the vote requirement, is a meeting open for public comment after sufficient notice of such meeting. Thus, regardless of what the taxes are to be used for, the Board may impose a millage rate higher than that allowed under §6-1-320(A) if it satisfies these requirements. Unpublished Op. Atty. Gen. Dated June 27, 2006. [Editor's Note: The millage rate limitation override by positive majority vote deleted from §6-1-320 effective until January 1, 2007.]

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. 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).

The Legislature removed the provision of §6-1-320(B) 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. 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. 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 June 13, 2007 opinion, we continue to believe 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).

It is our opinion that the Legislature intended for County Council to determine the millage rate cap applicable to District Two pursuant to this provision. However, while County Council has the sole authority to set the millage rate for District Two, it may not exceed the millage rate cap as calculated in accordance with §6-1-320(A) unless one of the enumerated exceptions listed under §6-1-320(B) apply. Unpublished Op. Atty. Gen. Dated October 27, 2009 (2009 WL 3658269). [Editor's Note: If a County Council has the authority to levy taxes on behalf of a school district

pursuant to §4-9-70 they also have the authority to set the millage rate, subject to the millage rate cap in §6-1-320(A).]

The rollback provisions and millage cap limitations apply to special purpose districts. Based on Angus, the rollback calculation as stated in §12-37-251(E) must be utilized given the best information available with regard to the assessed value of the property. Additionally, the potential impact appeals may have on the final assessed value of the property cannot be considered when calculating the rollback millage. Unpublished Op. Atty. Gen. Dated October 14, 2009 (2009 WL 3658272).

The Legislature intended to limit a local governing body's ability to exceed the millage rate cap under §6-1-320(A) to the year in which the exception applies. Therefore, if the commission wishes to exceed the millage rate allowed pursuant to §6-1-320(A), it must establish the applicability of one of the exceptions in subsection (B) for that particular year. In the case of deficiency, the legislature makes clear that the excess millage levied to cure the deficiency is further limited in that it may only be imposed until the deficiency is cured. Op. Atty. Gen. Dated October 26, 2010 (2010 WL 4391632).

Sections 12-37-251 and 6-1-320 do not specifically address the situation in which overall property values decrease. Due to the mandatory language contained in §6-1-320(A), the Legislature intended for this calculation to be used in any year of reassessment, not just when overall property values increased. Op. Atty. Gen. Dated June 28, 2011 (2011 WL 2648717).

If the (service or user) fee imposed (pursuant to section 6-1-330) is a tax, then it must comply with the millage cap in §6-1-320(A) or satisfy one of the statutory exemptions to that cap. If the fee is a true "service or user fee," it need not comply with the §6-1-320 millage cap. A court evaluating a fee's validity will look at whether it is imposed to provide a "special benefit" to the payers and whether the fee is used to fund the service for which it was imposed. If the fee is a general revenue-raising measure, a court will find it to be a tax. Op. Atty. Gen. Dated August 25, 2011 (2011 WL 3918181).

A school board that is not allowed to raise the millage above last year's level except upon approval of county council pursuant to a local act may still raise millage above last year's level to meet one of the exceptions in §6-1-320(B), notwithstanding approval by county council. Op. Atty. Gen. Dated March 30, 2012 (2012 WL 1154974). [EDITOR'S NOTE: The local act referenced in this opinion abolished a county board of education and transferred its powers to the school district. The school district was prohibited from raising the millage without county council approval but was found to be the "governing body" for purposes of the millage rate cap exceptions set out in §6-1-320(B).]

A millage substitution where a municipality increases its millage rate from 0 to 51 mils, while the millage rate for a public service district located within the municipality correspondingly decreases from 51 mils to 0 mils would probably violate the plain and literal reading of §6-1-320.

Even though the statutory intent of §6-1-320 might be satisfied because "overall" taxes are not increased, the millage for the municipality would increase by more than the amount allowed in this statutory provision. Op. Atty. Gen. Dated April 28, 2014 (2014 WL 1809641).

A court would likely find that §6-1-320 mandates that political subdivisions follow the millage rates permitted under subsection (A) unless an exception is warranted under subsection (B) or Act No. 249 of 2014. When reinstating a previously eliminated millage rate, a political subdivision must apply subsection (A)(1) of §6-1-320 to arrive at its base millage rate. A governing body likely may not reinstate 81 mills as its millage rate because an increase from 0 to 81 mills would exceed the millage cap. Op. Atty. Gen. Dated July 9, 2014 (2014 WL 3640923).

Section 6-1-320(G) is applicable to special purpose districts and allows an increase in the tax millage rate by referendum for the general operating purposes for fire districts in existence on January 1, 2014 and serving less than 700 homes. The referendum must include the amount of the millage increase, and the actual millage levy may not exceed the millage increase specified in the referendum. Op. Atty. Gen. Dated September 18, 2014 (2014 WL 4953186).

Section 6-1-320(F) provides that a special tax district established pursuant to §4-9-30(5) is not subject to the millage cap of §6-1-320 but would be subject to the millage rate limitations in §4-9-30(5). Because the special tax district was created pursuant to §4-9-30(5)(iii) and that section does not impose a millage rate limitation, the governing body is authorized to set the annual millage in an amount determined by the body to be necessary for operating purposes. Op. Atty. Gen. Dated December 30, 2015 (2015 WL 9701674).

The school district is limited to a millage increase that is the lower of the increase allowed by Section 6-1-320(A) or the increase allowed by the local legislation providing a millage cap. Section 6-1-320(E) provides that this article cannot be construed to "amend or repeal" any caps on school millage that are "more restrictive" than the limitation provided by §6-1-320(A). In this case, the district would have to compare the millage increase allowed by §6-1-320(A) with the millage allowed by the local legislation and choose the lower of the two. Op. Atty. Gen. Dated April 14, 2016 (2016 WL 1711848).

CASE NOTES

Sections 12-37-251(E) and 6-1-320(A) do not permit a local government to make adjustments to the statutory formula for calculating rollback millage unless the governing body utilizes the public hearing requirements of §6-1-320(C).

Section 12-37-251(E) permits the use of three adjustments in calculating the rollback millage. Although the circuit court found that the variables used by Myrtle Beach "appear to be sensible and necessary devices" and that denying their use "would lead to a result that is unworkable, inefficient, inaccurate, and problematic," the Supreme Court found that the variables permitted by statute to be clear and unambiguous. Therefore the Supreme Court held that Myrtle

Beach's use of non-statutory variables violated §12-37-251(E) and the Myrtle Beach failed to hold a public meeting as provided under §6-1-320(C) which would have allowed it to legally override the mandatory requirements of subsection (A). Angus v. City of Myrtle Beach, 363 S.C. 1, 609 S.E.2d 808 (2005). [Editor's Note: The assessed value must be adjusted only by deducting assessments added for (1) property or improvements not previously taxed, (2) for new construction, and (3) for renovation of existing structures.]

SECTION 6-1-330: LOCAL FEE IMPOSITION LIMITATIONS

EDITOR'S NOTE: This section codifies county fee authority contained in §4-9-30(5) as interpreted by the Brown v. Horry County line of cases. See case notes below for the legal history. The separate fund requirement for fees which generate more than 5% of the entities prior fiscal year budget is intended to prevent unproductive operating costs which would result from maintaining numerous accounts for routine fees such as copy charges, little league recreation fees, etc.

§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.

Cross References --

Public notice requirements for Development Impact Fees, see §6-1-2010.
Impact Fees, generally, see §6-1-910 through §6-1-2010.
Local Accommodations Tax in segregated fund, see §6-1-520.

ATTORNEY GENERAL'S OPINION

The ordinance imposes a user fee for fire and emergency medical services provided by the town pursuant to §4-21-10. Furthermore, §6-1-330 authorizes a municipality to "charge and collect a service or user fee" so long as the revenues are "used to pay costs related to the provision of the service or program for which the fee was paid." In our opinion, the Ordinance is neither unconstitutional, nor a violation of State law regarding motor vehicle accidents. Unpublished Op. Atty. Gen. Dated April 4, 2005. [Editor's Note: The city enacted an ordinance which charges a user fee for fire and emergency medical services for both residents and non-residents in specific situations. City residents were excluded from the fee if their municipal taxes covered the fee due. Nonresidents were charged the full fee.]

In reading §6-1-330 in conjunction with§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).

We are of the opinion that the County's requirement that a development site review be conducted prior to the construction of a new building is a zoning ordinance. Because the School District must comply with zoning ordinances enacted by the County, we believe the County has the authority to require a development site review for the District's facilities. Moreover, so long as the fee charge for such a review is valid in all other respects, we also believe the County can assess a per square foot fee for this review. Unpublished Op. Atty. Gen. Dated February 24, 2010 (2010 WL 928440).

A uniform service charge is a "service or user fee" within the meaning of §6-1-300(6) and it does not appear that such a charge must be tied to the value of the property upon which it is imposed. A municipality is authorized to impose a uniform service charge pursuant to §6-1-330. However, the validity of a uniform service charge will depend on whether the charge satisfies the four-part test set forth by the South Carolina Supreme Court. Op. Atty. Gen. Dated August 24, 2011 (2011 WL 3918170). [EDITOR'S NOTE: In this case, the municipality was attempting to create a

public safety user fee to offset a portion of the city's fire and police budget. The ordinance also allowed the city to adjust the fee to meet their general fund operating budget. This likely fails the "specific benefit" prong of the test because it funds an ongoing city expense rather than a particular improvement that confers a specific benefit on the payers. There is also a question of whether the "enterprise fund" that is created in the ordinance is separate from the general fund.]

To adopt a service fee, a majority of the total membership of city (or county) council would have to vote in favor of the fee. As stated in §6-1-330, a public hearing also is required. In addition, the notice required by §6-1-80, concerning adoption of the municipal (or county) budget, must include the fact that the fee would be used to fund a service previously funded by property taxes. Op. Atty. Gen. Dated August 23, 2012 (2012 WL 3875116). [EDITOR'S NOTE: If a county wants to fund a service with a fee when the service was previously funded by property taxes they would have to impose the fee pursuant to §6-1-330 and meet the budget notice requirements in §6-1-80.]

Section 12-37-235 does not authorize a county to levy a fire service fee on certain tax exempt property on behalf of a special purpose district and then remit such a fee to the district. Special purpose districts are separate political subdivisions from a county and, if an elected body, have independent taxing authority. The language of §12-37-235 only authorizes counties and municipalities to charge certain tax exempt properties a fee for fire services. Had the legislature intended to authorize a special purpose district to charge such fees on tax exempt property, it would have done so. In other words, the district may not indirectly levy a fee that the law prevents it from doing so directly. Op. Atty. Gen. Dated January 15, 2014 (2014 WL 1398601). [EDITOR'S NOTE: This opinion also indicated that a fire service fee charged under §12-37-235 would likely be a tax and constitutionally suspect when the charge is imposed on entities that are tax exempt under the constitution of South Carolina.]

CASE NOTES

Under §4-9-30(5), counties can impose a service charge or user fee, such as a road maintenance fee, where it is a fair and reasonable alternative to increasing the general county property tax and is imposed upon those for whom the service is primarily provided. The amount of such fee and upon whom it is imposed are subject to the requirements of equal protection, reasonableness and uniformity. Brown v. Horry County, 308 S.C. 180, 417 S.E.2d 565 (1992).

A service charge is imposed on the theory that the portion of a community which is required to pay the fee receives some special benefit as a result of the improvements with the proceeds of the charge and does not become a tax merely because the general public obtains a benefit. The Horry County road maintenance fees go into the county general fund to be used specifically for the maintenance and improvement of county roads. Because the fee proceeds are specifically allocated for road maintenance, the fee is a service charge under §4-9-30(5). Brown v. Horry County, 308 S.C. 180, 417 S.E.2d 565 (1992).

§6-1-330

Taxes are levied on all property for the maintenance of county government. Although some services are not rendered in the incorporated areas, these services are still provided for the maintenance of county government and, therefore, benefit all the residents of the county. The equal protection clause does not require that mathematical symmetry be attained between the benefits received and the payment for those benefits. Davis v. County of Greenville, 313 S.C. 459, 443 S.E.2d 383 (1994).

Local governments have the authority to adopt fees calculated as a percentage to be charged on accommodations or meals and beverages served at businesses licensed for on-premises consumption of alcohol to support tourism related expenditures. Hospitality Assoc. of S.C., Inc. v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995).

A local government uniform service charge is lawful if: (1) it is imposed for a particular governmental service rather than for the general support of the government; and (2) the persons required to pay the charge derive a special benefit from the improvement made with the charge proceeds which the general public does not receive. A $200 fee per auto with dealer and wholesale tags for improving county roads does not meet the test because the stated benefit inured to all car owners. Fairway Ford v. Greenville County, 324 S.C. 84, 476 S.E.2d 490 (1996).

A county ordinance which imposes a solid waste disposal fee and requires multi-tenant property owners to be responsible for the fees of their tenants, unless there is a lease on file in the county records, is constitutional. Skyscraper Corp. v. County of Newberry, 323 S.C. 412, 475 S.E.2d 764 (1996).

The city allocated water and sewer fee revenue to its General Fund for economic development purposes. The trial court granted summary judgement for the city. On appeal, the Supreme Court reversed and remanded due to an issue of material fact as to whether the city's expenditures of water and sewer revenues were lawful. The Court acknowledged that §6-1-330(B) directs local governments to use revenue derived from fees to pay costs related to the provision of the services for which the fee was paid. The Court held that the law requires some nexus between these economic development expenditures and the city's provision of water and sewer services. Azar v. City of Columbia, 414 S.C. 307, 778 S.E.2d 315 (2015).

ARTICLE 5: LOCAL ACCOMMODATIONS TAX ACT

SECTION 6-1-500: SHORT TITLE

EDITOR'S NOTE: This section is self explanatory.

§6-1-500. Short title.

This article may be cited as the "Local Accommodations Tax Act".

HISTORY: 1997 Act No. 138, §8.

SECTION 6-1-510: DEFINITIONS

EDITOR'S NOTE: These definitions apply to the terms defined below as used in this article, §§6-1-500 through 6-1-560. The definition of "local accommodations tax" uses one of the state accommodations tax bases. This makes the local accommodations tax base uniform across the state. Uniformity makes it easier for hoteliers to calculate local accommodations taxes, thus increasing compliance rates. It also gives local jurisdictions another document from which to reference receipts.

§6-1-510. Definitions.

As used in this article:

(1) "Local accommodations tax" means a tax on the gross proceeds derived from the rental or charges for accommodations furnished to transients as provided in Section 12-36-920(A) and which is imposed on every person engaged or continuing within the jurisdiction of the imposing local governmental body in the business of furnishing accommodations to transients for consideration.

(2) "Local governing body" means the governing body of a county or municipality.

(3) "Positive majority" means a vote for adoption by the majority of the members of the entire governing body, whether present or not. However, if there is a vacancy in the membership of the governing body, a positive majority vote of the entire governing body as constituted on the date of the final vote on the imposition is required.

HISTORY: 1997 Act No. 138, §8.

SECTION 6-1-520: IMPOSITION OF LOCAL ACCOMMODATIONS TAX

EDITOR'S NOTE: Local governments are specifically authorized to impose an accommodations tax on room rental charges not to exceed a cumulative rate of three percent upon a positive majority vote. Before counties can impose more than a one and a half percent accommodations tax inside municipal boundaries, the county must obtain the consent of the municipal governing body. The county may not impose any accommodations tax within the municipal limits if the city is at the three percent maximum rate. All revenue from the accommodations tax must be kept in a separate fund from the entity's general fund.

§6-1-520. Imposition of local accommodations tax.

(A) A local governing body may impose, by ordinance, a local accommodations tax, not to exceed three percent. However, an ordinance imposing the local accommodations tax must be adopted by a positive majority vote. The governing body of a county may not impose a local accommodations tax in excess of one and one-half percent within the boundaries of a municipality without the consent, by resolution, of the appropriate municipal governing body.

(B) All proceeds from a local accommodations tax must be kept in a separate fund segregated from the imposing entity's general fund. All interest generated by the local accommodations tax fund must be credited to the local accommodations tax fund.

HISTORY: 1997 Act No. 138, §8.

CASE NOTES

Accommodations Tax Act and Hospitality Tax Act do not permit a county to divest a municipality of a portion of its tax rate when municipality has previously imposed the full accommodations and/or hospitality tax authorized by those statutes. City of Hardeeville v. Jasper County, 340 S.C. 39, 530 S.E.2d 374 (2000).

Online travel company engaged in the business of reserving accommodations in the state is "furnishing" accommodations for the purpose of §§6-1-510 and 6-1-520 and is conducting business within this state. Those companies must remit the sales tax on the gross proceeds of the furnishing or hotel accommodations in the state. Travelscape v. SCDOR, 391 S.C. 89, 705 S.E.2d 28 (2011).

SECTION 6-1-530: PROJECTS FOR WHICH THE LOCAL ACCOMMODATIONS TAX MAY BE USED

EDITOR'S NOTE: Accommodations tax revenue must be used for the projects listed in subsection (A). Counties generating more than $900,000 in state accommodations tax pursuant to §12-36-920 may use the revenue for projects listed in subsection (A) and for the purposes set out in subsection (B). Counties collecting less than $900,000 annually in state accommodations tax revenue may use up to 50% of their local accommodations tax revenue on the operational expenses for the capital facilities.

§6-1-530. Use of revenue from local accommodations tax.

(A) The revenue generated by the local accommodations tax must be used exclusively for the following purposes:

(1) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;

(2) tourism-related cultural, recreational, or historic facilities;

(3) beach access, renourishment, or other tourism-related lands and water access;

(4) highways, roads, streets, and bridges providing access to tourist destinations;

(5) advertisements and promotions related to tourism development; or

(6) water and sewer infrastructure to serve tourism-related demand.

(B)(1) In a county in which at least nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, the revenues of the local accommodations tax authorized in this article may also be used for the operation and maintenance of those items provided

in (A)(1) through (6) including police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities.

(2) In a county in which less than nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, an amount not to exceed fifty percent of the revenue in the preceding fiscal year of the local accommodations tax authorized pursuant to this article may be used for the additional purposes provided in item (1) of this subsection.

HISTORY: 1997 Act No. 138, §8; 1999 Act No. 93, §13; 2002 Act No. 312, §1; 2006 Act No. 314, §1; 2010 Act No. 290, §35.

Cross References --

Local accommodations tax proceeds may be pledged as security for bonds, see §6-1-760.

ATTORNEY GENERAL'S OPINION

Despite an argument that because the General Assembly connected the number of magistrates required with the amount of accommodations tax revenue, the Legislature recognized the relationship between increased tourism and the resulting need for additional magistrates, the funding of a magistrate's position from Local Accommodations Tax revenue would contravene §6-1-530. Unpublished Op. Atty. Gen. Dated September 28, 2000.

SECTION 6-1-540: CUMULATIVE RATE OF LOCAL ACCOMMODATIONS TAX

EDITOR'S NOTE: Local governments are specifically authorized to impose an accommodations tax on room rental charges not to exceed a cumulative rate of three percent upon a positive majority vote. Any accommodations taxes exceeding three percent that were imposed prior to December 31, 1996, are grandfathered.

§6-1-540. Cumulative rate of local accommodations tax.

The cumulative rate of county and municipal local accommodations taxes for any portion of the county area may not exceed three percent, unless the cumulative total of such taxes were in excess of three percent prior to December 31, 1996, in which case the cumulative rate may not exceed the rate that was imposed as of December 31, 1996.

HISTORY: 1997 Act No. 138, §8.

ATTORNEY GENERAL'S OPINION

Cities and counties are now cumulatively capped in the imposition of their accommodations and hospitality taxes. The legislature has not allowed a local government to piggy back its pre-existing tax rate on top of the maximum cumulative tax rate which state law now allows. An ordinance which increases the tax on the already taxed accommodations or hospitality items to an

amount beyond the maximum that the Legislature has allowed would violate state law. Unpublished Op. Atty. Gen. Dated September 18, 2001.

SECTION 6-1-550: ANNEXATION AND LOCAL ACCOMMODATIONS TAX REVENUE

EDITOR'S NOTE: If an accommodations taxpayer is annexed by a municipality, the county revenue from the site is frozen at the previous year's level and the municipality receives the growth in revenue from the taxpayer.

§6-1-550. Local accommodations tax revenue upon annexation.

In an area of the county where the county has imposed a local accommodations tax that is annexed by a municipality, the municipality must receive only that portion of the revenue generated in excess of the county local accommodations tax revenue for the previous twelve months in the area annexed.

HISTORY: 1997 Act No. 138, §8.

SECTION 6-1-560: REAL ESTATE AGENTS REPORTING REQUIREMENT

EDITOR'S NOTE: This section is self explanatory.

§6-1-560. Real estate agents required to report when rental property listing dropped.

Real estate agents, brokers, corporations, or listing services required to remit taxes under this section must notify the appropriate local governmental entity or entities if rental property, previously listed by them, is dropped from their listings.

HISTORY: 1997 Act No. 138, §8.

SECTION 6-1-570: TAX REMITTANCE

EDITOR'S NOTE: This section sets the frequency of collection of the Local Accommodations Tax.

§6-1-570. Remitting tax to local governing body; frequency determined by estimated average amounts.

The tax provided for in this article must be remitted to the local governing body on a monthly basis when the estimated amount of average tax is more than fifty dollars a month, on a quarterly basis when the estimated amount of average tax is twenty-five dollars to fifty dollars a month, and on an annual basis when the estimated amount of average tax is less than twenty-five dollars a month.

HISTORY: 1998 Act No. 419, Part II, §63A

Cross References --
Confidentiality of Returns required under §6-1-570, see §6-1-120.

ARTICLE 7: LOCAL HOSPITALITY TAX ACT

SECTION 6-1-700: SHORT TITLE

EDITOR'S NOTE: This section is self explanatory.

§6-1-700. Short title.

This article may be cited as the "Local Hospitality Tax Act".

HISTORY: 1997 Act No. 138, §9.

SECTION 6-1-710: DEFINITIONS

EDITOR'S NOTE: These definitions apply to the terms defined below as used in this article, §§6-1-700 through 6-1-750. Item (2) has an option of two different tax bases for this tax. The county has the option to tax meals in all restaurants or only those with an alcohol license.

§6-1-710. Definitions.

As used in the article:

(1) "Local governing body" means the governing body of a county or municipality.

(2) "Local hospitality tax" is a tax on the sales of prepared meals and beverages sold in establishments or sales of prepared meals and beverages sold in establishments licensed for on-premises consumption of alcoholic beverages, beer, or wine.

(3) "Positive majority" means a vote for adoption by the majority of the members of the entire governing body, whether present or not. However, if there is a vacancy in the membership of the governing body, a positive majority vote of the entire governing body as constituted on the date of the final vote on the imposition is required.

HISTORY: 1997 Act No. 138, §9.

ATTORNEY GENERAL'S OPINION

Construing "prepared meals" to apply to all components of meals such as breads and pies would lead to an absurd result, as most food items sold in a grocery store could be used as components of a meal. Furthermore, had the General Assembly intended to include these kinds of

items, it could have used the more likely choice of words "prepared food and beverages" in the definition of the tax. A practical reading of §6-1-710 requires our conclusion that foods such as bread and pies, which typically serve as only components of a meal are not contemplated by the Act.

Component parts of a meal are not intended to constitute "prepared meals" for purposes of the local hospitality tax. Items such as "slicing ham, pork chops from a loin, spiraling of a whole ham, the splitting of a watermelon, birthday cake" would not, in our opinion, constitute a "prepared meal." Nor typically would individual food items such as breads, cakes, pies, doughnuts or similar items be subject to the Local Hospitality Tax. Unpublished Op. Atty. Gen. dated October 17, 2003.

SECTION 6-1-720: IMPOSITION OF LOCAL HOSPITALITY TAX

EDITOR'S NOTE: Local governments are specifically authorized to impose a hospitality tax on prepared meals and beverages not to exceed a cumulative rate of two percent upon a positive majority vote of council. Before counties can impose more than a one percent hospitality tax inside municipal boundaries, the county must obtain the consent of the municipality. The county may not impose a hospitality tax within municipal limits in those municipalities which tax at the maximum rate. All revenue from the hospitality tax must be kept in a separate fund from the entity's general fund.

§6-1-720. Imposition of local hospitality tax.

(A) A local governing body may impose, by ordinance, a local hospitality tax not to exceed two percent of the charges for food and beverages. However, an ordinance imposing the local hospitality tax must be adopted by a positive majority vote. The governing body of a county may not impose a local hospitality tax in excess of one percent within the boundaries of a municipality without the consent, by resolution, of the appropriate municipal governing body.

(B) All proceeds from a local hospitality tax must be kept in a separate fund segregated from the imposing entity's general fund. All interest generated by the local hospitality tax fund must be credited to the local hospitality tax fund.

HISTORY: 1997 Act No. 138, §9.

ATTORNEY GENERAL'S OPINION

A provider of services, including an institution of higher learning, must collect a county's hospitality fee from the consumer and hold it in trust until remitted to the proper authority. Unpublished Op. Atty. Gen., dated February 27, 1998.

CASE NOTES

Accommodations and Hospitality Tax Acts do not permit a county to divest a municipality of a portion of its tax rate when municipality has previously imposed the full accommodations

and/or hospitality tax authorized by those statutes. City of Hardeeville v. Jasper County, 340 S.C. 39, 530 S.E.2d 374 (2000)

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

EDITOR'S NOTE: Hospitality tax revenue must be used for one of the projects outlined in subsection (A). Counties generating more than $900,000 in state accommodations tax pursuant to §12-36-920 may use the revenue from the hospitality tax for the projects listed in subsection (A) and the purposes set forth in subsection (B)(1). Counties collecting less than $900,000 annually in state accommodations tax revenue may use up to 50% of their local hospitality tax revenue on the operational expenses for the capital facilities listed in subsection (A).

§6-1-730. Use of revenue from local hospitality tax.

(A) The revenue generated by the hospitality tax must be used exclusively for the following purposes:

(1) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;
(2) tourism-related cultural, recreational, or historic facilities;
(3) beach access and renourishment;
(4) highways, roads, streets, and bridges providing access to tourist destinations;
(5) advertisements and promotions related to tourism development; or
(6) water and sewer infrastructure to serve tourism-related demand.

(B)(1) In a county in which at least nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, the revenues of the hospitality tax authorized in this article may be used for the operation and maintenance of those items provided in (A)(1) through (6) including police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities.

(2) In a county in which less than nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, an amount not to exceed fifty percent of the revenue in the preceding fiscal year of the local hospitality tax authorized pursuant to this article may be used for the additional purposes provided in item (1) of this subsection.

HISTORY: 1997 Act No. 138, §9; 1999 Act No. 93, §14; 2006 Act No. 314, §2; 2010 Act No. 290, §36.

ATTORNEY GENERAL'S OPINIONS

The town may not stack the accommodations tax revenues for the three counties in which it is located for the purpose of meeting the accommodations tax requirement enabling it to use its local hospitality tax proceeds for the additional purposes listed in §6-1-730(B). The town may use its hospitality tax proceeds for the additional purposes listed in §6-1-730(B) if at least one of the

counties in which it is located annually collects at least $900,000 in state accommodations tax. Section 6-1-730(B) does not require those funds for the additional services be used in that county, but may be used in any location within the Town. Unpublished Op. Atty. Gen. Dated February 3, 2006.

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).

If a county collects at least $900,000 in accommodations taxes pursuant to §12-36-920, it may use its hospitality tax revenue for the maintenance and operation of a tourism-related building. Op. Atty. Gen. Dated June 10, 2010 (2010 WL 2678689). [EDITOR'S NOTE: See Op. Atty. Gen. Dated March 27, 2014 indicating that revenue for such maintenance and operation is allowed even if the county collects less than $900,000 in annual accommodations tax; however, the expenditures would be limited to 50% of the hospitality tax revenue.]

Section 6-1-730(B) allows the use of local hospitality tax revenue for fire protection services as part of the "operation and maintenance" costs of facilities listed in §6-1-730(A), if the services are directly attendant to the facility. The service area of a fire truck purchased with local hospitality tax revenue must include, but need not be limited to, a facility listed in §6-1-320(A). Op. Atty. Gen. Dated December 5, 2011 (2011 WL 6959374).

Funds from the local hospitality tax collected pursuant to §6-1-720 may be used for the maintenance and repair of roads, streets, and bridges so long as the roads, streets, and bridges provide access to tourist destinations. What constitutes a tourist destination and whether a particular road provides such access is a question of fact for the court to decide. Op. Atty. Gen. Dated March 27, 2014 (2014 WL 1511521).

Funds from the local hospitality tax collected pursuant to §6-1-720 may be used for a recreational facility as long as it serves to promote and facilitate tourism in accord with the intent of the tax and as long as it fits within one of the purposes listed in §6-1-730(A). A court will likely find there must be a direct and casual connection between tourism and the promotion thereof for local hospitality funds to be used in whole or part to pay for a recreational facility. Determining if a recreational facility serves to promote tourism and would be considered to be "tourism-related" is a question of fact for the court to decide. Op. Atty. Gen. Dated February 17, 2015 (2015 WL 836506).

SECTION 6-1-740: LOCAL HOSPITALITY TAX RATE

EDITOR'S NOTE: Local governments are specifically authorized to impose a hospitality tax on food and beverages not to exceed a cumulative rate of two percent upon a positive majority vote. Any hospitality taxes exceeding two percent that were imposed prior to December 31, 1996, are grandfathered.

§6-1-740. Cumulative rate of local hospitality tax.

The cumulative rate of county and municipal hospitality taxes for any portion of the county area may not exceed two percent, unless the cumulative total of such taxes was in excess of two percent or were authorized to be in excess of two percent prior to December 31, 1996, in which case the cumulative rate may not exceed the rate that was imposed or adopted as of December 31, 1996.

HISTORY: 1997 Act No. 138, §9.

ATTORNEY GENERAL'S OPINION

Cities and counties are now cumulatively capped in the imposition of their accommodations and hospitality taxes by the General Assembly. The legislature has not allowed a local government to piggy back its pre-existing tax rate on top of the maximum cumulative tax rate which state law now allows. An ordinance which increases the tax on the already taxed accommodations or hospitality items to an amount beyond the maximum that the Legislature has allowed would violate state law. Unpublished Op. Atty. Gen. Dated September 18, 2001. [Editor's Note: The question which arose was whether a county or municipality which had already enacted a accommodations tax or a hospitality tax could then utilize the newly enacted Local Accommodations Tax or Hospitality Tax to increase revenue by stacking two tourism taxes.]

SECTION 6-1-750: ANNEXATION AND LOCAL HOSPITALITY TAX REVENUE

EDITOR'S NOTE: If a hospitality taxpayer is annexed by a municipality, the county revenue from the site is frozen at the previous year's level and the municipality receives the growth in revenue from the taxpayer.

§6-1-750. Local hospitality tax revenue upon annexation.

In an area of the county where the county has imposed a local hospitality tax that is annexed by a municipality, the municipality must receive only that portion of the revenue generated in excess of the county local hospitality tax revenue for the previous twelve months in the area annexed.

HISTORY: 1997 Act No. 138, §9.

SECTION 6-1-760: CALCULATION OF TAX; TOURIST DEFINED; REVENUE USE FOR BOND PAYMENT

EDITORS NOTE: This section grandfathers hospitality taxes imposed prior to March 15, 1997 as long as the tax does not exceed 3%, is calculated on a base consistent with §6-1-510(1), and is used for the purposes enumerated in §6-1-530.

This section also defines the term "tourist" as a person who does not reside within a particular jurisdictional boundary but enters for reasons of recreation or tourism. The Act provides that revenues generated from the hospitality tax, local accommodations tax and state accommodations tax may be pledged to secure bonds for the purposes of developing capital projects to attract and support tourists.

§6-1-760. Ordinances prior to March 15, 1997; calculation; revenue.

(A) With respect to capital projects and as used in this section, 'tourist' means a person who does not reside in but rather enters temporarily, for reasons of recreation or leisure, the jurisdictional boundaries of a municipality for a municipal project or the immediate area of the project for a county project.

(B) Notwithstanding any provision of this article, any ordinance enacted by county or municipality prior to March 15, 1997, imposing an accommodations fee which does not exceed the three percent maximum cumulative rate prescribed in Section 6-1-540, is calculated upon a base consistent with Section 6-1-510(1), and the revenue from which is used for the purposes enumerated in Section 6-1-530, remains authorized and effective after the effective date of this section. Any county or municipality is authorized to issue bonds, pursuant to Section 14(10), Article X of the Constitution of this State, utilizing the procedures of Section 4-29-68, Section 6-17-10 and related sections, or Section 6-21-10 and related sections, for the purposes enumerated in Section 6-1-530, to pledge as security for such bonds and to retire such bonds with the proceeds of accommodations fees imposed under Article 5 of this chapter, hospitality fees imposed under this chapter, state accommodations fees allocated pursuant to Section 6-4-10(1), (2), and (4), or any combination thereof, and the pledge of such other nontax revenues as may be available for those purposes for capital projects used to attract and support tourists.

HISTORY: 1997 Act No. 138, §10; 2010 Act No. 284, §1.

SECTION 6-1-770: TAX REMITTANCE

EDITOR'S NOTE: This section sets the frequency of collection of the Local Hospitality Tax.

§6-1-770. Remitting tax to local governing body; frequency determined by estimated average amounts.

The tax provided for in this article must be remitted to the local governing body on a monthly basis when the estimated amount of average tax is more than fifty dollars a month, on a quarterly basis when the estimated amount of average tax is twenty-five dollars to fifty dollars a month, and on an annual basis when the estimated amount of average tax is less than twenty-five dollars a month.

HISTORY: 1998 Act No. 419, Part II, §63B.

Cross References --
Confidentiality of returns required under §6-1-770, see §6-1-120.

ARTICLE 9: DEVELOPMENT IMPACT FEE ACT

SECTION 6-1-910: SHORT TITLE

EDITOR'S NOTE: This section is self explanatory.

§6-1-910. Short title.

This article may be cited as the "South Carolina Development Impact Fee Act".

HISTORY: 1999 Act No. 118, §1.

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).

SECTION 6-1-920: DEFINITIONS

EDITOR'S NOTE: These definitions apply to the terms defined below as used in this article, §§6-1-910 through 6-1-2010 and must be studied and referred to when reading the text of the Development Impact Fee Act.

Act No. 129 of 2016 added schools to the permitted uses of impact fee revenue, by adding subitem (18)(*I) to §6-1-920. Previously, item (18), "public facilities," did not include school facilities as a permitted use of impact fee revenue.

§6-1-920. Definitions.

As used in this article:

(1) "Affordable housing" means housing affordable to families whose incomes do not exceed eighty percent of the median income for the service area or areas within the jurisdiction of the governmental entity.

(2) "Capital improvements" means improvements with a useful life of five years or more, by new construction or other action, which increase or increased the service capacity of a public facility.

(3) "Capital improvements plan" means a plan that identifies capital improvements for which development impact fees may be used as a funding source.

(4) "Connection charges" and "hookup charges" mean charges for the actual cost of connecting a property to a public water or public sewer system, limited to labor and materials involved in making pipe connections, installation of water meters, and other actual costs.

(5) "Developer" means an individual or corporation, partnership, or other entity undertaking development.

(6) "Development" means construction or installation of a new building or structure, or a change in use of a building or structure, any of which creates additional demand and need for public facilities. A building or structure shall include, but not be limited to, modular buildings and manufactured housing. "Development" does not include alterations made to existing single-family homes.

(7) "Development approval" means a document from a governmental entity which authorizes the commencement of a development.

(8) "Development impact fee" or "impact fee" means a payment of money imposed as a condition of development approval to pay a proportionate share of the cost of system improvements needed to serve the people utilizing the improvements. The term does not include:

(a) a charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for development;

(b) connection or hookup charges;

(c) amounts collected from a developer in a transaction in which the governmental entity has incurred expenses in constructing capital improvements for the development if the owner or developer has agreed to be financially responsible for the construction or installation of the capital improvements;

(d) fees authorized by Article 3 of this chapter.

(9) "Development permit" means a permit issued for construction on or development of land when no subsequent building permit issued pursuant to Chapter 9 of Title 6 is required.

(10) "Fee payor" means the individual or legal entity that pays or is required to pay a development impact fee.

(11) "Governmental entity" means a county, as provided in Chapter 9, Title 4, and a municipality, as defined in Section 5-1-20.

(12) "Incidental benefits" are benefits which accrue to a property as a secondary result or as a minor consequence of the provision of public facilities to another property.

(13) "Land use assumptions" means a description of the service area and projections of land uses, densities, intensities, and population in the service area over at least a ten-year period.

(14) "Level of service" means a measure of the relationship between service capacity and service demand for public facilities.

(15) "Local planning commission" means the entity created pursuant to Article 1, Chapter 29, Title 6.

(16) "Project" means a particular development on an identified parcel of land.

(17) "Proportionate share" means that portion of the cost of system improvements determined pursuant to Section 6-1-990 which reasonably relates to the service demands and needs of the project.

(18) "Public facilities" means:

(a) water supply production, treatment, laboratory, engineering, administration, storage, and transmission facilities;

(b) wastewater collection, treatment, laboratory, engineering, administration, and disposal facilities;

(c) solid waste and recycling collection, treatment, and disposal facilities;

(d) roads, streets, and bridges including, but not limited to, rights-of-way and traffic signals;

(e) storm water transmission, retention, detention, treatment, and disposal facilities and flood control facilities;

(f) public safety facilities, including law enforcement, fire, emergency medical and rescue, and street lighting facilities;

(g) capital equipment and vehicles, with an individual unit purchase price of not less than one hundred thousand dollars including, but not limited to, equipment and vehicles used in the delivery of public safety services, emergency preparedness services, collection and disposal of solid waste, and storm water management and control;

(h) parks, libraries, and recreational facilities.

(i*) public education facilities for grades K-12 including, but not limited to, schools, offices, classrooms, parking areas, playgrounds, libraries, cafeterias, gymnasiums, health and music rooms, computer and science laboratories, and other facilities considered necessary for the proper public education of the state's children.

(19) "Service area" means, based on sound planning or engineering principles, or both, a defined geographic area in which specific public facilities provide service to development within the area defined. Provided, however, that no provision in this article may be interpreted to alter, enlarge, or reduce the service area or boundaries of a political subdivision which is authorized or set by law.

(20) "Service unit" means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements.

(21) "System improvements" means capital improvements to public facilities which are designed to provide service to a service area.

(22) "System improvement costs" means costs incurred for construction or reconstruction of system improvements, including design, acquisition, engineering, and other costs attributable to the improvements, and also including the costs of providing additional public facilities needed to serve new growth and development. System improvement costs do not include:

(a) construction, acquisition, or expansion of public facilities other than capital improvements identified in the capital improvements plan;

(b) repair, operation, or maintenance of existing or new capital improvements;

(c) upgrading, updating, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental, or regulatory standards;

(d) upgrading, updating, expanding, or replacing existing capital improvements to provide better service to existing development;

(e) administrative and operating costs of the governmental entity; or

(f) principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the governmental entity to finance capital improvements identified in the capital improvements plan.

HISTORY: 1999 Act No. 118, §1; 2016 Act No. 229, § 2.

* At the time this was printed, this subitem was not yet designated, but is expected to be designated as printed here.

ATTORNEY GENERAL'S OPINION

A development project is exempt from impact fees if the project is to create "affordable housing" as defined. A project to provide housing for the low-income population, whose income does not exceed 80% of the area median income, would come within the definition of "affordable housing" so as to exempt the project from impact fees. However, §6-1-970 also provides that a particular project is exempt from impact fees if "the exempt development's proportionate share of system improvements is funded through a revenue source other than development impact fees." The term "system improvements" is defined by §6-1-920 (21) as "capital improvements to public facilities which are designed to provide service to a service area." Unpublished Op. Atty. Gen. dated December 17, 2003.

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).

School facilities development impact fees are not authorized by the SC Development Impact Fee Act. The purposes for which proceeds of development impact fees may be used are expressly enumerated in the Act and do not include schools or school facilities. Unpublished Op. Atty. Gen. Dated February 20, 2008 (2008 WL 608962).

The school district would be responsible for any impact fee imposed by the county. Moreover, we believe the county has the general authority to impose fees on the school district through its authority under §4-9-30. We do not believe the county has the ability to exempt school districts, churches, nonprofit entities or small businesses from impact fees under Chapter 1 of Title 6. Op. Atty. Gen. Dated October 18, 2010 (2010 WL 4391638). [EDITOR'S NOTE: See Proviso

117.101 of the 2016 General Appropriations Act stating that "governmental entities are prohibited from assessing impact fees on the construction of new elementary, middle, or secondary schools." Section 6-1-970(8) &(9) also exempts certain public schools and fire departments from impact fees.]

SECTION 6-1-930: PLANS AND REPORTS REQUIRED FOR ADOPTION OF IMPACT FEE

EDITOR'S NOTE: A governmental entity must have adopted a comprehensive plan or a capital improvements plan which complies with §6-1-960(B) in order to impose a development impact fee. The ordinance imposing the impact fee must be approved by a positive majority. This section also details reporting requirements.

§6-1-930. Developmental impact fee.

(A)(1) Only a governmental entity that has a comprehensive plan, as provided in Chapter 29 of this title, and which complies with the requirements of this article may impose a development impact fee. If a governmental entity has not adopted a comprehensive plan, but has adopted a capital improvements plan which substantially complies with the requirements of Section 6-1-960(B), then it may impose a development impact fee. A governmental entity may not impose an impact fee, regardless of how it is designated, except as provided in this article. However, a special purpose district or public service district which (a) provides fire protection services or recreation services, (b) was created by act of the General Assembly prior to 1973, and (c) had the power to impose development impact fees prior to the effective date of this section is not prohibited from imposing development impact fees.

(2) Before imposing a development impact fee on residential units, a governmental entity shall prepare a report which estimates the effect of recovering capital costs through impact fees on the availability of affordable housing within the political jurisdiction of the governmental entity.

(B)(1) An impact fee may be imposed and collected by the governmental entity only upon the passage of an ordinance approved by a positive majority, as defined in Article 3 of this chapter.

(2) The amount of the development impact fee must be based on actual improvement costs or reasonable estimates of the costs, supported by sound engineering studies.

(3) An ordinance authorizing the imposition of a development impact fee must:

(a) establish a procedure for timely processing of applications for determinations by the governmental entity of development impact fees applicable to all property subject to impact fees and for the timely processing of applications for individual assessment of development impact fees, credits, or reimbursements allowed or paid under this article;

(b) include a description of acceptable levels of service for system improvements; and

(c) provide for the termination of the impact fee.

(C) A governmental entity shall prepare and publish an annual report describing the amount of all impact fees collected, appropriated, or spent during the preceding year by category of public facility and service area.

(D) Payment of an impact fee may result in an incidental benefit to property owners or developers within the service area other than the fee payor, except that an impact fee that results in

benefits to property owners or developers within the service area, other than the fee payor, in an amount which is greater than incidental benefits is prohibited.

HISTORY: 1999 Act No. 118, §1.

CASE NOTES

Under the Development Impact Fee Act a capital improvements plan was required to be in substantial compliance with the requirements of the Act, regardless of whether there was a comprehensive plan in place. Charleston Trident Home Builders, Inc. v. Town of Summerville, 369 S.C. 498, 632 S.E.2d 864 (2006).

SECTION 6-1-940: ORDINANCE CONTENTS

EDITOR'S NOTE: This section details what must be stated in a ordinance imposing an impact fee, including the amount of the fee, how the fee was calculated, the improvements for which the fee is to be used, the payor's right to appeal, and the time the fee is due.

§6-1-940. Amount of impact fee.

A governmental entity imposing an impact fee must provide in the impact fee ordinance the amount of impact fee due for each unit of development in a project for which an individual building permit or certificate of occupancy is issued. The governmental entity is bound by the amount of impact fee specified in the ordinance and may not charge higher or additional impact fees for the same purpose unless the number of service units increases or the scope of the development changes and the amount of additional impact fees is limited to the amount attributable to the additional service units or change in scope of the development. The impact fee ordinance must:

(1) include an explanation of the calculation of the impact fee, including an explanation of the factors considered pursuant to this article;

(2) specify the system improvements for which the impact fee is intended to be used;

(3) inform the developer that he may pay a project's proportionate share of system improvement costs by payment of impact fees according to the fee schedule as full and complete payment of the developer's proportionate share of system improvements costs;

(4) inform the fee payor that:

(a) he may negotiate and contract for facilities or services with the governmental entity in lieu of the development impact fee as defined in Section 6-1-1050;

(b) he has the right of appeal, as provided in Section 6-1-1030;

(c) the impact fee must be paid no earlier than the time of issuance of the building permit or issuance of a development permit if no building permit is required.

HISTORY: 1999 Act No. 118, §1.

SECTION 6-1-950: ADOPTION OF THE IMPACT FEE

EDITOR'S NOTE: Prior to adoption of an impact fee, the governing body must enact a resolution directing the local planning commission to conduct a study and recommend an impact fee ordinance. Upon receipt of this resolution the local planning commission shall prepare and adopt its recommendation in the same manner used in the development of recommendations for a comprehensive plan.

§6-1-950. Procedure for adoption of ordinance imposing impact fees.

(A) The governing body of a governmental entity begins the process for adoption of an ordinance imposing an impact fee by enacting a resolution directing the local planning commission to conduct the studies and to recommend an impact fee ordinance, developed in accordance with the requirements of this article. Under no circumstances may the governing body of a governmental entity impose an impact fee for any public facility which has been paid for entirely by the developer.

(B) Upon receipt of the resolution enacted pursuant to subsection (A), the local planning commission shall develop, within the time designated in the resolution, and make recommendations to the governmental entity for a capital improvements plan and impact fees by service unit. The local planning commission shall prepare and adopt its recommendations in the same manner and using the same procedures as those used for developing recommendations for a comprehensive plan as provided in Article 3, Chapter 29, Title 6, except as otherwise provided in this article. The commission shall review and update the capital improvements plan and impact fees in the same manner and on the same review cycle as the governmental entity's comprehensive plan or elements of it.

HISTORY: 1999 Act No. 118, §1.

SECTION 6-1-960: THE CAPITAL IMPROVEMENTS PLAN

EDITOR'S NOTE: This section details what the capital improvements plan recommended by the local planning commission must contain. The recommendation of the local planning commission is not binding on the governmental entity which may amend or alter the plan.

§6-1-960. Recommended capital improvements plan; notice; contents of plan.

(A) The local planning commission shall recommend to the governmental entity a capital improvements plan which may be adopted by the governmental entity by ordinance. The recommendations of the commission are not binding on the governmental entity, which may amend or alter the plan. After reasonable public notice, a public hearing must be held before final action to adopt the ordinance approving the capital improvements plan. The notice must be published not less than thirty days before the time of the hearing in at least one newspaper of general circulation in the county. The notice must advise the public of the time and place of the hearing, that a copy of

the capital improvements plan is available for public inspection in the offices of the governmental entity, and that members of the public will be given an opportunity to be heard.

(B) The capital improvements plan must contain:

(1) a general description of all existing public facilities, and their existing deficiencies, within the service area or areas of the governmental entity, a reasonable estimate of all costs, and a plan to develop the funding resources, including existing sources of revenues, related to curing the existing deficiencies including, but not limited to, the upgrading, updating, improving, expanding, or replacing of these facilities to meet existing needs and usage;

(2) an analysis of the total capacity, the level of current usage, and commitments for usage of capacity of existing public facilities, which must be prepared by a qualified professional using generally accepted principles and professional standards;

(3) a description of the land use assumptions;

(4) a definitive table establishing the specific service unit for each category of system improvements and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial, agricultural, and industrial, as appropriate;

(5) a description of all system improvements and their costs necessitated by and attributable to new development in the service area, based on the approved land use assumptions, to provide a level of service not to exceed the level of service currently existing in the community or service area, unless a different or higher level of service is required by law, court order, or safety consideration;

(6) the total number of service units necessitated by and attributable to new development within the service area based on the land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;

(7) the projected demand for system improvements required by new service units projected over a reasonable period of time not to exceed twenty years;

(8) identification of all sources and levels of funding available to the governmental entity for the financing of the system improvements; and

(9) a schedule setting forth estimated dates for commencing and completing construction of all improvements identified in the capital improvements plan.

(C) Changes in the capital improvements plan must be approved in the same manner as approval of the original plan.

HISTORY: 1999 Act No. 118, §1.

CASE NOTES

Although consulting firm's impact fee study, which detailed the proposed calculation of impact fees, did not originate with the planning commission, it was included in the enactment of the impact fee ordinance and was subjected to public notice and hearing, and thus, the capital improvements plan, which by itself did not meet the Development Impact Fee Act's requirements,

was effectively amended by the report. Charleston Trident Home Builders, Inc. v. Town of Summerville, 369 S.C. 498, 632 S.E.2d 864 (2006).

SECTION 6-1-970: EXEMPTIONS FROM IMPACT FEES

EDITOR'S NOTE: This section provides for exemptions from impact fees.

§6-1-970. Exemptions from impact fees.

The following structures or activities are exempt from impact fees:

(1) rebuilding the same amount of floor space of a structure that was destroyed by fire or other catastrophe;

(2) remodeling or repairing a structure that does not result in an increase in the number of service units;

(3) replacing a residential unit, including a manufactured home, with another residential unit on the same lot, if the number of service units does not increase;

(4) placing a construction trailer or office on a lot during the period of construction on the lot;

(5) constructing an addition on a residential structure which does not increase the number of service units;

(6) adding uses that are typically accessory to residential uses, such as a tennis court or a clubhouse, unless it is demonstrated clearly that the use creates a significant impact on the system's capacity; and

(7) all or part of a particular development project if:

(a) the project is determined to create affordable housing; and

(b) the exempt development's proportionate share of system improvements is funded through a revenue source other than development impact fees;

(8) constructing a new elementary, middle, or secondary school; and

(9) constructing a new volunteer fire department.

HISTORY: 1999 Act No. 118, §1; 2016 Act No. 229, §1.

SECTION 6-1-980: CALCULATION OF THE IMPACT FEE

EDITOR'S NOTE: The impact fee is to be calculated by dividing the costs of the capital improvements by the total number of projected service units that potentially could use the capital improvements.

§6-1-980. Calculation of impact fees.

(A) The impact fee for each service unit may not exceed the amount determined by dividing the costs of the capital improvements by the total number of projected service units that potentially could use the capital improvement. If the number of new service units projected over a reasonable

period of time is less than the total number of new service units shown by the approved land use assumptions at full development of the service area, the maximum impact fee for each service unit must be calculated by dividing the costs of the part of the capital improvements necessitated by and attributable to the projected new service units by the total projected new service units.

(B) An impact fee must be calculated in accordance with generally accepted accounting principles.

HISTORY: 1999 Act No. 118, §1.

CASE NOTES

Calculation of fees in town's development impact fee ordinance was sufficient where the fees were based on reasonable estimates made by town's engineer and a national provider of real estate costs, and the impact fee report indicated that the accepted level of service for projected capital improvements was the current level of service provided by the town. Charleston Trident Home Builders, Inc. v. Town Council of Town of Summerville, 369 S.C. 498, 632 S.E.2d 864 (2006).

SECTION 6-1-990: DETERMINING THE FEE PAYOR'S PROPORTIONATE SHARE

EDITOR'S NOTE: This section outlines the factors to be used in determining a developer's share of impact fees. Specifically this section allows for credits and offsets which may be used to reduce the impact fee calculated under §6-1-980.

§6-1-990. Maximum impact fee; proportionate share of costs of improvements to serve new development.

(A) The impact fee imposed upon a fee payor may not exceed a proportionate share of the costs incurred by the governmental entity in providing system improvements to serve the new development. The proportionate share is the cost attributable to the development after the governmental entity reduces the amount to be imposed by the following factors:

(1) appropriate credit, offset, or contribution of money, dedication of land, or construction of system improvements; and

(2) all other sources of funding the system improvements including funds obtained from economic development incentives or grants secured which are not required to be repaid.

(B) In determining the proportionate share of the cost of system improvements to be paid, the governmental entity imposing the impact fee must consider the:

(1) cost of existing system improvements resulting from new development within the service area or areas;

(2) means by which existing system improvements have been financed;

(3) extent to which the new development contributes to the cost of system improvements;

(4) extent to which the new development is required to contribute to the cost of existing system improvements in the future;

(5) extent to which the new development is required to provide system improvements, without charge to other properties within the service area or areas;

(6) time and price differentials inherent in a fair comparison of fees paid at different times; and

(7) availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation.

HISTORY: 1999 Act No. 118, §1.

CASE NOTES

Town's capital improvements plan, as amended by consulting firm's report, substantially complied with the statutory requirements of the Development Impact Fee Act, where the report provided a summary description of the existing facilities, indicated that impact fees were calculated to maintain current level of service for public facilities, provided an estimate of when the funds for capital improvements would be needed, and took into account all of the required factors for a proportionate share analysis except for time and price differentials, which were not needed since the report gave all costs in current dollars with no assumed inflation rate. Charleston Trident Home Builders, Inc. v. Town Council of Town of Summerville, 369 S.C. 498, 632 S.E.2d 864 (2006).

SECTION 6-1-1000: LIMIT ON DEVELOPER'S SHARE

EDITOR'S NOTE: This section is self explanatory.

§6-1-1000. Fair compensation or reimbursement of developers for costs, dedication of land or oversize facilities.

A developer required to pay a development impact fee may not be required to pay more than his proportionate share of the costs of the project, including the payment of money or contribution or dedication of land, or to oversize his facilities for use of others outside of the project without fair compensation or reimbursement.

HISTORY: 1999 Act No. 118, §1.

SECTION 6-1-1010: ACCOUNTING AND EXPENDITURE OF REVENUES

EDITOR'S NOTE: This section requires that revenues from impact fees be maintained in an interest bearing account and that accounting record must be maintained for each category of system improvements and the service area in which the fees are collected. Additionally, expenditures of impact fees must be in accordance with the capital improvements plan.

§6-1-1010. Accounting; expenditures.

§6-1-1010

(A) Revenues from all development impact fees must be maintained in one or more interest-bearing accounts. Accounting records must be maintained for each category of system improvements and the service area in which the fees are collected. Interest earned on development impact fees must be considered funds of the account on which it is earned, and must be subject to all restrictions placed on the use of impact fees pursuant to the provisions of this article.

(B) Expenditures of development impact fees must be made only for the category of system improvements and within or for the benefit of the service area for which the impact fee was imposed as shown by the capital improvements plan and as authorized in this article. Impact fees may not be used for:

(1) a purpose other than system improvement costs to create additional improvements to serve new growth;

(2) a category of system improvements other than that for which they were collected; or

(3) the benefit of service areas other than the area for which they were imposed.

HISTORY: 1999 Act No. 118, §1.

ATTORNEY GENERAL'S OPINION

Section 6-1-1010 does not include a provision for the supply of affordable housing for low-income individuals. For a local housing trust fund to be funded with proceeds from a development impact fee, the General Assembly would need to amend the Development Impact Fee Act to include affordable housing as a public facility. If the General Assembly were to enact such an amendment, any impact fee must meet the requirements of a uniform service charge, as set forth in Brown v. County of Horry to be valid. Unpublished Op. Atty. Gen. Dated January 11, 2006.

SECTION 6-1-1020: REFUNDS OF IMPACT FEES

EDITOR'S NOTE: Impact fees must be refunded if the impact fees have not been expended within three years of the date they were scheduled to be expended or a building permit or permit for installation of a manufactured home is denied. A refund must be sent to the owner of record within ninety days after it is determined by the entity that a refund is due.

§6-1-1020. Refunds of impact fees.

(A) An impact fee must be refunded to the owner of record of property on which a development impact fee has been paid if:

(1) the impact fees have not been expended within three years of the date they were scheduled to be expended on a first-in, first-out basis; or

(2) a building permit or permit for installation of a manufactured home is denied.

(B) When the right to a refund exists, the governmental entity shall send a refund to the owner of record within ninety days after it is determined by the entity that a refund is due.

(C) A refund must include the pro rata portion of interest earned while on deposit in the impact fee account.

(D) A person entitled to a refund has standing to sue for a refund pursuant to this article if there has not been a timely payment of a refund pursuant to subsection (B) of this section.

HISTORY: 1999 Act No. 118, §1.

SECTION 6-1-1030: APPEALS

EDITOR'S NOTE: A governmental entity which adopts a development impact fee ordinance shall provide for administrative appeals by the developer or fee payor. The governmental entity shall provide for mediation by a qualified independent party upon voluntary agreement by the entity and the fee payor.

§6-1-1030. Appeals.

(A) A governmental entity which adopts a development impact fee ordinance shall provide for administrative appeals by the developer or fee payor.

(B) A fee payor may pay a development impact fee under protest. A fee payor making the payment is not estopped from exercising the right of appeal provided in this article, nor is the fee payor estopped from receiving a refund of an amount considered to have been illegally collected. Instead of making a payment of an impact fee under protest, a fee payor, at his option, may post a bond or submit an irrevocable letter of credit for the amount of impact fees due, pending the outcome of an appeal.

(C) A governmental entity which adopts a development impact fee ordinance shall provide for mediation by a qualified independent party, upon voluntary agreement by both the fee payor and the governmental entity, to address a disagreement related to the impact fee for proposed development. Participation in mediation does not preclude the fee payor from pursuing other remedies provided for in this section or otherwise available by law.

HISTORY: 1999 Act No. 118, §1.

SECTION 6-1-1040: COLLECTION OF IMPACT FEES

EDITOR'S NOTE: A governmental entity may provide in a development impact fee ordinance the method for collection of development impact fees.

§6-1-1040. Collection of development impact fees.

A governmental entity may provide in a development impact fee ordinance the method for collection of development impact fees including, but not limited to:

(1) additions to the fee for reasonable interest and penalties for nonpayment or late payment;

(2) withholding of the certificate of occupancy, or building permit if no certificate of occupancy is required, until the development impact fee is paid;

(3) withholding of utility services until the development impact fee is paid; and

(4) imposing liens for failure to pay timely a development impact fee.

HISTORY: 1999 Act No. 118, §1.

SECTION 6-1-1050: AGREEMENTS IN LIEU OF IMPACT FEES

EDITOR'S NOTE: A fee payor and developer may enter into an agreement with a governmental entity in lieu of payment of impact fees.

§6-1-1050. Permissible agreements for payments or construction or installation of improvements by fee payors and developers; credits and reimbursements.

A fee payor and developer may enter into an agreement with a governmental entity, including an agreement entered into pursuant to the South Carolina Local Government Development Agreement Act, providing for payments instead of impact fees for facilities or services. That agreement may provide for the construction or installation of system improvements by the fee payor or developer and for credits or reimbursements for costs incurred by a fee payor or developer including interproject transfers of credits or reimbursement for project improvements which are used or shared by more than one development project. An impact fee may not be imposed on a fee payor or developer who has entered into an agreement as described in this section.

HISTORY: 1999 Act No. 118, §1.

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

EDITOR'S NOTE: Existing impact fee ordinances are not affected by this article until termination of the ordinance.

§6-1-1060. Article shall not affect existing laws.

(A) The provisions of this article do not repeal existing laws authorizing a governmental entity to impose fees or require contributions or property dedications for capital improvements. A development impact fee adopted in accordance with existing laws before the enactment of this article is not affected until termination of the development impact fee. A subsequent change or reenactment of the development impact fee must comply with the provisions of this article. Requirements for developers to pay in whole or in part for system improvements may be imposed by governmental entities only by way of impact fees imposed pursuant to the ordinance.

(B) Notwithstanding another provision of this article, property for which a valid building permit or certificate of occupancy has been issued or construction has commenced before the

effective date of a development impact fee ordinance is not subject to additional development impact fees.

HISTORY: 1999 Act No. 118, §1.

ATTORNEY GENERAL'S OPINION

The grandfather clause [§6-1-1060] 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).

SECTION 6-1-1070: IMPROVEMENT OF SPD AND SCHOOL FACILITIES

EDITOR'S NOTE: If the proposed system improvements include the improvement of public facilities under the jurisdiction of another unit of government, an agreement between the governmental entities must specify the reasonable share of funding by each unit. A governmental entity may enter into an agreement with another unit of government that has the responsibility of providing the service for which an impact fee may be imposed. The determination of the amount of the impact fee for the contracting governmental entity must be made in the same manner as provided in this article. Although this provision would allow a joint project with a school district, it would not allow the use of the fee for a school building. Possible uses include ball fields or other facilities.

§6-1-1070. Shared funding among units of government; agreements.

(A) If the proposed system improvements include the improvement of public facilities under the jurisdiction of another unit of government including, but not limited to, a special purpose district that does not provide water and wastewater utilities, a school district, and a public service district, an agreement between the governmental entity and other unit of government must specify the reasonable share of funding by each unit. The governmental entity authorized to impose impact fees may not assume more than its reasonable share of funding joint improvements, nor may another unit of government which is not authorized to impose impact fees do so unless the expenditure is pursuant to an agreement under Section 6-1-1050 of this section.

(B) A governmental entity may enter into an agreement with another unit of government including, but not limited to, a special purpose district that does not provide water and wastewater utilities, a school district, and a public service district, that has the responsibility of providing the service for which an impact fee may be imposed. The determination of the amount of the impact fee for the contracting governmental entity must be made in the same manner and is subject to the same procedures and limitations as provided in this article. The agreement must provide for the collection

of the impact fee by the governmental entity and for the expenditure of the impact fee by another unit of government including, but not limited to, a special purpose district that does not provide water and wastewater utilities, a school district, and a public services district unless otherwise provided by contract.

HISTORY: 1999 Act No. 118, §1.

SECTION 6-1-1080: WATER AND SEWER EXCLUSION

EDITOR'S NOTE: This chapter does not apply to a development impact fee for water or wastewater utilities, such as a tap fee, except that in order to impose an impact fee the utility must have a capital improvements plan before the imposition of the impact fee, must prepare a report to be made public before imposition of the impact fee, and must enact the fee in accordance with the requirements of Article 3 of this chapter (§6-1-300 through §6-1-330).Tap fees for water and sewer service are the most common uses of impact fees, and are excluded from the new requirements of this legislation.

§6-1-1080. Exemptions; water or wastewater utilities.

The provisions of this chapter do not apply to a development impact fee for water or wastewater utilities, or both, imposed by a city, county, commissioners of public works, special purpose district, or nonprofit corporation organized pursuant to Chapter 35 or 36 of Title 33, except that in order to impose a development impact fee for water or wastewater utilities, or both, the city, county, commissioners of public works, special purpose district or nonprofit corporation organized pursuant to Chapter 35 or 36 of Title 33 must:

(1) have a capital improvements plan before imposition of the development impact fee; and

(2) prepare a report to be made public before imposition of the development impact fee, which shall include, but not be limited to, an explanation of the basis, use, calculation, and method of collection of the development impact fee; and

(3) enact the fee in accordance with the requirements of Article 3 of this chapter.

HISTORY: 1999 Act No. 118, §1.

SECTION 6-1-1090: EFFECT OF MUNICIPAL ANNEXATION

EDITOR'S NOTE: This section provides that annexation by a municipality of an area subject to this fee does not affect the fee unless the municipality assumes the liability to be satisfied by impact fee revenue.

§6-1-1090. Annexations by municipalities.

A county development impact fee ordinance imposed in an area which is annexed by a municipality is not affected by this article until the development impact fee terminates, unless the municipality assumes any liability which is to be paid with the impact fee revenue.

HISTORY: 1999 Act No. 118, §1.

SECTION 6-1-2000: NO GRANT OF TAXING AUTHORITY

EDITOR'S NOTE: This section is self explanatory.

§6-1-2000. Taxation or revenue authority by political subdivisions.

This article shall not create, grant, or confer any new or additional taxing or revenue raising authority to a political subdivision which was not specifically granted to that entity by a previous act of the General Assembly.

HISTORY: 1999 Act No. 118, §1.

SECTION 6-1-2010: PUBLIC NOTICE

EDITOR'S NOTE: This section excuses the imposing governmental entities from the FOI Act notice requirements and other specialized public notice requirements.

§6-1-2010. Compliance with public notice or public hearing requirements.

Compliance with any requirement for public notice or public hearing in this article is considered to be in compliance with any other public notice or public hearing requirement otherwise applicable including, but not limited to, the provisions of Chapter 4, Title 30, and Article 3 of this chapter.

HISTORY: 1999 Act No. 118, §1.

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.

§4-35-10

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 recyclement, 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. . ."

§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.

ATTORNEY GENERAL'S OPINIONS

Though the assessment rates may vary, county council does not have the authority to defer the assessment without penalty for a developer but not for other property owners in the improvement district. The assessment must be imposed upon all property in the district and they must be annually assessed and collected with the property taxes. In its definition of "assessment," §4-35-30(1) provides that the "assessment must be made upon all real property located within the district, other

than property constituting improvements." Additionally, the State Constitution requires that a special assessment be imposed on any property owner who is receiving the benefits of the improvements to their property. Op. Atty. Gen. Dated September 28, 2015 (2015 WL 5896031).

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 authorizes 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.

ATTORNEY GENERAL'S OPINIONS

Though the assessment rates may vary, no constitutional or statutory provisions allow county council to defer assessments for any property within the improvement district. The assessment must be imposed upon all property in the district and they must be annually assessed and collected with the property taxes. Op. Atty. Gen. Dated September 28, 2015 (2015 WL 5896031).

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.

ATTORNEY GENERAL'S OPINIONS

County council does not have the authority to grant a 2-year assessment deferral without penalty for a developer but not the other property owners in the improvement district. Section 4-35-120 provides that when a governing body confirms an assessment, it must be "annually assessed and collected with the property taxes." Op. Atty. Gen. Dated September 28, 2015 (2015 WL 5896031).

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.

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 recyclement, 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. Authority to exercise powers and provisions of this chapter.

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.Relation to existing 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. Assessments.

(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. Issuance of special district bonds.

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. Effect on 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. Inclusion of existing improvements.

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.

§6-35-90

HISTORY: 2008 Act No. 350, §1.

SECTION 6-35-95: DISCLOSURE BY OWNER OR DEVELOPER 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. Disclosure to prospective purchasers that property subject to 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. Collection of improvement fees.

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 my multiple districts ('collective improvements').

§6-35-110. Improvements to be funded by multiple districts; deposit in trust fund.

(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 improvement district and impose assessment.

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 by public body describing proposed district and improvement plan; description of payment of costs; public hearing.

(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 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 of public hearing; publication.

(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 PUBLIC PROPERTY

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

§6-35-160. Improvement as property of a public entity; alteration and leasing.

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.

§6-35-160

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. Ordinance creating district; findings; contents; notice of adoption.

(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. Assessment roll; preparation and notice; hearing of objections; correction and confirmation of assessment; waiver of notice requirements.

(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. Abolishing district; public 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

Part II of this publication contains provisions which may be implemented or initiated by the county governing body in order to impose the sales and use tax. The revenues then may be used for various purposes as defined in the statutes. These include the Capital Project Sales Tax Act which is a local option sales tax for use in constructing capital projects such as roads, civic centers, police and fire facilities, jails, and a number of other projects, the Local Option Sales Tax (LOST) which may be used to both reduce the property tax and diversify local government revenue streams, and the Transportation Project Sales Tax which is utilized for transportation related purposes. The Personal Property Tax Exemption Sales Tax and the Local Property Tax Credit Sales Tax are intended to be used as a replacement mechanism to swap ad valorem taxation for sales and use tax. All of these statutes grant counties sources of revenue other than the property tax.

The Voting Rights Act requires that all referenda, including the various local option sales taxes, must be pre-cleared by the U.S. Justice Department. However, In *Shelby Cnty., Ala. v. Holder*, 133 S. Ct. 2612, 186 L. Ed. 2d 651 (2013), the U.S. Supreme Court held that the formula in §4 of the Act that determines which states are subject to the pre-clearance requirements in §5 is unconstitutional. Technically, the pre-clearance provisions in §5 still apply, but with no formula to determine which jurisdictions are subject to §5, the pre-clearance requirements of the Voting Rights Act are practically suspended. Congress can adopt a new formula in §4 at any time, which would re-activate the pre-clearance requirements found in §5.

ARTICLE 1: LOCAL OPTION SALES TAX

SECTION 4-10-10: DEFINITIONS

EDITOR'S NOTE: This section is self explanatory. Note that "County area" means all the area within the geographical boundaries of a county, including the incorporated areas of the county.

§4-10-10. Definitions.

For purposes of this chapter:

(1) "County area" means a county and all municipalities within its geographical boundaries.

(2) "County" means the unincorporated areas of a county area or county government as the use of the term dictates.

(3) "Municipality" means a municipal corporation created pursuant to Chapter 1 of Title 5 or a municipal government as the use of the term dictates.

(4) "Minimum distribution" means an amount equal to two million dollars for the first distribution and after that adjusted annually on a cumulative basis by a percentage equal to the increase in revenues credited to the Education Improvement Act Fund for the most recently completed fiscal year over the revenues credited to that fund in the preceding fiscal year.

(5) "Population" means population as determined in the most recent official United States Census.

(6*) "General election" means the Tuesday following the first Monday in November in any year.

HISTORY: 1990 Act No. 317, §1; 2016 Act No. 250, §1.

* At the time this supplement was printed, this item was not yet designated, but is expected to be designated as printed here.

Cross references --

Definition of county area given in §4-10-10(1) used elsewhere, see §4-10-330.

ATTORNEY GENERAL'S OPINION

It is likely a court would find proposed ordinance is within authority of municipality to provide for government services deemed necessary and proper for security, general welfare, and convenience of municipality or for preserving health, peace, order, and good government. A court, however, would most likely find proposed ordinance invalid since purposes and uses of funds from municipal accommodations tax and state local option sales tax are in conflict. 1993 Op. Atty. Gen., No. 93-76.

CASE NOTES

The title of the Local Option Sale Tax legislation, §4-10-20, meets the requirements of S.C. Const. Art. III, §17. The title (1) states the general subject, local option sales tax, (2) states the requirements for a "referendum, collection, use and distribution" of such a tax, and (3) conveys reasonable notice that the distribution scheme of the local option sales tax is within the Act. Westvaco Corp. v. S.C. Dept. of Revenue, 321 S.C. 59, 467 S.E.2d 739 (1995), rehearing denied.

A county ordinance assessing a tax upon transient accommodations did not conflict with local sales taxes or the statute imposing a statewide tax on accommodations where the ordinance did not attempt to change or circumvent any of the requirements of the State statutes, and nothing in the State statutes prohibited the county from imposing an additional and separate charge on accommodations rentals. Hospitality Ass'n of S.C., Inc. v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995).

SECTION 4-10-20: IMPOSITION IF TAX AND EXEMPTIONS

EDITOR'S NOTE: This section grants a county the authority, subject to referendum approval, to impose a one cent sales tax on the same goods which are subject to the state sales tax.

§4-10-20. Rate of tax; exemptions; reports by utilities; rental units.

A county, upon referendum approval, may levy a sales and use tax of one percent on the gross proceeds of sales within the county area which are subject to tax under Chapter 36 of Title 12 and the enforcement provisions of Chapter 54 of Title 12. The sale of items with a maximum tax levied in accordance with Section 12-36-2110 and Article 17 of Chapter 36 of Title 12 is exempt from the local sales and use tax. The adopted rate also applies to tangible personal property subject to the use tax in Section 12-36-1310. Taxpayers required to remit taxes under Section 12-36-1310 shall identify the county or municipality in the county area in which tangible personal property purchased at retail is stored, used, or consumed in this State. Utilities are required to report sales in the county or municipality in which consumption of the tangible personal property occurs. A taxpayer subject to the tax imposed by Section 12-36-920, who owns or manages rental units in more than one county or municipality, shall report separately in his sales tax return the total gross proceeds from business done in each county or municipality.

HISTORY: 1990 Act No. 317, §1; 1997 Act No. 149, §9A; 1997 Act No. 151, §1A.

Cross references --

Construction contracts, see §4-10-25.
Payment in lieu of taxes, see §4-29-69.
Use of LOST in estimated tax liability, see §12-35-580.

ATTORNEY GENERAL'S OPINIONS

Eligible unit within county area may not receive in current fiscal year any less of distribution of LOST funds than that unit received in previous fiscal year unless there is reduction in collections from previous year. This result applies to municipalities in Charleston County notwithstanding incorporation during current year of James Island. Municipalities in Charleston County are required to receive in current fiscal year at least as much LOST revenues as those entities received in prior fiscal year. 1993 Op. Atty. Gen. No. 93-59.

Retail sale of tangible personal property is not subject to local option sales tax when seller located within county that imposes tax is required to deliver property to purchaser outside that county. 1991 Op. Atty. Gen. No 91-47, p. 121.

CASE NOTES

The Local Option Sale Tax (LOST) scheme does not alter the levying of property taxes nor the assessment of property; rather, the scheme merely levies a sales tax and distributes the revenue in the form of a property tax credit. Westvaco Corp. v. S.C. Dept. of Revenue, 321 S.C. 59, 467 S.E.2d 739 (1995), rehearing denied.

A county ordinance assessing a tax upon transient accommodations did not conflict with local sales taxes or the statute imposing a statewide tax on accommodations where the ordinance did not attempt to change or circumvent any of the requirements of the State statutes, and nothing in the statutes prohibited the county from imposing an additional and separate charge on accommodations rentals. Hospitality Ass'n of S. C., Inc. v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995).

SECTION 4-10-25: CONSTRUCTION CONTRACTS

EDITOR'S NOTE: Construction contracts entered into either executed prior to the imposition of the LOST or in which the written bid was submitted prior to the imposition of the LOST are exempt from the local sales and use tax if a copy of the bill is filed with the Department of Revenue within six months.

§4-10-25. Construction contracts; application.

The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under Section 4-10-20 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 local sales and use tax provided in Section 4-10-20 if a verified copy of the contract is filed with the South Carolina Department of Revenue within six months after the imposition of the local sales and use tax.

HISTORY: 1990 Act No. 317, §1; 1993 Act No. 181, §54.

SECTION 4-10-30: REFERENDUM TO ADOPT TAX

EDITOR'S NOTE: This section authorizes a referendum on the question of implementing the LOST. If the initial referendum fails, a county council may call for another referendum. A referendum after the initial referendum may only be held once in twelve months and must be held on the Tuesday following the first Monday in November.

Two weeks before the referendum the county council and the municipal councils must publish in a newspaper of general circulation the anticipated credit against property taxes in the first year of implementation of the property tax credit fund. The notice must show the anticipated credit

on a primary residence, personal property, a commercial facility and an industrial facility. This is in addition to the ordinary notice required under §7-13-35.

§4-10-30. Referendum on question of implementing local option sales and use tax within county.

(A) The county election commission in each county shall conduct a referendum on the Tuesday following the first Monday in November on the question of implementing the local option sales and use tax within the county area. The state election laws apply to the referendum mutatis mutandis. The county election commission shall publish the results of the referendum and certify them to the county council. The sales and use tax must not be imposed in the county area, unless a majority of the qualified electors voting in the referendum approve the question.

(B) The ballot must read substantially as follows:

"Must a one percent sales and use tax be levied in _____ County for the purpose of allowing a credit against a taxpayer's county and municipal ad valorem tax liability and for the purpose of funding county and municipal operations in the _____ County area?

Yes [ ]
No [ ]"

(C) If the question is not approved at the initial referendum, the county council may call for another referendum on the question. However, following the initial referendum, a referendum for this purpose must not be held more often than once in twelve months and must be held on the Tuesday following the first Monday in November.

(D) Two weeks before the referendum the county council and the municipal councils in the county area shall publish in a newspaper of general circulation within the jurisdiction the anticipated credit against property taxes in the first year of implementation of the property tax credit fund. The notice must show the anticipated credit on the following classes of property:

(1) a primary residence;
(2) personal property including, but not limited to, an automobile;
(3) a commercial facility;
(4) an industrial facility.

HISTORY: 1990 Act No. 317, §1.

Cross references --
Ordinary notice requirement of elections, see §7-13-35.

CASE NOTES

Section 7-13-400 provides for the form of the ballot when questions are submitted. The purpose of §7-13-400 is to aid the voter in understanding the *meaning* of his vote, not the *reason* for it. Instead of explaining *how* the voter could vote for or against the sales tax, the instructions to the voter in this case attributed *reasons* to vote in favor of the measure. Section 7-13-400 sets forth the format to create a neutrally worded ballot and does not contemplate words of advocacy. Accordingly, the election results in this case must be voided. Douan v. Charleston County Council, 357 S.C. 601, 594 S.E.2d 261(2003).

ATTORNEY GENERAL'S OPINION

Eligible unit within county area may not receive in current fiscal year any less of distribution of LOST funds than that unit received in previous fiscal year unless there is reduction in collections from previous year. This result applies to municipalities in Charleston County notwithstanding incorporation during current year of James Island. Municipalities in Charleston County are required to receive in current fiscal year at least as much LOST revenues as those entities received in prior fiscal year. 1993 Op. Atty. Gen., No. 93-59.

SECTION 4-10-35: REPEAL OF TAX

EDITOR'S NOTE: This section describes how to rescind the LOST. A referendum will be held on the question of rescission upon the petition of 15 percent of the qualified electors. This referendum may not be held earlier than two years after the tax has been levied in the county. If a majority of electors vote against rescinding the tax, no further rescission referendums may be held for a period of two years. If they vote in favor of rescinding the tax, the tax may not be reimposed in the county for a period of two years

§4-10-35. Petition to rescind tax; referendum.

(A) Upon petition of fifteen percent of the qualified electors of a county presented to the governing body of that county which has implemented the one percent sales and use tax authorized by this chapter requesting that this tax be rescinded, the county governing body shall conduct a referendum on the Tuesday following the first Monday in November next following on the question of rescinding the local option sales and use tax within the county area. The state election laws apply to the referendum mutatis mutandis. The county election commission shall publish the results of the referendum and certify them to the county council. The sales and use tax must be rescinded in the county area upon the certification of the results if a majority of the qualified electors voting in the referendum vote in favor of rescinding the tax.

(B) The ballot must read substantially as follows:

"Must the one percent local option sales and use tax levied in _____ County pursuant to Chapter 10, Title 4 of the 1976 Code be rescinded?

Yes [ ]
No [ ]"

(C) A referendum for rescission of this tax may not be held earlier than two years after the tax has been levied in the county. If a majority of the qualified electors voting in the rescission referendum vote against rescinding the tax, no further rescission referendums may be held for a period of two years. If a majority of the qualified electors vote in favor of rescinding the tax, the tax may not be reimposed in the county for a period of two years. The petition requesting rescission must be presented to the county governing body at least one hundred twenty days before the Tuesday following the first Monday of November of that year or the referendum must be held on the Tuesday following the first Monday of November of the following year.

HISTORY: 1990 Act No. 317, §1.

CASE NOTES

Section 7-13-400 provides for the form of the ballot when questions are submitted. The purpose of §7-13-400 is to aid the voter in understanding the *meaning* of his vote, not the *reason* for it. Instead of explaining *how* the voter could vote for or against the sales tax, the instructions to the voter in this case attributed *reasons* to vote in favor of the measure. Section 7-13-400 sets forth the format to create a neutrally worded ballot and does not contemplate words of advocacy. Accordingly, the election results in this case must be voided. Douan v. Charleston County Council, 357 S.C. 601, 594 S.E.2d 261(2003).

SECTION 4-10-40: PROPERTY TAX CREDIT FUND DISTRIBUTION

EDITOR'S NOTE: Section 4-10-40 explains how revenue from the Property Tax Credit Fund is to be distributed. Seventy-one percent of the LOST collected goes into the Property Tax Credit Fund (see §4-10-90). The revenue collected in this fund is distributed 67 percent to the county and 33 percent to the municipalities in the county area.

§4-10-40. Distribution of revenue allocated to Property Tax Credit Fund.

(A) The revenue allocated to the Property Tax Credit Fund, as provided in Section 4-10-90, must be distributed to the county and the municipalities in the county area as follows:

(1) sixty-seven percent to the county;

(2) thirty-three percent to the municipalities in the county area so that each municipality receives an amount equal to what its percentage of population bears to the total population in all the municipalities in the county area.

(B)(1) All of the revenue received by a county and municipality from the Property Tax Credit Fund must be used to provide a credit against the property tax liability of taxpayers in the county and municipality in an amount determined by multiplying the appraised value of the taxpayer's taxable property by a fraction in which the numerator is the total estimated revenue received by the county or municipality from the Property Tax Credit Fund during the applicable fiscal year of the political subdivision and the denominator is the total of the appraised value of taxable property in the county or municipality as of January 1 of the applicable taxable year.

(2) For purposes of this chapter:

(a) property tax liability includes liability to pay fees in lieu of property taxes;

(b) taxable property includes exempt property for which the owner must pay fees in lieu of property taxes; and

(c) reference to liability for fees in lieu of tax applies to fees arising pursuant to Section 4-1-170 in connection with location in a multi-county industrial or business park as provided in Section 13 of Article VIII of the Constitution of the State of South Carolina.

(C) All interest accruing to the credit funds received by a county or a municipality from the Property Tax Credit Fund must be used to provide an additional credit as provided in this section.

(D) If a municipality has adopted or adopts a redevelopment plan for a tax increment financed redevelopment project pursuant to Chapter 6 of Title 31, a deficiency resulting from the application of this section in the tax allocation fund or separate fund established to pay project costs must be funded from the municipality's allocation from the County/Municipal Revenue Fund each year so as to provide full funding for the project. A tax increment financing bond holder, agent, or trustee may enforce this requirement.

(E) For motor vehicles subject to the payment of property taxes pursuant to Article 21, Chapter 37 of Title 12, the credit provided under this section applies against the tax liability for motor vehicle tax years beginning after December of the year in which the credit is calculated.

HISTORY: 1990 Act No. 317, §1; 1991 Act No. 109, §8; 1991 Act No. 168, §12; 1998 Act No. 442, §13.

Cross references --

Additional property tax credit, see §4-10-50.

ATTORNEY GENERAL'S OPINIONS

Credit for county ad valorem taxes to be funded from local option sales tax applies to taxable property throughout county, including property situate within and without corporate limits of municipalities within county. 1990 Op. Atty. Gen., No. 90-59.

Property qualifying for homestead exemption is not taxable property and hence is not included in determining ratio for calculating tax credit provided by local option sales tax. 1991 Op. Atty. Gen., No. 91-28 p. 81.

Eligible unit within county area may not receive in current fiscal year any less of distribution of LOST funds than that unit received in previous fiscal year unless there is reduction in collections from previous year. This result applies to municipalities in Charleston County notwithstanding incorporation during current year of James Island. Municipalities in Charleston County are required to receive in current fiscal year at least as much LOST revenues as those entities received in prior fiscal year. 1993 Op. Atty. Gen., No. 93-59.

As long as all municipal property taxes, if any, have been credited to the taxpayers and as long as it serves a valid public purpose, the Local Option Sales Tax would not preclude a municipality from coming to an agreement with a county to use funds received by the municipality for the Property Tax Credit Fund to further reduce county property taxes owed by the municipal residents. Excess funds from the municipality's Property Tax Credit Fund may also be distributed in the same manner to pay for public services for its citizens by a special purpose district. Unpublished Op. Atty. Gen. Dated June 13, 2014.

SECTION 4-10-50: DISTRIBUTION OF COUNTY/MUNICIPAL REVENUE FUND

EDITOR'S NOTE: Section 4-10-50 explains how revenue from the County/Municipal Revenue Fund is to be distributed. Twenty-nine percent of the LOST collected goes into the County/Municipal Revenue Fund (see §4-10-90). The statute dictates that the proceeds contained in the County/Municipal Revenue Fund are distributed to the county and municipalities: 50 percent based upon location of sale and 50 percent based upon population. It is important to note that the county's population is based upon the entire county area. Also important is that some or all of the revenue distributed under this section may be used as an additional property tax credit.

§4-10-50. Distribution of revenue set aside for the County/Municipal Revenue Fund.

(A) The revenue generated in a county area and set aside and allocated to the County/Municipal Revenue Fund must be distributed to the county and the municipalities in the county area as follows:

(1) fifty percent based upon the location of the sale;

(2) fifty percent based on population.

(B) The population of the county is the population of the county area, and the population of the municipalities is the population within the corporate boundaries of the municipalities in the county area.

(C) Revenue distributed to a county or municipality under this section may be used to provide an additional property tax credit in the manner provided in Section 4-10-40(B).

HISTORY: 1990 Act No. 317, §1; 1991 Act No. 168, §14.

ATTORNEY GENERAL'S OPINIONS

Our courts recognize economic development as a legitimate public purpose. A facility for teaching medical students is a legitimate public purpose because it promotes economic development in the city by attracting students and faculty and revitalizes the city. A court would likely find that because the proposed medical school facility serves a public purpose and the city's corporate purpose, the city could use tax revenue from the County/Municipal Revenue Fund to fund such a project. Op. Atty. Gen. Dated April 29, 2014 (2014 WL 1909729).

SECTION 4-10-60: SHARED REVENUE FUND

EDITOR'S NOTE: This section distributes from county areas which receive more than $5 million from LOST a percentage of their revenues to counties which receive less than a minimum distribution under LOST.

§4-10-60. Withholdings from amount collected by counties; apportionment amongst other counties.

(A) At the end of each fiscal year and before August first a percentage, to be determined by the State Treasurer and not to exceed five percent of collections, must be withheld from those county areas collecting five million dollars or more from the sales and use tax authorized by this chapter, and that amount must be distributed to assure that each county area receives a minimum distribution. The difference between the minimum distribution and the actual collections within a county area must be distributed to the eligible units within the county area based on population as provided for in this chapter.

(B) The amount withheld from those county areas collecting five million dollars or more must be apportioned among the county and the municipalities in the county area in the same proportion as those units received remittances as provided in this chapter. An amount withheld in excess must be distributed back to the county areas whose collections exceed five million dollars based on the ratio of the funds available to the collections by each county area.

(C) As a condition precedent to a county area being subject to an assessment by the State Treasurer or being a recipient of revenue pursuant to this section, the county area must have implemented the sales and use tax as authorized by this chapter.

(D) The provisions of subsection (A) do not apply if the total number of county areas adopting the sales and use tax authorized by this chapter, which are projected by the Department of Revenue to collect five million dollars or more, generated fifty percent or less during the most currently available fiscal year of the total statewide collections from the levy of a one percent sales and use tax, then those county areas generating five million dollars or more must be assessed five percent of the amount generated in the county area, and that amount must be used as a supplement to those county areas generating less than the minimum distribution. The supplement to those county areas generating less than the minimum distribution must be distributed so that each county area receives an amount equal to what its percentage of population bears to the total population in all of the county areas generating less than the minimum distribution which have implemented the sales and use tax authorized by this chapter. Once the amount of the supplement has been determined for each of the county areas to be supplemented, then the supplement must be distributed to the eligible units within the county area based on population as provided for in this chapter. However, the supplement to the county area combined with collections within the county area may not exceed the minimum distribution.

HISTORY: 1990 Act No. 317, §1; 1993 Act No. 181, §55.

ATTORNEY GENERAL'S OPINION

Local sales tax which is withheld under §4-10-60(D) must be distributed to county areas that levy tax but collect less than amount of minimum distribution. Amount distributed to such area is percentage of tax determined by applying percentage of population of receiving county area to total population of all county areas that collect less than minimum distribution. Distribution to a county area, however, may not exceed difference between tax collected by county area and amount of minimum distribution. Any withholding tax in excess of amount needed to fund disbursements must be returned to contributing county areas. 1991 Op. Atty. Gen., No. 91-9.

SECTION 4-10-65: UNIDENTIFIED REVENUE DISTRIBUTION

EDITOR'S NOTE: Unidentified revenue can result from an error by the merchant in identifying the proper governmental unit, especially in terms of proper municipal identification.

§4-10-65. Local option tax revenues not identified as to unit shall go to local option supplemental revenue fund.

Funds collected by the department from the local option sales tax which are not identified as to the governmental unit due the tax, and cannot be so identified after a reasonable effort by the department to determine the appropriate governmental unit, must be deposited to a local option supplemental revenue fund. These funds must be distributed in accordance with Section 4-10-60 to those counties generating less than the minimum distribution.

HISTORY: 1993 Act No. 164, Part II, §99; 1999 Act No. 93, §1.

SECTION 4-10-67: LOCAL OPTION USE TAX DISTRIBUTION

EDITOR'S NOTE: This section is self-explanatory.

§4-10-67. Deposit and distribution of local option use tax.

Local option use tax collected by the department in conjunction with the filing of individual income tax returns must be deposited to a local option supplemental revenue fund and distributed in accordance with Section 4-10-60 to those counties generating less than their minimum distribution.

HISTORY: 2000 Act No. 399, §3(S).

SECTION 4-10-70: AMOUNT TO BE RECEIVED BY ELIGIBLE UNIT WITHIN COUNTY AREA

EDITOR'S NOTE: This section states that no eligible unit within a county area may receive less from the distribution of LOST than it received in the previous fiscal year unless the amount of collections is less that the preceding years collections. According to the Attorney General's Opinion cited below, if a new municipality is introduced into the county area, each municipality will receive its minimum distribution (The same amount it received in the previous fiscal year, for the new entity this would be $ 0), then the revenue would be distributed as prescribed by the normal distribution statutes.

§4-10-70. Determination of amount to be received by eligible unit within county area.

No eligible unit within a county area may receive less from the distribution of the sales and use tax authorized by this chapter than it received in the previous fiscal year. However, if the amount of collections from the sales and use tax in the county area is less than the preceding fiscal year's collections, then the distributions to the eligible units within the county area much be reduced on a proportional basis.

HISTORY: 1990 Act No. 317, §1.

ATTORNEY GENERAL'S OPINION

Eligible unit within county area may not receive in current fiscal year any less of distribution of LOST funds than that unit received in previous fiscal year unless there is reduction in collections from previous year. This result applies to municipalities in Charleston County notwithstanding incorporation during current year of James Island. Municipalities in Charleston County are required to receive in current fiscal year at least as must LOST revenues as those entities received in prior fiscal year. 1993 Op. Atty. Gen., No. 93-59.

SECTION 4-10-80: REVENUE COLLECTION REPORTS

EDITOR'S NOTE: By August 15 the State Treasurer must report to the county chief administrative officers, county treasurers, and municipal clerks the total amount of LOST revenue collected in their county area.

§4-10-80. Reports as to total amount of revenue collected.

Annually by August fifteenth the State Treasurer shall report to the county chief administrative officers, county treasurers, and municipal clerks in those county areas which levy the sales and use tax authorized by this chapter the total amount of revenue collected as reported by the Department of Revenue in the county area for the preceding fiscal year.

HISTORY: 1990 Act No. 317, §1; 1993 Act No. 181, §56.

SECTION 4-10-90: TAX ADMINISTRATION AND COLLECTION AND NOTIFICATION OF ADOPTION

EDITOR'S NOTE: The purpose of this section is to explain how the state is to administer and collect the local option sales tax. The Department of Revenue is responsible for collecting LOST. After a county adopts the LOST by referendum, the county must notify the Department of Revenue by December 31 for the tax to be imposed on May 1. If the county fails to notify the Department by December 31, then the imposition is delayed for a year. Subsections (3)(1) through (5) contain a sliding scale for distribution between the Revenue Fund and the Credit Fund. The phase in occurred in the first years after adoption of the LOST statute. The division is now 71 percent to the Property Tax Credit Fund and 29 percent to the County/Municipal Revenue Fund.

§4-10-90. Department of Revenue to administer and collect local sales and use tax; forms; regulations; notice by county that tax has been approved; revenues to be credited to Local Sales and Use Tax Fund; reports to State Treasurer; refunds.

(A) The Department of Revenue shall administer and collect the local sales and use tax in the manner that sales and use taxes are administered and collected pursuant to Chapter 36 of Title 12. The commission may prescribe forms and promulgate regulations in conformity with this chapter, including tables prescribing the amount to be added to the sales price. The county shall notify the Department of Revenue and the State Treasurer through delivery of a certified copy of a resolution adopted by the county by December thirty-first following the referendum for the tax to be imposed May first. Failure to deliver the resolution by December thirty-first causes a delay of the imposition until the first day of May of the next calendar year. Notwithstanding the provisions of this subsection, the local sales and use tax must not be imposed before July first following the first referendum held pursuant to Section 4-10-30.

(B) All revenues collected by the Department of Revenue on behalf of a county area pursuant to this chapter must be remitted to the State Treasurer to be credited to a Local Sales and Use Tax

Fund which is separate and distinct from the state general fund. After deducting the amount of refunds made and the costs to the Department of Revenue of administering the tax, not to exceed one-half of one percent of the fund or seven hundred fifty thousand dollars, whichever is greater, the State Treasurer shall deposit the revenue into the Local Sales and Use Tax Fund which consists of two separate funds: the Property Tax Credit Fund and the County/Municipal Revenue Fund. The revenue collected pursuant to this chapter must be allocated to each fund as follows:

(1) During the first year after the effective date of this act, sixty-three percent to the Property Tax Credit Fund and thirty-seven percent to the County/Municipal Revenue Fund.

(2) During the second year after the effective date of this act, sixty-five percent to the Property Tax Credit Fund and thirty-five percent to the County/Municipal Revenue Fund.

(3) During the third year after the effective date of this act, sixty-seven percent to the Property Tax Credit Fund and thirty-three percent to the County/Municipal Revenue Fund.

(4) During the fourth year after the effective date of this act, sixty-nine percent to the Property Tax Credit Fund and thirty-one percent to the County/Municipal Revenue Fund.

(5) During the fifth year after the effective date of this act, and each year thereafter, seventy-one percent to the Property Tax Credit Fund and twenty-nine percent to the County/Municipal Revenue Fund. The allocation of revenue to each fund provided for in this section must remain uniform as to the percentage allocated to each fund regardless of the year in which a county adopts the local sales and use tax. The State Treasurer shall distribute monthly the revenues according to the provisions of this chapter.

(C) The Department of Revenue shall furnish data to the State Treasurer and to the governing bodies of the counties and municipalities receiving revenues for the purpose of calculating distributions and estimating revenues. The information which may be supplied to counties and municipalities includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information by taxpayer received by appropriate county or municipal officials is considered confidential and is governed by the provisions of Section 12-54-240. A person violating this section is subject to the penalties provided in Section 12-54-240. The State Treasurer may correct misallocations from the Property Tax Credit Fund and County/Municipal Revenue Fund by adjusting subsequent allocations, but these adjustments may be made only in allocations made in the same fiscal year as the misallocation. However, allocations made as a result of city or county code errors must be corrected prospectively.

HISTORY: 1990 Act No. 317, §1; 1991 Act No. 168, §§1, 13; 1993 Act No. 181, §57; 1998 Act No. 432, §18A.

Cross references --

Discount allowed on amount of sales or use tax owed to state upon timely filing and payment of tax, see §12-36-2610.

ATTORNEY GENERAL'S OPINION

Eligible unit within county area may not receive in current fiscal year any less of distribution of LOST funds than that unit received in previous fiscal year unless there is reduction in collections from previous year. This result applies to municipalities in Charleston County notwithstanding incorporation during current year of James Island. Municipalities in Charleston County are required to receive in current fiscal year at least as much LOST revenues as those entities received in prior fiscal year. 1993 Op. Atty. Gen., No. 93-59.

SECTION 4-10-100: COMMENCEMENT OF LOCAL SALES AND USE TAX

EDITOR'S NOTE: This section deals with those services that are billed monthly. If a service is billed monthly, then the local sales and use tax begins with the first day of the billing period after the date of general imposition of the local sales and use tax.

§4-10-100. Commencement of local sales and use tax.

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

HISTORY: 1990 Act No. 317, §1.

ARTICLE 3: CAPITAL PROJECT SALES TAX ACT

SECTION 4-10-300: SHORT TITLE

EDITOR'S NOTE: This section is self explanatory.

§4-10-300. Short title.

This article may be cited as the "Capital Project Sales Tax Act".

HISTORY: 1997 Act No. 138, §3.

Cross References --

For optional sales tax to finance transportation facilities, see §4-37-10, et seq.

SECTION 4-10-310: COUNTY GOVERNING BODY MAY IMPOSE A SALES TAX

EDITOR'S NOTE: The levy of the Capital Project Sales Tax must be approved in a referendum held at the time of the general election. However, the referendum to approve the Capital Project Sales Tax does not also operate to increase the debt limitation unless the bond issuance question is voted upon as well. Note that this tax may not be imposed if a county already has imposed the transportation sales and use tax in Chapter 37 of Title 4, or in an area of the county which has a local law imposing a sales and use tax. The exception to this last rules is if that area, as of July 1, 2012, had a local option sales tax for schools imposed by local act of the General Assembly.

§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. This limitation does not apply in a county area in which, as of July 1, 2012, a local sales and use tax was imposed pursuant to a local act of the General Assembly, the revenues of which are used to offset the costs of school construction, or other school purposes, or other government expenses, or for any combination of these uses.

HISTORY: 1997 Act No. 138, §3, 2009 Act No. 49, §1; 2012 Act No. 267, §4.

SECTION 4-10-320: COMMISSION CREATION; COMPOSITION

EDITOR'S NOTE: County council must create a commission composed of six members, three appointed by the county council and three appointed by municipalities within the county, prior to calling for a Capital Project Sales Tax referendum. The commission then considers funding proposals for capital projects within the county. A person does not have to be a commission member to propose a project. The commission formulates the ballot question to be used for the referendum.

§4-10-320. Commission creation; composition.

(A) The governing body of any county is authorized to create a commission subject to the provisions of this section. The commission consists of six members, all of whom must be residents of the county, appointed as follows:

(1) The governing body of the county must appoint three members of the commission.

(2) The municipalities in the county must appoint three members, who must be residents of incorporated municipalities within the county, and who are selected according to the following mechanism:

(a) The total population of all incorporated municipalities within the county, as determined by the most recent United States census, must be divided by three, the result being an apportionate average.

(b) The respective population of each municipality in the county must be divided by the apportionate average to determine an appointive index.

(c) Each municipality in the county appoints a number of members to the commission equal to the whole number indicated by their appointive index. However, no single municipality may appoint more than two members to the commission; unless there is only one municipality in the county, and in such case the municipality is entitled to three appointments to the commission.

(d) When less than three members are selected to the commission in accordance with the prescribed appointive index method, the remaining member or members must be selected in a joint meeting of the commission appointees of the municipalities in the county. The member or members must be chosen from among the residents of the municipalities in the county that before this time have not provided a representative for the commission.

(e) In the event no municipality is entitled to appoint a member to the commission pursuant to the formula in subitem (c) of this subsection, the municipality with the highest appointive index must be deemed to have an appointive index of one.

(B) When the governing body of any county creates a commission, it must be created in accordance with the procedures specified in subsection (A) and only upon the request of the governing body of the county. If within the thirty-day period following the adoption of a resolution to create the commission, one or more of the municipalities fails or refuses to appoint their proportionate number of members to the commission, the county governing body must appoint an additional number of members equal to the number that any such municipality is entitled to appoint. A vacancy on the commission must be filled in the manner of the original appointment.

(C) The commission created pursuant to this section must consider proposals for funding capital projects within the county area. The commission then formulates the referendum question that is to appear on the ballot pursuant to Section 4-10-330(D).

HISTORY: 1997 Act No. 138, §3.

ATTORNEY GENERAL'S OPINION

The broad spending power and discretion bestowed upon the Commission is, in my judgment, an exercise of the sovereign power. Serving simultaneously as county auditor or mayor and on the Capital Project Sales Tax Commission would constitute dual office holding in violation of Art. XVII, §§1A of the S. C. Constitution. Unpublished Op. Atty. Gen. Dated May 28, 2002.

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

EDITOR'S NOTE: The list of allowed projects and ballot question contents are outlined in this section. The ballot question must state the projects for which the tax is imposed and the time period for the tax stated in increments of two years, not to exceed eight years, or for reimposition of a tax, a period ending April thirtieth, not longer than seven years. When more than one project is to be funded, the ordinance must set out the order in which those projects are funded and may use a formula or other system to fund projects simultaneously.

In addition, if several counties were to agree to a joint project to be funded by the sales tax, the counties could make the imposition of the sales tax contingent upon the passage in another county. Imposition of the sales tax can also be made contingent upon the granting of a permit or other factors. This section also allocates the expenses for any referendum held.

Subsection 4-10-330(C) governs the publication of notices for the Capital Projects Sales Tax Act and subitem (2) creates a different publication schedule when the referendum is to be held in an odd numbered year and is the only item on the ballot.

§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 Section 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) dredging, dewatering, and constructing spoil sites, disposing of spoil materials, and other matters directly related to the act of dredging;

(h) 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 (g) of this item;

(i) any combination of the projects described in subitems (a) through (h) 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, 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)(1) 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. Subject to item (2), 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.

(2) If the referendum on the question of imposing sales and use tax is conducted in an odd-numbered year, and it is the only matter being considered at the general election, then six 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.

(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, §§22.A, 22.B and 22.E; 2004 Act No. 244, §2; 2004 Act No. 292, §2; 2009 Act No. 49, §2; 2012 Act No. 268, §1; 2014 Act No. 243, §1; 2016 Act No. 250, §2, §4.

ATTORNEY GENERAL'S OPINIONS

The fact that a landfill is not one of the projects listed in §4-10-330, does not inevitably lead to the conclusion that it would not be permissible to use the proceeds of the tax for such a purpose. In fact, it would appear that the closing of a landfill would be among the class of projects generally contemplated by the statute. Unpublished Op. Atty. Gen. Dated August 17, 1998.

All necessary matters incidental to a project authorized by the referendum question posed in §4-10-330 would be included in the authorization.

Generally, public funds may be expended only for designated purposes as authorized by the General Assembly. It is well recognized that public funds may be expended only for their designated purpose. It does not appear that funds [authorized under Article 3, Title 4] could be used to acquire only land for a recreational facility where the actual construction of the improvement would be budgeted from a different source of revenue or at a different point in time. Unpublished Op. Atty. Gen. dated May 20, 2004. [Editor's Note: The above referenced Attorney General's Opinion essentially asked for an opinion regarding three different issues involving authorized expenditures from the Capital Projects Sales Tax. The questions were as follows:

1) whether a project authorized under §4-10-330 would include necessary rights of way, costs of designing, permitting, bidding, building, and overseeing construction of the project;

2) whether it would be reasonable to include in the list of proposed projects a proposal to acquire land for future recreational projects; and

3) whether it would be possible to put before the voters a proposal to acquire land for a recreational facility and to include sufficient funds to build a "phase one" of a park, but leave funding of a future phase to another time and source of funding.

The Attorney General's opinion answers the first question in the affirmative, stating that it would be absurd to conclude that a project was authorized but incidentals necessary to the project would not be included in said authorization. However the attorney general's opinion states that the second two proposals would not be authorized by §4-10-330. The opinion states that a local government could not utilize funds from the Capital Project Sales tax for purchase of land where the actual construction of the improvement would be budgeted at a different time and with a different source of revenue. The opinion states that the third proposal would represent only a "token compliance with the mandate for construction of the types of facilities for which such funds may be expended," and further states that it would be questionable as to whether such a limited building plan would be authorized.]

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 Art. VIII, §16 of the SC Constitution. However, if the county 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 Art. VIII, §16 in addition to a referendum required under the CPST 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).

A court would likely find that a women's abuse center falls within the projects listed in §4-10-330(A)(1). The General Assembly used language such as "may include the following" and "any combination of these facilities . . . projects ... [or] entities," indicating that a flexible interpretation of the statute is appropriate. One could logically conclude that a center for abused women is a combination of a hospital, emergency medical facility, educational facility and county project.

Therefore, the county may include infrastructure improvements to an abused women's center on the ballot. Unpublished Op. Atty. Gen. Dated April 22, 2010 (2010 WL 1808731).

A Capital Project Sales Tax Commission (CPSTC) must conform to whatever limitations or requirements are given to it by statutes governing it and the resolution creating it. If a county council chooses not to go forward with the tax, they are not required to proceed with a referendum. However, once county council chooses to go forward with the tax pursuant to ordinance, the election commission is required to conduct the referendum pursuant to statute. County council, as the appointing agency for the CPSTC, has the authority to remove individual members or abolish the CPSTC. Op. Atty. Gen. Dated July 28, 2014 (2014 WL 3886691).

CASE NOTES

Section 7-13-400 provides for the form of the ballot when questions are submitted. The purpose of §7-13-400 is to aid the voter in understanding the *meaning* of his vote, not the *reason* for it. Instead of explaining *how* the voter could vote for or against the sales tax, the instructions to the voter in this case attributed *reasons* to vote in favor of the measure. Section 7-13-400 sets forth the format to create a neutrally worded ballot and does not contemplate words of advocacy. Accordingly, we find that the election results in this case must be voided. Douan v. Charleston County Council, 357 S.C. 601, 594 S.E.2d 261(2003).

Section 4-10-330(C) requires a referendum for this tax to be held at a general election, but because the Capital Project Sales Tax Act does not define "general election," the general election statutes must be used to determine its meaning. Section 7-1-20(1) provides that a "general election" is the election to be held for officers to the regular terms of office provided by law and for voting on constitutional amendments. The general election occurs on the first Tuesday following the first Monday in November. The practical effect of this ruling is that a general election is an election held each and every November. State v. County of Florence, 406 S.C. 169, 749 S.E.2d 516 (2013).

SECTION 4-10-340: TAX IMPOSITION AND TERMINATION

EDITOR'S NOTE: This section sets out the imposition and termination time for any sales tax adopted under this article and designates how any surplus is to be handled. 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. A reimposed tax terminates on the thirtieth of April, 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 applicable thirtieth of April, 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, §§22.C and 22.F; 2009 Act No. 49, §3; 2016 Act No. 250, §3.

ATTORNEY GENERAL'S OPINION

In the event the projects approved in the initial referendum are not completed, the reimposition of the tax may only be for the incompleted projects and an extension of the current Capital Project Sales Tax would have to involve only those projects initially approved. Moreover, when the initial referendum does not raise sufficient revenue to fund the projects approved by the voters, the Legislature intended that any reimposition of the tax permitted by §4-10-340 be used only for the specific projects approved in the initial referendum. Op. Atty. Gen. Dated April 23, 2013 (2013 WL 1803941). [EDITOR'S NOTE: See State v. County of Florence, 406 S.C. 169, 749 S.E.2d 516 (2013), where the court ruled differently on this question.]

CASE NOTES

Section 4-10-340(C) only contemplates a situation where a county collects revenue in excess of the funds necessary to complete the projects approved in the original referendum. This provision does not require the completion of those projects, nor does it make completion a prerequisite for

reimposition of the tax. Subsection (C)(2) does not require a tax reimposition to include the original projects. As such, a county may hold a referendum to reimpose the tax to fund new projects not approved in the original referendum even if the original projects are not complete and the revenue raised by the original tax is insufficient to fund the original projects. If and when a county does not complete a project for which the voters approved a tax, then the voters may decide whether they wish to continue the tax to fund another project. State v. County of Florence, 406 S.C. 169, 749 S.E.2d 516 (2013).

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

EDITOR'S NOTE: The Department of Revenue has the responsibility to collect and administer this local option sales tax. For Capital Project Sales taxes imposed or reimposed after June 3, 2009, food eligible to be purchased with USDA food stamps are exempt from this tax.

§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.A.

SECTION 4-10-360: SEPARATE FUND REQUIRED

EDITOR'S NOTE: This revenue must be kept in a fund separate from the State's general fund.

§4-10-360. Revenue remitted to state treasurer and held in a separate fund.

The revenues of the tax collected under this article must be remitted to the Department of Revenue and placed on deposit with the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues quarterly to the county treasurer in the county area in which the tax is imposed and the revenues must be used only for the purposes stated in the imposition ordinance. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocations. However, allocations made as a result of city or county code errors must be corrected prospectively. Within thirty days of the receipt of any quarterly payment, the county treasurer or the county administrator shall certify to the Department of Revenue amounts of net proceeds applied to the costs of each project and the amount of project costs remaining to be paid and, if bonds have been issued that were approved in the referendum, a schedule of payments remaining due on the bonds that are payable from the net proceeds of the sales tax authorized in the referendum.

HISTORY: 1997 Act No. 138, §3; 1999 Act No. 93, §4; 2002 Act No. 334, §22D.

SECTION 4-10-370: DISTRIBUTION OF REVENUE

EDITOR'S NOTE: The Department of Revenue must provide the data listed below to county treasurers for use in distributing the revenue.

§4-10-370. Calculating distributions to counties; confidentiality.

The Department of Revenue shall furnish data to the State Treasurer and to the county treasurers receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to counties and municipalities upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12-54-240. A person violating this section is subject to the penalties provided in Section 12-54-240.

HISTORY: 1997 Act No. 138, §3.

SECTION 4-10-380: UNIDENTIFIED FUNDS AND SUPPLEMENTAL DISTRIBUTIONS

EDITOR'S NOTE: Unidentified revenue can result from an error by the merchant in identifying the proper governmental unit, especially in terms of proper municipal identification.

§4-10-380. Unidentified funds; transfer and supplemental distributions.

Annually, and only in the month of June, funds collected by the department from the local option capital project sales tax, which are not identified as to the governmental unit due the tax, must be transferred, after reasonable effort by the department to determine the appropriate governmental unit, to the State Treasurer's Office. The State Treasurer shall distribute these funds to the county treasurer in the county area in which the tax is imposed and the revenues must be used only for the purposes stated in the imposition ordinance. The State Treasurer shall calculate this supplemental distribution on a proportional basis, based on the current fiscal year's county area revenue collections.

HISTORY: 1999 Act No. 93, §5.

ARTICLE 5: PERSONAL PROPERTY TAX EXEMPTION SALES TAX ACT

SECTION 4-10-510: SHORT TITLE

EDITOR'S NOTE: This section is self explanatory.

§4-10-510. Article title.

This article may be cited as the "Personal Property Tax Exemption Sales Tax Act".

HISTORY: 2000 Act No. 387, Part II, §99A.

SECTION 4-10-520: PURPOSE

EDITOR'S NOTE: This section is self explanatory.

§4-10-520. Purpose.

This article provides the only method in which the governing body of a county by ordinance may exempt private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors from property taxes levied in the county as provided in Section 3, Article X of the Constitution of this State.

HISTORY: 2000 Act No. 387, Part II, §99A.

SECTION 4-10-530: MEANING OF "COUNTY"

EDITOR'S NOTE: The legislation defines county as "a county and all municipalities within its geographical boundaries."

§4-10-530. Meaning of "county".

As used in this article, a county has the meaning provided for "county areas" in Section 4-10-10(1).

HISTORY: 2000 Act No. 387, Part II, §99A.

SECTION 4-10-540: IMPOSITION OF SALES TAX TO REPLACE VEHICLE TAX

EDITOR'S NOTE: This section is the crux of the implementation language. It directs how the property tax is to be replaced with a sales tax. Subsection A states that the sales tax may be imposed in increments of one-tenth of one percent, not to exceed two percent. No statutory guidance is given as to whether the tax is to be rounded up or down. County Council must obtain from the Board of Economic Advisors a certified estimate of the rate of sales tax necessary to equal the revenue derived from personal property taxes in the latest completed year.

If the rate of sales tax necessary to equal the revenue derived from personal property taxes exceeds two percent, then in the first year of implementation the shortfall will be made up by a distribution from the Trust Fund for Tax Relief. Thereafter the distribution will be adjusted by the consumer price index. In no case may this distribution result in a reimbursement to a county that exceeds the personal property tax revenue not collected because of the exemption. The mechanism to fund any potential state payments has been included in a temporary proviso in the general appropriations act each year. The FY 2016-17 proviso reads:

> **117.38.** (GP: Personal Property Tax Relief Fund) If the Personal Property Tax Exemption Sales Tax is imposed in a county and a sales tax rate of two percent of

gross proceeds of sales is insufficient to offset the property tax not collected, sufficient amounts must be credited to the Trust Fund for Tax Relief established pursuant to Section 11-11-150 of the 1976 Code to provide the reimbursement to offset such a shortfall in the manner provided in Section 4-10-540(A) of the 1976 Code.

§4-10-540. Imposition of sales and use tax to replace vehicle tax.

(A) Subject to the requirements of this article, the county council by ordinance may impose a sales and use tax in increments of one-tenth of one percent, not to exceed two percent, subject to referendum approval. The rate of the tax must be set at an amount expressed in tenths of one percent estimated to be sufficient to produce revenues that do not exceed those necessary to replace private passenger motor vehicle, motorcycle, general aviation aircraft, boat, and boat motor property tax revenue in the county in the most recently completed fiscal year, but in no case more than two percent. The county council must obtain from the Board of Economic Advisors the board's certified estimate of the rate of sales and use tax necessary in the county to equal property tax revenues derived from private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors in the latest completed fiscal year. If this rate exceeds two percent, the maximum rate the board may certify is two percent. This certified rate is the rate of tax that must appear in the referendum question. If the revenue of a two percent tax does not at least equal the revenue not collected, then for the first year of implementation, the shortfall must be made up by a distribution to the county from the Trust Fund for Tax Relief, and this distribution is considered additional sales tax revenue pursuant to this article. Thereafter, this distribution must be adjusted by an amount equal to any increase in the consumer price index in the most recently completed calendar year, but in no case may this distribution result in a reimbursement to a county that exceeds the personal property tax revenue not collected because of the exemption allowed by this article.

(B) If the property tax assessment ratio applicable to private passenger motor vehicles and motorcycles is reduced, then for a county where the tax allowed by this article is imposed, the board shall certify a new tax rate applying the reduced assessment ratio to the assessed value of vehicles in the county in the most recently completed fiscal year, using the millage applicable for that fiscal year, and calculate a tax rate sufficient to produce that revenue in a fiscal year plus the revenue not collected because of the exemption for general aviation aircraft, boats, and boat motors from the original calculation, not to exceed two percent. This new rate applies effective beginning with the month the assessment ratio changes and continues to apply while that assessment ratio applies or until the tax is rescinded.

HISTORY: 2000 Act No. 387, Part II, §99A.

SECTION 4-10-550: REFERENDUM AND CERTIFICATION OF RESULTS

EDITOR'S NOTE: This section discusses how the exemption is to be enacted. In order to impose the sales tax under this article, county council must first pass an ordinance proposing the change.

Then the county election commission will conduct a referendum on the question at the time of the next general election. If a majority of votes cast are in favor of imposing the sales tax, then the sales tax is imposed on July 1 of the next year. The July 1 start date differs from the other local option sales tax act. The later start date also means that there will only be 10 months of sales tax revenue to replace 12 months of property tax revenue. Results must be certified by the election commission to county council and the Department of Revenue.

§4-10-550. Ordinance and referendum; certification of results.

(A) The sales and use tax authorized by this article is imposed by an enacting ordinance of the county council.

(B) Upon receipt of the ordinance, the county election commission shall conduct a referendum on the question of imposing the sales and use tax. A referendum for this purpose must be held at the time of the general election. Two weeks before the referendum the election commission shall publish in a newspaper of general circulation the question that is to appear on the ballot. This notice is in lieu of any other notice otherwise required by law.

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

"Must a (rate) sales and use tax be imposed in (county) to replace property tax revenues not collected because of a one hundred percent property tax exemption for private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors otherwise taxable in the county?

Yes [ ]
No [ ]"

(D) All qualified electors desiring to vote in favor of imposing the tax shall vote 'Yes' and all qualified electors opposed to imposing 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 beginning for motor vehicle tax years beginning on and after that date, and all other property tax years beginning after the year in which the referendum is held, all private passenger motor vehicles as defined in Section 56-3-630, motorcycles, general aviation aircraft, boats, and boat motors otherwise taxable in the county are exempt from property taxes levied in the county. The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the result no later than December thirty-first to the county governing body and to the Department of Revenue.

(E) Upon receipt of the returns of the referendum, the county council, by resolution, shall declare the results thereof. The results of the referendum may not be questioned except by a suit or proceeding instituted within thirty days from the date the resolution is adopted.

HISTORY: 2000 Act No. 387, Part II, §99A.

CASE NOTES

Section 7-13-400 provides for the form of the ballot when questions are submitted. The purpose of §7-13-400 is to aid the voter in understanding the *meaning* of his vote, not the *reason* for it. Instead of explaining *how* the voter could vote for or against the sales tax, the instructions to the voter in this case attributed *reasons* to vote in favor of the measure. Section 7-13-400 sets forth the format to create a neutrally worded ballot and does not contemplate words of advocacy. Accordingly, we find that the election results in this case must be voided. Douan v. Charleston County Council, 357 S.C. 601, 594 S.E.2d 261(2003).

The court ruled that when an act requires a referendum to be held at a general election but does not define "general election," the general election statutes must be used to determine its meaning. Section 7-1-20(1) provides that a "general election" is the election to be held for officers to the regular terms of office provided by law and for voting on constitutional amendments. The general election occurs on the first Tuesday following the first Monday in November. Thus, the practical effect of this ruling is that a general election is an election held each and every November, unless a particular Act states otherwise. State v. County of Florence, 406 S.C. 169, 749 S.E.2d 516 (2013). [EDITOR'S NOTE: Although this case addressed the Capital Project Sales Tax, its principle would likely also apply here as "general election" is not defined in this Act.]

SECTION 4-10-560: DATE OF IMPOSITION

EDITOR'S NOTE: If a majority of votes cast in the referendum are in favor of imposing the sales tax, then the sales tax is imposed on July 1 of the next year.

§4-10-560. Date of imposition.

If the sales and use tax is approved in the referendum, the tax is imposed on the first of July following the date of the referendum. If the certification is not timely made to the Department of Revenue, the imposition and property tax exemption is postponed for twelve months.

HISTORY: 2000 Act No. 387, Part II, §99A.

SECTION 4-10-570: REPEAL OF TAX

EDITOR'S NOTE: This section explains how to rescind the personal property sales tax exemption. Upon petition of at least 15 percent of the electors, a county shall direct the county election commission to conduct a referendum on the question of rescinding the sales and use tax. The petition requesting rescission must be received at least 120 days before election day, or the referendum will be held the next year. However, a referendum for rescission of the tax may not be held earlier than two years after the tax has been imposed

§4-10-570. Petition to rescind; referendum.

(A) Upon petition of at least fifteen percent of the qualified electors of a county presented to the county council of the county which has implemented the sales and use tax authorized by this article requesting that this tax be rescinded, the council shall direct the county election commission to conduct a referendum on the question of rescinding the sales and use tax. A referendum for this purpose must be held on the Tuesday following the first Monday in November following verification of the petition. Two weeks before the referendum the election commission shall publish in a newspaper of general circulation the question that is to appear on the ballot. This notice is in lieu of any other notice otherwise required by law.

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

"Must the (rate) sales and use tax imposed in (county) be rescinded with the revenue not collected replaced by extending the property tax to private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors previously not subject to property tax in this county?

Yes [ ]
No [ ]"

(C)(1) All qualified electors desiring to vote in favor of rescinding the tax shall vote 'Yes' and all qualified electors opposed to rescinding the tax shall vote 'No'. If a majority of the votes cast are in favor of rescinding the tax, then the tax is rescinded effective July first following the referendum and property taxes apply to all private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors taxable in the county for motor vehicle tax years beginning after June 30 following the referendum and other property tax years beginning after the year in which the referendum is held. The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the result no later than December thirty-first to the county council. If a majority 'Yes' vote is certified, it must be certified to the Department of Revenue by the same date.

(2) Upon receipt of the return of the referendum, the county council shall declare the results thereof by resolution. The results of the referendum may not be questioned except by a suit or proceeding instituted within thirty days from the date the resolution is adopted.

(D) A referendum for rescission of this tax may not be held earlier than two years after the tax has been imposed in the county. If a majority of the qualified electors voting in the rescission referendum vote against rescinding the tax, no further rescission referendums may be held for a period of two years. If a majority of the qualified electors vote in favor of rescinding the tax, the tax may not be reimposed in the county for a period of two years. The petition requesting rescission must be presented to the county governing body at least one hundred twenty days before the

Tuesday following the first Monday of November of that year or the referendum must be held on the Tuesday following the first Monday of November of the following year.

HISTORY: 2000 Act No. 387, Part II, §99A.

CASE NOTES

Section 7-13-400 provides for the form of the ballot when questions are submitted. The purpose of §7-13-400 is to aid the voter in understanding the *meaning* of his vote, not the *reason* for it. Instead of explaining *how* the voter could vote for or against the sales tax, the instructions to the voter in this case attributed *reasons* to vote in favor of the measure. Section 7-13-400 sets forth the format to create a neutrally worded ballot and does not contemplate words of advocacy. Accordingly, we find that the election results in this case must be voided. Douan v. Charleston County Council, 357 S.C. 601, 594 S.E.2d 261(2003).

SECTION 4-10-580: ADMINISTRATION AND COLLECTION

EDITOR'S NOTE: The revenues from the sales and use tax will be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected. The State Treasurer shall distribute the revenues quarterly to the county treasurer.

§ 4-10-580. Administration and collection.

(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 of Title 12 and the enforcement provisions of Chapter 54 of Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 are exempt from the tax imposed by this article. The tax imposed by this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36 of Title 12.

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

(D) Utilities shall 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 shall 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: 2000 Act No. 387, Part II, §99A.

SECTION 4-10-590: DISTRIBUTION OF REVENUES

EDITOR'S NOTE: Revenues of the tax must be distributed by the county treasurer to the general fund of property taxing entities in the county in the proportion that each such entity collects all property taxes levied in the county. It is unclear as to whether the millage rates used to determine the relative shares may change each year. If the rates are allowed to change this would result in school operating millage becoming a larger percentage of the proceeds from this tax over time, because school local effort requirements must be maintained. Obviously, as local effort in education continues to spiral upward, counties and municipalities will net a lower portion of the revenues derived from the sales tax.

§4-10-590. Distribution of revenues.

(A) The revenues of the tax collected under this article must be remitted to the Department of Revenue and placed on deposit with the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues quarterly to the county treasurer of the county in which the tax is imposed. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocations.

(B) Revenues of the tax must be distributed by the county treasurer to the general funds of property taxing entities in the county in the proportion that each such entity collects of all property taxes levied in the county.

HISTORY: 2000 Act No. 387, Part II, §99A.

SECTION 4-10-600: AVAILABILITY OF DATA TO CALCULATE DISTRIBUTIONS

EDITOR'S NOTE: This section requires the BEA to furnish data to the county for the purpose of calculating distributions and estimating revenues.

§4-10-600. Availability of data to calculate distributions.

The Board of Economic Advisors shall furnish data to the State Treasurer and to the counties receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to counties upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12-54-240. A person violating this section is subject to the penalties provided in Section 12-54-240.

HISTORY: 2000 Act No. 387, Part II, §99A.

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

SECTION 4-10-720: DEFINITIONS

EDITOR'S NOTE: This local option sales tax authorization is in addition to all other local option sales taxes. The revenue from this local option sales tax would provide credits against the county operating property tax, the school operating property tax, or both. The credits would apply to all classes of property, whether residential, industrial, commercial, or personal. Property subject to a fee in lieu of tax agreement under Chapter 4 of Title 12 is not eligible for credits. The credits to be generated appear to be an "all or nothing" proposition because the definition of "property tax" in §4-10-720(3) "means all property tax millage imposed for operational purposes by a political subdivision." So the credits would be for all remaining school operating property taxes, all county operating property taxes, or all of the operating property taxes for both schools and the county. There is no revenue sharing provision under which a county would donate or receive from a fund as there is in the original local option sales tax. There is also no provision to change the sales tax rate after the initial adoption.

§4-10-720. Definitions.

As used in this article:

(1) "Class of property" means property classified for property tax purposes as provided pursuant to Section 1, Article X of the Constitution of this State and as further permitted in Section 12-43-220. Property subject to a fee in lieu of property taxes, as defined in Chapter 12, Title 4 is not included in this definition of a class of property. All classes of property are provided a credit against property tax liability as provided in this article.

(2) "Political subdivision" means a county, or a school district located wholly or partly within a county area, or both the county and a school district so located.

(3) "Property tax" means all property tax millage imposed for operating purposes by a political subdivision.

(4) "Property tax liability" means the amount of tax due as a result of the imposition of property tax.

(5) "ORS" means the Office of Research and Statistics of the State Budget and Control Board.

HISTORY: 2006 Act No. 388, Part III, §1.

SECTION 4-10-730: REFERENDUM AND SALES TAX RATE

EDITOR'S NOTE: A referendum for this local option sales tax may be called for by county ordinance or petition signed by seven percent of the county electors at least 120 days prior to the November referendum date. This local option sales tax would be imposed in increments of one tenth of one percent necessary to grant the relief proposed, up to a maximum of one percent, taking into account reimbursements received for property tax exemptions. The rate is to be set by the Office of Research and Statistics of the State Budget and Control Board and is to be targeted to generate no more than is necessary to replace the existing property tax liability of the selected political subdivision(s).

§4-10-730. Local option sales and use tax; credit against property tax liability.

(A)(1) Subject to the requirements of this article, the governing body of the county by a county council ordinance or by an initiated ordinance submitted to the governing body of the county by a petition signed by qualified electors of the county, equal in number to at least seven percent of the qualified electors of the county, may impose a sales and use tax in increments of one-tenth of one percent, not to exceed one percent, subject to referendum approval in order to provide a credit against property tax imposed by a political subdivision for all classes of property subject to such tax. The ordinance may provide for a credit against the property tax liability for the county or the school district(s) in the county, or the property tax liability for both the county and the school district(s) in the county. An ordinance must be enacted or a petition initiating an ordinance must be presented to the county governing body at least one hundred twenty days before the Tuesday following the first Monday of November of that year.

(2) The rate of the tax must be set at an amount expressed in tenths of one percent estimated to be sufficient to produce revenues that do not exceed those necessary to replace property tax revenue in the county for the affected political subdivisions in the most recently completed fiscal year, but not more than one percent and must take into account reimbursements received by political subdivisions for property tax exemptions.

(3) If the county or municipality within the county has enacted a tax increment financing redevelopment plan, or other financing plan that relies upon property tax for its funding to retire indebtedness or pay for project costs, the rate of tax must be set in an amount that must consider full

funding for the project or retirement of indebtedness, which must include compliance with any covenants in the governing documents authorizing this indebtedness or future indebtedness heretofore authorized by the tax increment financing redevelopment plan that relies upon property tax for its funding for the amount that the sales tax would substitute for the property tax payments. The revenues of such tax attributable to the funding replacement for a tax increment redevelopment financing plan that relies upon property tax for its funding must be distributed by the county treasurer pursuant to Section 4-10-780.

(4) The governing body of the county shall obtain from ORS after ORS has obtained all information necessary to provide such estimate, a certified estimate of the rate of sales and use tax necessary in the county to equal the property tax not collected, and for the amount, if applicable, for the funding replacement for the tax increment financing redevelopment plan or other financing plan that relies upon property tax for its funding. This certified rate, not to exceed one percent, is the rate of tax that must appear in the referendum question.

(5) A qualified elector of the county desiring to circulate a petition shall file a written request with the governing body of the county detailing the property tax liability or liabilities to which the credit will apply and the governing body shall forward the request to ORS, which shall design the petition form in consultation with the State Election Commission and calculate and certify the tax rate necessary to provide the credits proposed in the petition. The petition form and a copy of the certification must be forwarded to the governing body of the county and the governing body shall provide the petition form to the qualified elector requesting the petition form.

(6) If competing petitions are timely filed with the governing body of the county and the signatures verified, the governing body may determine which petition initiated ordinance shall go on the ballot or it may substitute its own ordinance in lieu of any petition initiated ordinance.

(B) If the sales and use tax authorized pursuant to this article is imposed in a county, then the sales and use tax revenue must be used to provide a credit against the property tax liability on all classes of property by the affected political subdivision.

HISTORY: 2006 Act No. 388, Part III, §1.

SECTION 4-10-740: REFERENDUM NOTICE AND QUESTION

EDITOR'S NOTE: This section provides the form of the question to be placed on the ballot. A referendum on the question of imposing the tax may be held at the time of the general election of any year. Two weeks before the referendum, the election commission shall publish in a newspaper of general circulation the question that is to appear on the ballot. The property tax credit for an individual taxpayer is to be calculated in the same manner as is provided in §4-10-40(B) of the original local option sales tax.

§4-10-740. Referendum.

(A) Upon receipt of the ordinance, the county election commission shall conduct a referendum on the question of imposing the sales and use tax. A referendum for this purpose must be held on the first Tuesday after the first Monday in November in any year. Two weeks before the

referendum, the election commission shall publish in a newspaper of general circulation the question that is to appear on the ballot. This notice is in lieu of any other notice otherwise required by law.

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

"Must a (rate) sales and use tax be levied in _____ County for the purpose of allowing a credit for all classes of property against the property tax liability for [affected political subdivision(s)] operations?

Yes []
No []"

(C) All qualified electors desiring to vote in favor of imposing the tax shall vote "Yes" and all qualified electors opposed to imposing the tax shall vote "No". If a majority of the votes cast are in favor of imposing the tax, the tax is imposed as provided in this article, and beginning after the fiscal year in which the referendum is held, all classes of property in the county shall receive a credit against the property tax liability of the political subdivision. The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the results no later than December thirty-first to the county governing body and to the Department of Revenue. The credit must be calculated in the manner provided pursuant to Section 4-10-40(B), mutatis mutandis.

(D) Upon receipt of the returns of the referendum, the county council, by resolution, shall declare the results thereof. The results of the referendum may not be questioned except by a suit or proceeding instituted within thirty days from the date the resolution is adopted.

HISTORY: 2006 Act No. 388, Part III, §1.

CASE NOTES

Section 7-13-400 provides for the form of the ballot when questions are submitted. The purpose of §7-13-400 is to aid the voter in understanding the *meaning* of his vote, not the *reason* for it. Instead of explaining *how* the voter could vote for or against the sales tax, the instructions to the voter in this case attributed *reasons* to vote in favor of the measure. Section 7-13-400 sets forth the format to create a neutrally worded ballot and does not contemplate words of advocacy. Accordingly, we find that the election results in this case must be voided. Douan v. Charleston County Council, 357 S.C. 601, 594 S.E.2d 261(2003).

SECTION 4-10-750: APPROVAL/FAILURE OF REFERENDUM QUESTION; SUBSEQUENT REFERENDUMS.

EDITOR'S NOTE: Upon favorable referendum result, the additional sales tax would be imposed the following July. If the sales and use tax is not approved subsequent referendums initiated by ordinance or by seven percent of the qualified electors may be held on election day in any year.

§4-10-750. Subsequent referendum.

(A) If the sales and use tax is approved in the referendum, the tax must be imposed by ordinance on the first of July following the date of the referendum. If the certification is not timely made to the Department of Revenue, the imposition of the tax and the property tax credits are postponed for twelve months.

(B) If the sales and use tax is not approved in the referendum, the county governing body by ordinance, or seven percent of the qualified electors of the county, by an initiated ordinance submitted to the governing body of the county, may provide for a subsequent referendum held in the manner provided pursuant to Section 4-10-740, but such a referendum may be held only on the first Tuesday after the first Monday in November in any year.

HISTORY: 2006 Act No. 388, Part III, §1.

SECTION 4-10-760: REPEAL OF TAX

EDITOR'S NOTE: This section describes how to rescind this sales tax. A referendum will be held on the question of rescission upon the petition of 7 percent of the qualified electors. This referendum may not be held earlier than two years after the tax has been levied in the county. If a majority of electors vote against rescinding the tax, no further rescission referendums may be held for a period of two years. If they vote in favor of rescinding the tax, the tax may not be reimposed in the county for a period of two years.

§4-10-760. Referendum on question of rescinding tax.

(A) Upon petition of at least seven percent of the qualified electors of a county presented to the county council of the county which has implemented the sales and use tax authorized by this article requesting that this tax be rescinded, the council shall direct the county election commission to conduct a referendum on the question of rescinding the sales and use tax. A referendum for this purpose must be held on the Tuesday following the first Monday in November following verification of the petition. Two weeks before the referendum, the election commission shall publish in a newspaper of general circulation the question that is to appear on the ballot. This notice is in lieu of any other notice otherwise required by law.

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

"Must the (rate) sales and use tax levied in _____ County for the purpose of allowing a credit for all classes of property against the property tax liability imposed for [affected political subdivision(s)] operations be rescinded?

Yes []
No []"

(C)(1) All qualified electors desiring to vote in favor of rescinding the tax shall vote "Yes" and all qualified electors opposed to rescinding the tax shall vote "No". If a majority of the votes cast are in favor of rescinding the tax, the tax is rescinded effective July first following the referendum and the applicable property taxes apply without credit beginning after the year in which the referendum is held. The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the result no later than December thirty-first

to the county council. If a majority "Yes" vote is certified, it must be certified to the Department of Revenue by the same date.

(2) Upon receipt of the return of the referendum, the county council shall declare the results thereof by resolution. The results of the referendum may not be questioned except by a suit or proceeding instituted within thirty days from the date the resolution is adopted.

(D) A referendum for rescission of this tax may not be held earlier than two years after the tax has been imposed in the county. If a majority of the qualified electors voting in the rescission referendum vote against rescinding the tax, no further rescission referendums may be held for a period of two years. If a majority of the qualified electors vote in favor of rescinding the tax, the tax may not be reimposed in the county for a period of two years. The petition requesting rescission must be presented to the county governing body at least one hundred twenty days before the Tuesday following the first Monday of November of that year or the referendum must be held on the Tuesday following the first Monday of November of the following year.

HISTORY: 2006 Act No. 388, Part III, §1.

CASE NOTES

Section 7-13-400 provides for the form of the ballot when questions are submitted. The purpose of §7-13-400 is to aid the voter in understanding the *meaning* of his vote, not the *reason* for it. Instead of explaining *how* the voter could vote for or against the sales tax, the instructions to the voter in this case attributed *reasons* to vote in favor of the measure. Section 7-13-400 sets forth the format to create a neutrally worded ballot and does not contemplate words of advocacy. Accordingly, we find that the election results in this case must be voided. Douan v. Charleston County Council, 357 S.C. 601, 594 S.E.2d 261(2003).

SECTION 4-10-770: TAX ADMINISTRATION AND COLLECTION

EDITOR'S NOTE: This section requires the Department of Revenue to administer and collect the tax. This local option sales tax would not apply to accommodations, any item subject to a sales tax cap, or unprepared food.

§4-10-770. Collection process.

(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)(1) 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 of Title 12 and the enforcement provisions of Chapter 54 of Title 12.

(2) The tax imposed by this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36 of Title 12.

(3) Any additional local sales and use tax imposed by this article does not apply to:

(a) amounts taxed pursuant to Section 12-36-920(A), the tax on accommodations for transients;
(b) items subject to a maximum sales and use tax pursuant to Section 12-36-2110; and
(c) unprepared food that may be lawfully purchased with United States Department of Agriculture food coupons.

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

(D) Utilities shall 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, shall 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 for 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: 2006 Act No. 388, Part III, §1.

SECTION 4-10-780: COLLECTION AND DISTRIBUTION OF REVENUES

EDITOR'S NOTE: This section describes the collection and distribution of the revenues of this local option sales tax. Notice that there is no revenue sharing provision under which a county would donate or receive from a fund as there is in the original local option sales tax. Additionally, this section contains special provisions for the distribution of revenues if a county contains more than one school district and when a school district is located in more than one county.

§4-10-780. Distribution of revenues.

(A) The revenues of the tax collected under this article must be remitted to the Department of Revenue and placed on deposit with the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues quarterly to the county treasurer of the

county in which the tax is imposed. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocations.

(B)(1) Revenues of the tax collected and deposited pursuant to subsection (A) of this section must be distributed by the county treasurer to the political subdivisions as determined by the ordinance establishing the referendum.

(2) The amount of the revenues of the tax collected that is attributable to the funding replacement for the tax increment financing redevelopment plan or other financing plan that relies upon property tax for its funding for a particular political subdivision must be distributed by the county treasurer to the political subdivision that has enacted this financing plan to be deposited into the special tax allocation fund or other similar fund of that political subdivision as may be required by the tax increment financing law, as applicable to counties or municipalities, or by other applicable law.

(3) For counties in which there is more than one school district, the county treasurer shall distribute the revenues of the tax:

(a) in direct proportion to the one-hundred-thirty-five-day average daily membership as referenced in Section 59-20-40(1)(a) for each of the school districts for the fiscal year immediately preceding that in which a distribution is made, as certified by the State Treasurer, upon advice of the State Department of Education;

(b) pursuant to a distribution plan unanimously agreed upon by all entities with fiscal authority over the school districts within the county; or

(c) pursuant to a distribution plan authorized by local act of the General Assembly or local ordinance.

(4) For school districts that are composed of more than one county, the county treasurer shall distribute the revenues of the tax:

(a) to the portion of the school district that resides in the county adopting the provisions of this article in proportion to the district's one-hundred-thirty-five-day average daily membership, as referenced in Section 59-20-40(1)(a), in comparison to the remainder of the school district outside of the county; or

(b) pursuant to a distribution plan authorized by agreement of the multiple counties comprising the school district through local act of the General Assembly or local ordinance. For purposes of this section, the one-hundred-thirty-five-day average daily membership as referenced in Section 59-20-40(1)(a) excludes any student not residing in the county.

HISTORY: 2006 Act No. 388, Part III, §1.

SECTION 4-10-790: FURNISHING OF DATA

EDITOR'S NOTE: This section states that the Office of Research and Statistics are required to provide the data necessary for determining distributions and estimating revenues. It appears as though the county must request the information. Information regrading specific taxpayers are deemed confidential.

§4-10-790. Calculating distributions and estimating revenues; use of data furnished by Office of Research and Statistics.

The Office of Research and Statistics of the State Budget and Control Board shall furnish data to the State Treasurer and to the applicable political subdivisions receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to political subdivisions upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12-54-240. A person violating this section is subject to the penalties provided in Section 12-54-240.

HISTORY: 2006 Act No. 388, Part III, §1.

SECTION 4-10-800: EFFECT ON MILLAGE RATE LIMITATIONS

EDITOR'S NOTE: This section states that nothing in this article affects the local government millage limitations in §6-1-320.

§4-10-800. Millage limits.

Nothing in this article in anyway alters the property tax millage limits imposed on political subdivisions pursuant to Section 6-1-320.

HISTORY: 2006 Act No. 388, Part III, §1.

SECTION 4-10-810: EIA LOCAL EFFORT

EDITOR'S NOTE: The revenue collected pursuant to this article will be counted when determining the EIA local effort requirement.

§4-10-810. Revenues as one of local revenues used in computation of Education Improvement Act maintenance of local effort.

Where applicable, the actual revenues of the sales and use tax collected pursuant to this article that are used to provide a credit against the property tax liability for school operations must be considered, pursuant to the requirements of Section 59-21-1030, one of the local revenues used in computation of the required Education Improvement Act maintenance of local effort.

HISTORY: 2006 Act No. 388, Part III, §1.

ATTORNEY GENERAL'S OPINION

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

SECTION 4-37-10: ESTABLISHMENT OF AN AUTHORITY

EDITOR'S NOTE: This section authorizes a county governing body to create a transportation authority. If a county chooses to finance all transportation-related projects, then the members of the transportation authority must be appointed by the county governing body. However, if the county chooses to enter into a partnership with other governmental entities to form a transportation authority then those other governmental entities must have one or more designated appointees on the authority board as provided in an intergovernmental agreement to be entered into by the parties.

§4-37-10. Transportation authority; establishment; membership.

(A) Subject to requirements of this chapter and the referendum described in Section 4-37-30, the governing body of a county may by ordinance establish a transportation authority with all of the rights and powers described in Section 4-37-20. If, pursuant to this section, a county chooses to finance all of the cost of highways, roads, streets, bridges, and other transportation-related projects and elects to create an authority for that purpose, the members of the authority board must be appointed by the county governing body in the manner it determines.

(B) If a county chooses to enter into a partnership, consortium, or other contractual arrangement with one or more other governmental entities and if the parties choose to form an authority for such purpose, those other governmental entities must have one or more designated appointees on the authority board as provided in an intergovernmental agreement to be entered into by the parties. In order for a county to enter into the formation of an authority, partnership, consortium, or other intergovernmental agreement pursuant to the provisions of this chapter with other counties, a referendum on the action must be held by each county and the referendum must be approved by each and every separate county and together.

(C) For purposes of this chapter "governmental entity" is a county in South Carolina, or the State of South Carolina and its departments and agencies.

(D) The existence of any authority created pursuant to this chapter must terminate not later than twelve months after a sales and use tax or toll authorized by this chapter terminates.

HISTORY: 1995 Act No. 52, §2.

SECTION 4-37-20: RIGHTS AND POWER OF TRANSPORTATION AUTHORITY

EDITOR'S NOTE: This section defines the powers of the transportation authority created through §4-37-10. The board of the transportation authority has all the rights and powers of a public body. The only power excluded from the board of the authority is that of eminent domain. The transportation authority may, however, recommend to the county governing body that it exercise its power of eminent domain.

§4-37-20. Rights and power of transportation authority.

The board of the authority has all the rights and powers of a public body, politic and corporate of this State, including, without limitation, all the rights and powers necessary or convenient to manage the business and affairs of the authority and to take action as it may consider advisable, necessary, or convenient in carrying out its powers including, but not limited to, the following rights and powers:

(1) to have perpetual succession;

(2) to sue and be sued;

(3) to adopt, use, and alter a seal;

(4) to make and amend bylaws for regulation of its affairs consistent with the provisions of this chapter;

(5) to acquire by gift, deed or easement, purchase, hold, use, improve, lease, mortgage, pledge, sell, transfer, and dispose of any property, real, personal, or mixed, or any interest in any property, or revenues of the authority as security for notes, bonds, evidences of indebtedness, or other obligations of the authority;

(6) to borrow money, make and issue notes, bonds, and other evidences of indebtedness; to secure the payment of the obligations or any part by mortgage, lien, pledge, or deed of trust, on any of its property, contracts, franchises, or revenues;

(7) to make contracts, including service contracts with a person, corporation, or partnership including, without limitation, the South Carolina Department of Transportation, to provide the facilities and services provided herein; and

(8) execute all instruments necessary or convenient for the carrying out of business.

The board of the authority is not authorized to exercise the powers of eminent domain; however, it may recommend to the county governing body that property be acquired through eminent domain. The county governing body must determine if the property is to be acquired through eminent domain and, if so, to commence the eminent domain proceedings.

HISTORY: 1995 Act No. 52, §2; 1997 Act No. 122, §2.

SECTION 4-37-25: COMPLIANCE REQUIREMENTS FOR THE TRANSPORTATION AUTHORITY

EDITOR'S NOTE: This section ensures that transportation authorities which are created using §4-37-10 follow the same procurement requirements as the Department of Transportation. Section 12-27-1320, which is referred to in this section, was repealed by Act No. 399 of 2000. The section required that 10 percent of the total state source highways funds be expended on contracts with business concerns owned and controlled by economically disadvantaged ethnic minorities and disadvantaged females.

§4-37-25. Transportation authority; procurement methods and requirements.

An authority created pursuant to this chapter must comply with §11-35-50. When procuring the construction, maintenance, and repair of bridges, highways, and roads, an authority must use the same procurement methods and apply the same procurement requirements used by and applied to the South Carolina Department of Transportation in the construction, maintenance, and repair of bridges, highways, and roads including the provisions of Section 12-27-1320 except that when applying Section 12-27-1320, the contracting entity may meet the expenditures standards of Section 12-27-1320 by either direct or indirect contracts. For purposes of this provision, "contracting entity" includes a governmental body and a private entity with which a governmental body contracts for the construction, maintenance, and repair of bridges, highways, and roads.

HISTORY: 1995 Act No. 52, §2.

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

EDITOR'S NOTE: Section 4-37-30 directs how to impose a new tax or toll for transportation purposes. A county may choose one but not both methods as a source of revenue. Section 4-37-20(A) directs how the sales tax is to be imposed. The governing body may vote to impose the sales tax, subject to a referendum, by enacting an ordinance. The ordinance must specify the projects for which the proceeds are to be used and the maximum time for which the tax may be imposed. The tax may not exceed 25 years. Upon receipt of the ordinance the county election commission will conduct a referendum on the question of imposing the sales tax. If the tax is approved in the referendum, it will be imposed effective the first day of May following the date of the referendum.

Section 4-37-30(A) allows a general election referendum to extend the original term of the tax or toll up to seven years, so long as the extension and original period does not exceed twenty-five years and the revenue is used to complete a project on the original ballot list.

Section 4-37-30(B) directs how the toll for transportation purposes is to be imposed. The governing body may vote to impose the toll, subject to a referendum, by enacting an ordinance. The ordinance must specify the projects for which the proceeds are to be used and the maximum time the toll may be charged. Upon receipt of the ordinance the county election commission will conduct a referendum on the question of authorizing an authority to use tolls in the jurisdiction.

§4-37-30. Sales and use taxes or tolls as revenue for transportation facilities.

To accomplish the purposes of this chapter, counties are empowered to impose one but not both of the following sources of revenue: a sales and use tax as provided in item (A) or to authorize an authority established by the county governing body as provided in Section 4-37-10 to use and impose tolls in accordance with the provisions of item (B):

(A) Subject to the requirements of this section, the governing body of a county may impose by ordinance a sales and use tax in an amount not to exceed one percent within its jurisdiction for a single project or for multiple projects and for a specific period of time to collect a limited amount of money.

(1) The governing body of a county may vote to impose the tax authorized by this section, subject to a referendum, by enacting an ordinance. The ordinance must specify:

(a) the project or projects and a description of the project or projects 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 county imposing the tax and which may include:

(i) highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects;

(ii) jointly-operated projects, of the type specified in sub-subitem (i), of the county and South Carolina Department of Transportation; or

(iii) projects, of the type specified in sub-subitem (i), operated by the county or jointly-operated projects of the county and other governmental entities;

(b) the maximum time, stated in calendar years or calendar quarters, or a combination of them, not to exceed twenty-five years or the length of payment for each project whichever is shorter in length, for which the tax may be imposed;

(c) the estimated capital cost of the project or projects to be funded in whole or in part from proceeds of the tax and the principal amount of bonds to be supported by the tax; and

(d) the anticipated year the tax will end.

(2) Upon receipt of the ordinance, the county election commission shall conduct a referendum on the question of imposing the optional special sales and use tax in the

jurisdiction. A referendum for the initial imposition of the sales and use tax within a county pursuant to this chapter and all subsequent referendums to impose, extend, or renew the tax must be held at the time of the general election. The commission shall publish the date and purpose of the referendum once a week for four consecutive weeks immediately preceding the date of the referendum in a newspaper of general circulation in the jurisdiction. A public hearing must be conducted at least fourteen days before the referendum after publication of a notice setting forth the date, time, and location of the public hearing. The notice must be published in a newspaper of general circulation in the county at least fourteen days before the date fixed for the public hearing.

(3) A separate question must be included on the referendum ballot for each purpose which purpose may, as determined by the governing body of a county, be set forth as a single question relating to several of the projects, and the question must read substantially as follows:

"I approve a special sales and use tax in the amount of (fractional amount of one percent) (one percent) to be imposed in (county) for not more than (time) to fund the following project or projects:

Project (1) for _____ $ _____
Yes ___
No ___

Project (2), etc."

In addition, the referendum, as determined by the governing body of a county, may contain a question on the authorization of general obligation bonds under the exemption provided in Section 14(6), Article X of the Constitution of South Carolina, 1895, so that revenues derived from the imposition of the optional sales and use tax may be pledged to the repayment of the bonds. The additional question must read substantially as follows:

"I approve the issuance of not exceeding $_____ of general obligation bonds of _____ County, maturing over a period not to exceed ___ years to fund the _____ project or projects.

Yes ___
No ___"

If the referendum on the question relating to the issuance of general obligation bonds is approved, the county may issue bonds in an amount sufficient to fund the expenses of the project or projects.

(4)(a) If a county has imposed a tax pursuant to this chapter for less than the maximum twenty-five year term allowed and the tax remains in effect, the governing body of the county at any time may call for a referendum to extend the term of the tax for up to seven years, and thereafter call for

referendums to extend the term of the tax for up to seven years, for an aggregate total not to exceed twenty-five years. The referendum to extend the term of the tax must be held at the general election. A separate question must be included on the referendum ballot for each purpose which purpose, as determined by the governing body of a county, may be set forth as a single question relating to several of the projects and the question must indicate whether the project is an existing project or new project. A new project or projects only may be listed on the ballot to the extent that the county has, or will, complete existing projects. The question must read substantially as follows:

"I approve the extension of a special sales and use tax in the amount of (fractional amount of one percent) (one percent) to be imposed in (county) not to exceed ___ years to fund the completion of the following existing project or projects and/or to fund the following new project or projects:

Project (1) for _____ $ _____ (new or existing)

Yes ___

No ___

Project (2), etc."

(b) All qualified electors desiring to vote in favor of imposing the tax for a particular purpose shall vote "yes" and all qualified electors opposed to levying the tax for a particular purpose shall vote "no". If a majority of the votes cast are in favor of imposing the tax for one or more of the specified purposes, then the tax is imposed as provided in this section; otherwise, the tax is not imposed. The election commission shall conduct the referendum pursuant to the election laws of this State, mutatis mutandis, and shall certify the result no later than November thirtieth after the date of the referendum to the appropriate governing body and to the Department of Revenue. Included in the certification must be the maximum cost of the project or projects or facilities to be funded in whole or in part from proceeds of the tax, the maximum time specified for the imposition of the tax, and the principal amount of bonds to be supported by the tax receiving a favorable vote. Expenses of the referendum must be paid by the jurisdiction conducting the referendum. If the tax is approved in the referendum, the tax is imposed effective the first day of May following the date of the referendum. If the reimposition of the tax pursuant to this article is approved in the referendum, the new or existing tax must be imposed, extended, or renewed immediately following the termination of the earlier imposed tax. If the certification is not made timely to the Department of Revenue, the imposition is postponed for twelve months.

(5) The tax terminates on the earlier of:

(a) the final day of the maximum time specified for the imposition; or

(b) the end of the calendar month during which the Department of Revenue determines that the tax has raised revenues sufficient to provide the greater of either

the cost of the project or projects as approved in the referendum or the cost to amortize all debts related to the approved projects.

(6) When the optional sales and use tax is imposed, the governing body of the jurisdiction authorizing the referendum for the tax shall include by definition more than one item as defined in (a)(i) and (a)(ii) to describe the single project or multiple projects for which the proceeds of the tax are to be used.

(7) Amounts collected in excess of the required proceeds first must be applied, if necessary, to complete each project for which the tax was imposed. Any additional revenue collected above the specified amount must be applied to the reduction of debt principal of the imposing political subdivision on transportation infrastructure debts only.

(8) The tax levied pursuant to this section 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 the amounts which may be added to the sales price because of the tax.

(9) The tax authorized by this section is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable jurisdiction which are subject to the tax imposed by Chapter 36 of Title 12 and the enforcement provisions of Chapter 54 of Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 are exempt from the tax imposed by this section. The gross proceeds of the sale of food lawfully purchased with United States Department of Agriculture food stamps are exempt from the tax imposed by this section. The tax imposed by this section also applies to tangible personal property subject to the use tax in Article 13, Chapter 36 of Title 12.

(10) Taxpayers required to remit taxes pursuant to Article 13, Chapter 36 of Title 12 must identify the county in which the tangible personal property purchase at retail is stored, used, or consumed in this State.

(11) Utilities are required to report sales in the county in which consumption of the tangible personal property occurs.

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

(13) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied pursuant to this section in a county, either pursuant to 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 special local sales and use tax provided in this section

if a verified copy of the contract is filed with the Department of Revenue within six months after the imposition of the special local sales and use tax.

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

(15) The revenues of the tax collected in each county pursuant to this section must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues and all interest earned on the revenues while on deposit with him quarterly to the county in which the tax is imposed and these revenues and interest earnings must be used only for the purpose stated in the imposition ordinance. The State Treasurer may correct misallocations costs or refunds by adjusting later distributions, but these adjustments must be made in the same fiscal year as the misallocations. However, allocations made as a result of city or county code errors must be corrected prospectively.

(16) The Department of Revenue shall furnish data to the State Treasurer and to the counties receiving revenues for the purpose of calculating distributions and estimating revenues. The information which must be supplied to counties upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12-54-240. A person violating this section is subject to the penalties provided in Section 12-54-240.

(17) The Department of Revenue may promulgate regulations necessary to implement this section.

(B)(1)(a) This item (B) is intended to provide an additional and alternative method, subject to a referendum, for the provision of and financing for highways, roads, streets, and bridges, and other transportation-related projects, either alone or in partnership with other governmental entities to the end that these transportation-related projects may be undertaken in such manner as may best be calculated to expedite relief of hazardous and congested traffic conditions on the highways in the State, including the authorization for turnpike projects undertaken by the Department of Transportation in Article 9 of Chapter 5 of Title 57. The Department of Transportation is prohibited from removing funds previously dedicated to the project or designated county area under its allocation formula based upon the fact that a county has passed a referendum to impose the tax provided in this chapter.

(b) Subject to the requirements of this item (B), the governing body of a county may by ordinance authorize, subject to a referendum, an authority to use tolls to finance projects authorized by this section.

(c) The ordinance enacted by the governing body of the county to authorize an authority to use tolls must specify:

(i) the purpose for which the toll revenues are to be used which may include jointly-operated projects between the authority and the South Carolina Department of Transportation;

(ii) the maximum time, stated in calendar years or calendar quarters, or a combination of them, not to exceed twenty-five years, for which the tolls may be imposed; and

(iii) the maximum cost of the project or facilities to be funded in whole or in part from toll revenues and the principal amount of bonds to be supported by the tolls.

(d) Upon receipt of the ordinance, the county election commission shall conduct a referendum on the question of authorizing an authority to use tolls in the jurisdiction. The referendum must be held on the first Tuesday occurring sixty days after the election commission receives the ordinance. If that Tuesday is a legal holiday then the referendum must be held on the next succeeding Tuesday that is not a holiday. The commission shall publish the date and purpose of the referendum once a week for four consecutive weeks immediately preceding the date of the referendum, in a newspaper of general circulation in the jurisdiction. A public hearing must be conducted at least fourteen days before the referendum, after publication of a notice setting forth the date, time, and location of the public hearing. The notice must be published in a newspaper of general circulation in the county at least fourteen days before the date fixed for the public hearing.

(e) A separate question must be included on the referendum ballot for each purpose and the question must read substantially as follows:

"I approve the imposition of tolls on the following project or projects in (county) for not more than (time) to fund the following project or projects:

Project (1) for _____ $ _____
Yes ___
No ___

Project (2) etc."

(f) All qualified electors desiring to vote in favor of imposing tolls for a particular purpose shall vote "yes" and all qualified electors opposed to imposing tolls for a particular purpose shall vote "no". If a majority of the votes cast are in favor of

imposing tolls for one or more of the specified purposes, then tolls are imposed as provided in this section; otherwise, an authority is not authorized to impose tolls. A subsequent referendum on this question, after the question is disapproved, must not be held more than once in twenty-four months. The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the result no later than sixty days after the date of the referendum to the appropriate county governing body and authority and to the South Carolina Department of Transportation. Included in the certification must be the maximum cost of the project or facilities to be funded in whole or in part from proceeds of the tolls and the maximum time specified for the imposition of the tolls receiving a favorable vote. Expenses of the referendum must be paid by the jurisdiction conducting the referendum.

(g) Tolls terminate on the earlier of:

(i) the final day of the maximum time specified for the imposition; or

(ii) the end of the calendar month during which the authority determines that the tolls have raised revenues sufficient to provide the greater of either the cost of the project or projects as approved in the referendum or the cost to amortize all debts related to the approved projects.

(h) When tolls are imposed for more than one purpose, the governing body of the jurisdiction authorizing the referendum for the tolls shall determine the priority for the expenditure of the net proceeds of the tolls for the purposes stated in the referendum.

(i) Amounts collected in excess of the required proceeds must first be applied, if necessary, to complete each project for which the toll was imposed; otherwise, the excess amounts must be credited to the general fund of the jurisdiction imposing the tax for infrastructure use only.

(2) If the voters have approved the imposition of tolls by referendum and if the authority enters into a partnership, consortium, or other contractual arrangement with the Department of Transportation relating to turnpike facilities, the authority may designate, establish, plan, improve, construct, maintain, operate, and regulate designated highways, roads, streets, and bridges as "turnpike facilities" as a part of the state highway system or any federal aid system whenever the authority determines the traffic conditions, present or future, justify these facilities. Under such partnership arrangement, the authority may utilize funds available for the maintenance of the state highway system for the maintenance of any turnpike facility financed pursuant to this chapter. If the authority determines it is feasible to make all or part of a construction project a turnpike facility, it may engage in the preliminary estimates and studies incident to the determination of the feasibility or

practicability of constructing any toll road as it from time to time considers necessary and the cost of the preliminary estimates and studies may be paid from the general highway fund and must be reimbursed from funds provided under this chapter only if the studies and estimates lead to the construction of a toll road.

(3) Under the partnership arrangement, the authority may acquire such lands and property, including rights of access as may be needed for turnpike facilities, by gift, devise, purchase, or condemnation by easement or in fee simple as authorized by law on or after the effective date of this chapter for acquiring property or property rights in connection with other state highways.

(4) In designating, establishing, planning, abandoning, improving, constructing, maintaining, and regulating turnpike facilities, the authority may exercise such authorizations as are granted generally to the Department of Transportation by the statutory law applicable to the state highway system, except as they may be inconsistent with the provisions included in this chapter.

(5) Whenever it becomes necessary that monies be raised for the transportation facilities described in this chapter, the authority may issue toll revenue bonds in a principal amount not to exceed the amount authorized in the referendum to authorize the authority to impose tolls to provide all or a portion of the cost of these facilities and maintenance of the toll road after adopting its resolution setting forth the following:

(a) the toll facility proposed to be constructed;

(b) the amount required for feasibility studies, planning, design, right-of-way acquisition, and construction of the toll facility;

(c) a tentative time schedule setting forth the period of time for which the toll shall be imposed and set forth a schedule for elimination of all or part of all tolls;

(d) a debt service table showing the estimated annual principal and interest requirements for the proposed toll revenue bonds;

(e) any feasibility study obtained by the authority relating to the proposed toll facility;

(f) any covenants to be made in the bond resolution respecting competition between the proposed toll facility and possible future highways whose construction would have an adverse effect upon the toll revenues which would otherwise be derived by the proposed toll facility;

(g) any additional revenue collected above the specified amount to satisfy the principal and interest of toll revenue bonds or maintenance must be applied to the reduction of debt principal of the imposing political subdivision.

(6) In addition to the powers listed above, the authority may in connection with such toll facilities:

(a) fix and revise from time to time and charge and collect tolls for transit over each turnpike facility constructed by it;

(b) combine for the purpose of financing the facilities any two or more turnpike facilities;

(c) control access to turnpike facilities;

(d) to the extent permitted by a bond resolution, expend turnpike facility revenues in advertising the facilities and services of the turnpike facility or facilities to the traveling public;

(e) receive and accept from any federal agency grants for or in the aid of the construction of any turnpike facility;

(f) do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter;

(g) enter into contracts with the Department of Transportation for sharing the cost of building and the revenues derived from the facilities authorized in this chapter and for the operation and maintenance of the facilities for transportation infrastructure debts only.

(C) It is intended that this chapter is an additional and alternative method of financing highway and bridge projects to those already provided under the provisions of the State Highway Bond Act (Section 57-11-210), the State Turnpike Bond Act (Section 57-5-1310 et seq.), the Revenue Bond Act for Utilities (Section 6-21-10 et seq.), and Section 4-9-30(5).

(D) The Department of Transportation must not diminish or decrease funds available to a municipality, county, or multi-county area because a project has been funded in the municipality, county, or multi-county area pursuant to a referendum provided in this chapter.

HISTORY: 1995 Act No. 52, §2; 1997 Act No. 122, §1; 1999 Act No. 93, §6; 2000 Act No. 368, §1; 2001 Act No. 89, §41; 2014 Act No. 229 §1.

Cross References --

Exemption of transportation facility funded by local option sales and use tax from designation as turnpike facility, see §57-5-1330.

Form of ballot when questions are submitted to a vote of the people, see §7-13-400

Limitation on the imposition of local sales tax by the Education Capital Improvements Sales and Use Tax, see §4-10-470.

ATTORNEY GENERAL'S OPINIONS

The Board of Elections and Voter Registration has no authority to change the wording of a ballot question submitted by the County Council. Such is consistent with the determination in Douan. Unpublished Op. Atty. Gen. Dated August 20, 2004.

Section 4-37-30 requires that the various "items" in (a)(i), (a)(ii), and (a)(iii) be separately presented to the voters as "different projects." While it may be argued that county council possesses the requisite discretion to combine projects together for a single vote, and arguably Douan implicitly approved such a grouping, we respectfully disagree that the statute permits such combination. This combination would, in our view constitute a form of "bobtailing" which is inconsistent with §4-37-30(3). Unpublished Op. Atty. Gen. Dated September 13, 2004.

Greenbelt is not defined in the statute, but is commonly defined as a "belt of parkways or farmlands that encircles a community." Unpublished Op. Atty. Gen. Dated October 27, 2004.

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).

CASE NOTES

Section 7-13-400 provides for the form of the ballot when questions are submitted. The purpose of §7-13-400 is to aid the voter in understanding the *meaning* of his vote, not the *reason* for it. Instead of explaining *how* the voter could vote for or against the sales tax, the instructions to the voter in this case attributed *reasons* to vote in favor of the measure. Section 7-13-400 sets forth the format to create a neutrally worded ballot and does not contemplate words of advocacy. Accordingly, we find that the election results in this case must be voided. Douan v. Charleston County Council, 357 S.C. 601, 594 S.E.2d 261(2003).

The court ruled that when an act requires a referendum to be held at a general election but does not define "general election," the general election statutes must be used to determine its

meaning. Section 7-1-20(1) provides that a "general election" is the election to be held for officers to the regular terms of office provided by law and for voting on constitutional amendments. The general election occurs on the first Tuesday following the first Monday in November. Thus, the practical effect of this ruling is that a general election is an election held each and every November, unless a particular Act states otherwise. State v. County of Florence, 406 S.C. 169, 749 S.E.2d 516 (2013). [EDITOR'S NOTE: Although this case addressed the Capital Project Sales Tax, its principle would likely also apply here as "general election" is not defined in this Act.]

SECTION 4-37-40: LIMITATION ON SALES TAX RATE

EDITOR'S NOTE: This section deals with those counties which have previously passed the Capital Project Sales Tax authorized under Article 3 of Chapter 10, Title 4. This section prohibits the imposition of both the Transportation taxes and the Capital Project Sales Tax. A county could impose the LOST under Article 1 or the Personal Property Tax Exemption Sales Tax Act in Article 5 in addition to the Transportation Project Tax.

§4-37-40. Limitation on sales tax rate.

At no time may any portion of the county area be subject to more than one percent sales tax levied pursuant to this chapter, Article 3, Chapter 10 of this title, or pursuant to any local legislation enacted by the General Assembly.

HISTORY: 1995 Act No. 52, §2; 2000 Act No. 368, §2.

ATTORNEY GENERAL'S OPINIONS

Based on our reading of both the local legislation allowing Lexington County to impose a one percent local sales 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 is one percent, Lexington County may not 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 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).

SECTION 4-37-50: UNIDENTIFIED FUNDS; TRANSFER AND SUPPLEMENTAL DISTRIBUTIONS

EDITOR'S NOTE: The State Treasurer shall distribute proportionally those funds collected by the Department of Revenue which cannot be identified as to which governmental unit is owed the money. Unidentified revenue can result from an error by the merchant in identifying the proper governmental unit, especially in terms of proper municipal identification.

§4-37-50. Unidentified funds; transfer and supplemental distributions.

Annually, and only in the month of June, funds collected by the department from the local option transportation facility tax, which are not identified as to the governmental unit due the tax, must be transferred, after reasonable effort by the department to determine the appropriate governmental unit, to the State Treasurer's Office. The State Treasurer shall distribute these funds to the county treasurer in the county area in which the tax is imposed and the revenues must be used only for the purposes stated in the imposition ordinance. The State Treasurer shall calculate this supplemental distribution on a proportional basis, based on the current fiscal year's county area revenue collections.

HISTORY: 1999 Act No. 93, §7.

PART III

OTHER REVENUE SOURCES

ARTICLE 23, CHAPTER 31, TITLE 5: FRONT FOOT OF PER-PARCEL ASSESSMENT FOR SEWER IMPROVEMENT

SECTION 5-31-2310: DEFINITION OF POLITICAL SUBDIVISION

EDITORS NOTE: Although this section is largely self explanatory, note that the public entity must operate a sewer system.

§5-31-2310. "Political subdivision" defined.

For the purposes of this article, "political subdivision" means a municipality, county, or special purpose district which operates a sewer system authorized by law.

HISTORY: 1992 Act No. 423, §1.

SECTION 5-31-2320: EXPENDITURES FOR SEWER IMPROVEMENTS

EDITOR'S NOTE: This section grants counties the authority to spend the money collected pursuant to this article on sewer improvements. The county may adopt this expenditure by resolution.

§5-31-2320. Authority to expend funds collected by front-foot or per-parcel assessments for sewer improvements.

Notwithstanding any other provision of law, a political subdivision by resolution or ordinance duly adopted may provide for the expenditure of funds collected by way of front-foot assessments or per-parcel assessments for sewer improvements in accordance with this article.

HISTORY: 1992 Act No. 423, §2.

SECTION 5-31-2330: EXPENDITURE OF FUNDS FOR MAINTENANCE OF SEWER LINES

EDITOR'S NOTE: This section allows counties to apply the funds received from front-foot or per-parcel assessments to maintenance, repair or replacement of sewer lines. In order to apply the funds to these purposes the construction of all sewer collection lines for which the assessments were imposed must be completed and obligations issued to finance the construction of the sewer collection lines must be discharged. According to §5-31-2340, below, funds may only be used for maintenance after a finding by the county governing body that the requirements of this section have

been met. Funds may be utilized only for the maintenance, repair, or replacement of those sewer collection lines for which the assessments were imposed.

§5-31-2330. Application of funds to maintenance, repair and replacement of lines; conditions.

In the event that a political subdivision, pursuant to special or general act, has collected funds by way of front-foot assessments or per-parcel assessments to defray the cost of construction of sewer collection lines, these funds may be applied by the political subdivision to the maintenance, repair, and replacement of the lines as long as the following conditions are satisfied:

(1) the construction of all sewer collection lines for which the assessments were imposed and collected has been completed; and

(2) any obligations issued to finance the construction of the sewer collection lines have been discharged.

HISTORY: 1992 Act No. 423, §3.

SECTION 5-31-2340: Requirements Before Funds May be Used For Sewer Line Maintenance

EDITOR'S NOTE: As stated above, this section states that funds may be used for maintenance only after a finding by the county governing body that the requirements of this section have been met. Funds may be utilized only for the maintenance, repair, or replacement of those sewer collection lines for which the assessments were imposed.

§5-31-2340. Requirements on political subdivision prior to expenditure of funds.

Before the expenditure of funds in accordance with this article, the political subdivision first shall find by resolution or ordinance that the conditions set forth in Section 5-31-2330 are satisfied. The political subdivision also shall set forth in its resolution or ordinance a general description of the properties upon which the assessments were imposed and a general description of the use to which the funds shall be applied; however, the funds shall be applied only to maintenance, repair, or replacement of those sewer collection lines in connection with which the assessments were imposed.

HISTORY: 1992 Act No. 423, §4.

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

SECTION 12-21-6510: Tourism Infrastructure Admissions Tax Act

EDITOR'S NOTE: This section is self explanatory.

§12-21-6510. Short title.

This article may be cited as the Tourism Infrastructure Admissions Tax Act.

HISTORY: 1997 Act No. 109, §1.

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, §22.C; 2006 Act No. 386, §48.C; 2007 Act No. 116, §3.A.

SECTION 12-21-6530: TWENTY-FIVE PERCENT OF ADMISSIONS TAX PAID TO HOST LOCAL GOVERNMENT

EDITOR'S NOTE: This section dictates the amount of the admissions tax is to be paid to the county or municipality. The political subdivision which houses the tourism or recreation facility is to receive 1/4 of the license tax paid on admissions. The funds must be used for additional infrastructure improvements. If more than one infrastructure improvement is being considered, preference must be given to the improvement requested by the establishment generating the tax. Funds may be shared with other political subdivisions to support the tourism facility.

§12-21-6530. Portion of tax to be paid to county or municipality where establishment located; use of funds.

(A) During the benefit period, an amount equal to one-fourth of the license tax paid on admissions to an establishment must be paid by the department to the county or municipality in which the establishment is located. This portion of the tax is to be used directly or indirectly for additional infrastructure improvements. If more than one infrastructure improvement is being considered at the same time, preference must be given to infrastructure improvements requested by the establishment generating 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.

(B) If the establishment is located in an unincorporated area of a county, the payment must be made to the county governing body and, if located within the corporate limits of a municipality, the payment must be made to the municipal governing body.

(C) The county or municipal governing body may share funds received from these payments with another county or municipal governing body to provide additional infrastructure facilities or services in support of the establishment that generates the tax on admissions responsible for the payments.

HISTORY: 1997 Act No. 109, §1.

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

EDITOR'S NOTE: This section directs that 1/4 of the license tax paid on admissions to an establishment must be deposited into the special tourism infrastructure development fund. Counties or municipalities within five miles of the major tourism or recreation facility or major tourism or recreation area may apply to the Advisory Coordinating Council for Economic Development for grants from the fund by submitting a 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. Preference will be given to projects for infrastructure which directly or indirectly serve the establishment that generates the admissions tax. 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.

ATTORNEY GENERAL'S OPINION

PRT possesses the authority to request reimbursement from the fund for its certification process expenses. Section 12-21-6540 (F) expressly states that council may be reimbursed from the fund for its expenses in administering the fund. Council has delegated many of the duties and responsibilities associated with the certification process to PRT. Such administrative duties exercised by PRT are part of Council's exercise of its express authority to administer the fund. Unpublished Op. Atty. Gen. dated February 14, 2005.

SECTION 12-21-6550: APPLICATION/REQUIREMENTS FOR TOURISM INFRASTRUCTURE ADMISSIONS REVENUE

EDITOR'S NOTE: This section contains the requirements incumbent on the political subdivision and the tourism facility that wishes to obtain the funds described in this chapter. The local government must file a certification application with PRT for each tourism or recreation facility located in a tourism or recreation area. The certification application must be filed within one year of the end of the investment period. When the application is complete, PRT shall forward the application on to the Department of Revenue (DOR). DOR must notify the county or the municipality, in writing, if the certification application has been approved. A tourism or recreation facility for which a certification application has been filed must request a determination from the Advisory Coordinating Council for Economic Development as to the status of the tourism or

recreation facility. This request must accompany the local governments request for certification. DOR forwards the request for determination to the council. Pursuant to §12-54-240(B)(22) DOR may disclose information contained in a return filed pursuant to Article 17, Chapter 21, Title 12, for the purpose of complying with the Tourism Infrastructure Admissions Tax Act.

§12-21-6550. Certification application to be filed in county or municipality where major tourism or recreation area located; request for classification.

In order to obtain the amounts provided in Sections 12-21-6530 and 12-21-6540:

(A) The county or municipality in which the major tourism or recreation facility or major tourism or recreation area is located must file with the Department of Parks, Recreation and Tourism a certification application. The Department of Parks, Recreation and Tourism shall review the application for completeness and accuracy and if necessary contact the county or municipality for additional information. A separate certification application must be filed for each tourism or recreation facility located in a tourism or recreation area. The certification application must be filed within one year of the end of the investment period.

(B) When the application is complete, the Department of Parks, Recreation and Tourism shall forward the application on to the department. The department shall notify the county or the municipality, in writing, if the certification application has been approved.

(C) A tourism or recreation facility for which a certification application has been filed must request a determination from the council as to the status of the tourism or recreation facility. The council must classify each tourism or recreation facility as a new tourism or recreation facility or an expansion to an existing tourism or recreation facility. If a tourism or recreation facility is classified as an expansion to an existing tourism or recreation facility, Section 12-21-6580 applies. The request for determination of classification must be included in the certification application. The department must forward a copy of the request to the council for its determination.

HISTORY: 1997 Act No. 109, §1; 2005 Act No. 145, §24.A.

Cross References --

Allowed disclosure of information contained in a return filed pursuant to the Tourism Infrastructure Admissions Tax Act, see §12-54-240.

SECTION 12-21-6560: FACTORS WHICH MAY BE INCLUDED IN DETERMINING IF THE INVESTMENT THRESHOLD HAS BEEN MET

EDITOR'S NOTE: In determining whether a facility meets the $20 million threshold for classification under the Tourism Infrastructure Admissions Tax Act an entity may include hotels, food, and retail services which are located within or adjacent to, and directly support, the facility or area. Any combination of public or private sector funds spent on the area or facility may also be

included in determining if the $20 million investment has been met.

§12-21-6560. Factors for considering whether facility qualifies as major tourism or recreation facility or area.

In determining whether or not a particular facility qualifies as a major tourism or recreation facility or a major tourism or recreation area, the following items may be included in determining if the twenty million dollar investment has been met:

(1) secondary support facilities such as hotels, food, and retail services which are located within, or immediately adjacent to, the major tourism or recreation facility or the major tourism or recreation area and which directly support the major tourism or recreation facility or the major tourism and recreation area;

(2) private or public sector funds or a combination of private and public sector funds, spent on the major tourism or recreation facility or the major tourism or recreation area.

HISTORY: 1997 Act No. 109, §1.

SECTION 12-21-6570: DESIGNATED DEVELOPMENT AREA IS TO DETERMINED BY ORDINANCE

EDITOR'S NOTE: The designated development area is to determined by the an ordinance enacted by the governing body of the county or municipality. If the area is in both, then both governing bodies must adopt an ordinance. A single development area may only encompass 5% of the total acreage the municipality or county. Multiple development areas may only total 10% of the total acreage of the municipality or county.

§12-21-6570. Designated development area and boundaries to be determined by ordinance; maximum total acreage allowed; designated development area embracing contiguous lands within two or more county-municipal entities.

(A) A designated development area and its boundaries must be determined by municipal ordinance, if located in a municipality, or by county ordinance, if located in an unincorporated county area, or by more than one ordinance by municipal or county governments, or both, if it embraces areas within two or more counties or municipalities. One or more designated development areas may be located within a municipality or unincorporated county area.

(B) The total aggregate amount of a single designated development area within any municipality or county may not exceed five percent of the total acreage of the municipality or unincorporated county area.

(C) If there is more than one designated development area within a county or municipality, the total acreage for all designated development areas within a municipality must not exceed ten percent of the total acreage of the municipality and the total acreage for all designated development areas within unincorporated areas of a county must not exceed ten percent of the total acreage of the county's unincorporated areas.

(D) The acreage limitations for municipalities and unincorporated county areas do not apply

to designated development areas created prior to the year 2005 and located on a closed federal military facility as defined by the Base Realignment and Closure department, and the acreage for an area where these conditions are met are in addition to the acreage limitations applicable to any other designated development areas within the same municipality or unincorporated county area.

(E) Two or more municipal or county governments or combination of these governments may adopt ordinances to designate a "designated development area" embracing contiguous lands within two or more of the involved county-municipal entities, but the acreage for each involved municipality or county must not exceed five percent of the total acreage in each involved municipality or unincorporated county area.

(F) The boundaries of a designated development area must be determined prior to the date that the certification application is approved.

HISTORY: 1997 Act No. 109, §1.

SECTION 12-21-6580: EXPANDED OR IMPROVED TOURISM FACILITIES

EDITOR'S NOTE: If a tourism facility is expanded or improved with an additional $20 million investment, then the amount of admissions revenues subject to this section is the amount above what the area previously generated. This amount is determined by using the average of the admissions tax revenues generated during the twenty-four months preceding the date of the filing of the certification application.

§12-21-6580. Expansion or improvement of facilities; calculation of admissions tax revenues subject to §§12-21-6530 and 12-21-6540.

If a major tourism or recreation facility or a major tourism and recreation area is expanded or improved with an additional twenty million dollar investment being made within an investment period, the amount of admissions tax revenues subject to Sections 12-21-6530 and 12-21-6540 for the benefit period is the amount in excess of the annual admissions tax revenues previously generated by the major tourism or recreation facility, or by all of the tourism or recreation facilities within the major tourism or recreation area, as appropriate. This amount is determined by using the average of the admissions tax revenues generated during the twenty-four months preceding the date of the filing of the certification application.

HISTORY: 1997 Act No. 109, §1; 1998 Act No. 432, §10.

SECTION 12-21-6590: EXTRAORDINARY RETAIL ESTABLISHMENTS.

EDITOR'S NOTE: This section limits to four the number of facilities which PRT may designate as qualifying facilities under the Tourism Infrastructure Admissions Tax Act by locating within or directly contiguous to an extraordinary retail establishment. The section also states that for the purposes of this section, sales taxes must be substituted for admissions taxes wherever admission tax appears in the Tourism Infrastructure Admissions Tax Act. Finally, the section allows for the

purposes of these tourism facilities infrastructure improvements 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. 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 one-half 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; additional infrastructure improvements and other expenditures supporting construction or operation; application for conditional certification.

(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, §22.D; 2006 Act No. 386, §48.D; 2007 Act No. 116, §3.B.

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. PRT 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 publicly owned. If the Legislature intended for such improvements to be publicly owned, it would not be necessary for it to require that such improvements be dedicated for public use, as all publicly owned property is presumably dedicated for public use. If the Legislature intended public 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 SC Constitution, especially

considering that such funds could be used for improvements that will not be publicly owned. 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 SC Constitution. Unpublished Op. Atty. Gen. Dated February 20, 2009 (2009 WL 580561).

ARTICLE 1, CHAPTER 37, TITLE 12: ASSESSMENT OF PROPERTY TAXES - GENERAL PROVISIONS

SECTION 12-37-135: COUNTYWIDE BUSINESS REGISTRATION

EDITOR'S NOTE: This statute provides a mechanism similar to the suspension of a sales tax license which the state uses to collect state taxes. The section authorizes the county governing body to impose a countywide business registration. Being current on property taxes may be a condition of the registration. Previously, the tax collector could only seize and sell business personal property to collect delinquent business personal property. Prior to renewal of the registration a business with delinquent property taxes would be informed that the registration would not be renewed until the matter was resolved. The county may charge an administrative fee of up to $15 to defray costs. If this mechanism is used, that county may not adopt the existing business license tax found in §4-9-30(12) which generates revenue in addition to being a property tax collection tool.

§12-37-135. Countywide business registration; fee.

A county governing body may require a business registration throughout the entire county area and may impose an administrative fee not to exceed fifteen dollars. The fee is an administrative fee and must not be based upon business income. The business registration authorized by this section must be administered and enforced in the same manner as the business license tax described in Section 4-9-30(12), but must not be converted into a business license tax as described in that provision. The business registration administrative fee may be billed on any property tax bill and is deemed to be property tax for the purposes of collection if so billed. This registration, if adopted, is in lieu of any business license which is authorized pursuant to Section 4-9-30(12).

HISTORY: 2005 Act No. 145, §45.

PART IV

STATE AID TO SUBDIVISIONS ACT

The State Aid to Subdivisions Act was adopted by the General Assembly in 1991 and is the main source of revenue sharing funds for city and county government. This act contains the formula used to determine the total amount of aid to subdivisions and the formula by which that appropriation is distributed among the political subdivisions of the state.

CHAPTER 27, TITLE 6: STATE AID TO SUBDIVISIONS ACT

SECTION 6-27-10: SHORT TITLE

EDITOR'S NOTE: This section is self-explanatory.

§6-27-10. Short title.

This chapter may be cited as the State Aid to Subdivisions Act.

HISTORY: 1991 Act No. 171, Part II, §22A.

SECTION 6-27-20: LOCAL GOVERNMENT FUND AND MID-YEAR BUDGET CUTS

EDITOR'S NOTE: This section creates the Local Government Fund and mandates that the Fund be financed as provided for in the State Aid to Subdivisions Act. This section is especially important in that the General Assembly clearly states its intent is that the Local Government Fund not be subject to mid-year budget cuts by the State Fiscal Accountability Authority. In the event that a mid-year cut in the Local Government Fund is necessary, the State Fiscal Accountability Authority must make that action by a separate vote and under no circumstance is the Local Government Fund to be cut below the previous year's appropriation.

The most important aspect of this section is the funding floor which takes effect as mid-year budget cuts are made. This feature means that when budgets are being formulated, local government officials will be able to act with the knowledge that the amount of money coming from the Local Government Fund will be at least the same amount as the previous year.

§6-27-20. Local Government Fund; fund exempt from mid-year cuts; exception.

There is created the Local Government Fund administered by the State Treasurer. This fund is part of the general fund of the State. It is the intent of the General Assembly that this fund not be subject to mid-year cuts. However, if mid-year cuts are mandated by the Executive Budget Office

or the General Assembly, as appropriate, to avoid a year-end deficit, this fund is not subject to such cuts, except by a majority vote of the entire State Fiscal Accountability Authority which is separate and apart from any other reduction. These cuts are permitted only to the extent that counties and municipalities do not receive less funding than received in the immediate preceding fiscal year. The Local Government Fund must be financed as provided in this chapter.

HISTORY: 1991 Act No. 171, Part II, §22A.

Cross Reference --

Annual appropriations for salary supplements for clerks of court, probate judges, sheriffs, registers of deeds, auditors, and treasurers, see §8-15-65.

SECTION 6-27-30: FUNDING THE LOCAL GOVERNMENT FUND

EDITOR'S NOTE: The funding formula for the Local Government Fund is four and one-half percent of the state general fund of the most recently completed fiscal year. This formula replaced a confusing hodge podge of earmarked taxes which local government officials had no way of predicting or monitoring. Local government officials can to some degree estimate revenues from the state which will be available in the budget process because it is a relatively simple calculation. In the past, the aid to subdivisions formula was funded in the general appropriations act at some significant portion less than was called for by the formula itself. Between mid-year cuts and freezes in the percentage of formula funding, the amount of state aid did not grow or did not grow at nearly the same rate as state mandated services. Proviso 113.5 in the 2016 General Appropriations Act suspends §§6-27-30 and 6-27-50 for FY2016-17.

§6-27-30. Funding of Local Government Fund from general fund revenues.

In the annual general appropriations act, an amount equal to not less than four and one-half percent of the general fund revenues of the latest completed fiscal year must be appropriated to the Local Government Fund.

HISTORY: 1991 Act No. 171, Part II, §22A.

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

EDITOR'S NOTE: This section creates two different sub-funds of the Local Government Fund, one for counties and one for municipalities and then dictates how those two separate sub-funds are to be distributed among the counties and municipalities. The county sub-fund is to be distributed on the basis of each county's population in comparison to the state population. The second part of this section makes provisions for the continuation of the distribution of mini-bottle taxes for alcohol and drug abuse programs.

Several provisos in the 2016 General Appropriations Act affect or reference the Local Government

Fund and are discussed here.

Proviso 113.4 creates a penalty if office space and appropriations to a legislative delegation are less than the amount determined by the legislative delegation. If a county council fails to appropriate the demanded funding level, then the shortfall must be deducted from the county's Aid to Subdivisions allocation and an additional 25% of the remaining Aid to Subdivisions allotment must be forwarded to the legislative delegation for its "administrative costs."

Proviso 113.6 requires any appropriation made by a county or city to appear as a separate and distinct line item in the budget. The proviso also requires the county or city to require any entity that receives an appropriation from the local government to provide a detailed description of the purposes for which the appropriation was used. This proviso also states that a political subdivision may not accept any funds from organizations as defined in Agenda 21, adopted by the United Nations in 1992 at its Conference on Environment and Development, without posting certain information regarding the funding on the political subdivision's website for 10 days.

Proviso 113.7 states that for Fiscal Year 2016-17, a political subdivision receiving aid from the Local Government Fund may reduce its support to any state-mandated program or requirement by up to a percentage equal to the percentage reduction in the actual amount appropriated to the Local Government Fund as compared to the amount required to be appropriated pursuant to §6-27-30. Excluded from reductions are Administrative Law Judges and their offices, Court of Appeals and their offices, Circuit and Family Courts and their offices, Magistrates and their offices, Masters-in-Equity and their offices, Probate Courts and their offices, Public Defenders and their offices, Solicitors and their offices, and the Supreme Court and their offices.

Proviso 113.9 states that a county shall have its portion of the Local Government Fund withheld if the county imposes any additional requirements for an agricultural use exemption for a landowner's timberland beyond what is required by §§12-43-230(a) & 12-43-232.

Proviso 117.101 prohibits the assessment of South Carolina Development Impact Fees on the construction of new elementary, middle, or secondary schools. If a governmental entity violates this prohibition it shall have its Aid to Subdivisions Allocation reduced by the amount of the impact fee.

Proviso 117.104 provides that two counties that receive an allocation from the Local Government Fund may enter into a Memorandum of Understanding in order to provide recreational activities and projects that benefit the citizens of both counties.

Proviso 117.142 states that no state funds shall be expended to assist in the United States Refugee Resettlement Program unless the county council of the county where the resettlement is to occur approves the relocation.

§6-27-40. Distribution of monies appropriated to Local Government Fund; use of funds distributed.

(A) Not later than thirty days after the end of the calendar quarter, the State Treasurer shall distribute the monies appropriated to the Local Government Fund as follows:

(1) Eighty-three and two hundred seventy-eight thousandths percent must be distributed to counties. Of the total distributed to counties, each county must receive an amount based on the ratio that the county's population is of the whole population of this State according to the most recent United States Census.

(2) Sixteen and seven hundred twenty-two thousandths percent must be distributed to municipalities. Of the total distributed to municipalities, each municipality must receive an amount based on the ratio that the municipality's population is of the population of all municipalities in this State according to the most recent United States Census.

(B) In making the quarterly distribution to counties, the State Treasurer shall notify each county of the amount that must be used for educational purposes relating to the use of alcoholic liquors and for the rehabilitation of alcoholics and drug addicts. Counties may pool these funds with other counties and may combine these funds with other funds for the same purposes. The amount that must be used as provided in this subsection is equal to twenty-five percent of the revenue derived pursuant to Section 12-33-245 allocated on a per capita basis according to the most recent United States Census.

HISTORY: 1991 Act No. 171, Part II, §22A; 1996 Act No. 415, §2.

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, see §11-9-75.

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

Minibottle revenue hold harmless for education, prevention, and other purposes, see §12-33-245(C).

ATTORNEY GENERAL'S OPINION

If there is any reduction by the county whatsoever in the funding of the offices listed in Section 8-15-65(A), there must be a corresponding reduction in the distribution due the county pursuant to the State Aid to Subdivisions Act. Unpublished Op. Atty. Gen., dated August 27, 1997. [Editor's Note: A proviso in the general appropriations act allows counties to cut any state mandated requirement by up to the same percentage that the LGF was cut, if no specific level of funding is provided by law, with exceptions for specific offices. 2016 Act No. 284, Part IB, Proviso 113.7.]

SECTION 6-27-50: AMENDMENT BY SEPARATE ACT ONLY

EDITOR'S NOTE: This section is the key to the effectiveness of the entire act. No section of the State Aid to Subdivisions Act may be amended or repealed unless it is by separate act of the General Assembly solely for the purpose of changing the act. This provision prevents the legislature from balancing the appropriations bill using the Local Government Fund, as was the custom in previous years. Proviso 113.5 in Act No. 284 of 2016 (The General Appropriations Act) suspends this section for FY2016-2017.

§6-27-50. Restrictions on amendment or repeal of chapter.

No section of this chapter may be amended or repealed except in separate legislation solely for that purpose.

HISTORY: 1991 Act No. 171, Part II, §22A.

SECTION 6-27-55: FUNDING FOR THE COUNTY OFFICES OF STATE AGENCIES

EDITOR'S NOTE: This section requires counties to utilize the Local Government Fund to fund those state agencies for which council is required to provide funding by state law. Counties are required to provide office space and facility service to DSS pursuant to §43-3-65. Additionally, a temporary proviso in the General Appropriations Act requires counties to provide office space for each Administrative Law Judge residing within that county upon their request (Act No. 284 of 2016, Part IB, Proviso 58.2).

Proviso 113.7 in Act No. 284 of 2016 the General Appropriations Act states that a political subdivision receiving aid from the Local Government Fund may reduce its support to any state-mandated program or requirement by up to a percentage equal to the percentage reduction in the actual amount appropriated to the Local Government Fund as compared to the amount required to be appropriated pursuant to §§6-27-30 and 6-27-55. The proviso adds several exemptions to the proviso. Excluded from reductions are Administrative Law Judges and their offices, Court of Appeals and their offices, Circuit and Family Courts and their offices, Magistrates and their offices, Masters-in-Equity and their offices, Probate Courts and their offices, Public Defenders and their offices, Solicitors and their offices, and the Supreme Court and their offices.

§6-27-55. Funding for county offices.

From funds distributed to the county pursuant to Section 6-27-40, a county council shall provide a reasonable amount of funds for all county offices of state agencies for which the council is required to provide funding by state law.

HISTORY: 1996 Act No. 458, Part II, §105.

Cross References --

County to provide office space and facility service, for county DSS, see §43-3-65.
Local governments demanding rent from state agencies, see §10-1-55.

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