

# Act No. 57 of 2023: Development of Workforce Housing



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## Act No. 57 of 2023 – S. 284

South Carolina General Assembly  
125th Session, 2023-2024

A57, R66, S284

### STATUS INFORMATION

General Bill  
Sponsors: Senators Davis, Turner, Jackson, Scott, Kimpson, Senn, Campsen and Sabb  
Companion/Similar bill(s): 4213  
Document Path: SR-0145KM23.docx

Introduced in the Senate on January 10, 2023  
Introduced in the House on April 4, 2023  
Last Amended on May 10, 2023  
Currently residing in the Senate

Summary: Development of Workforce Housing



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- This Act would allow revenue that is collected under a local A-tax ordinance and revenue remitted back to local governments under the 2% State A-tax statute to be used for workforce housing. (Capped at 15%)
- It would also allow local governments to issue bonds to finance workforce housing projects. Those revenues used for workforce housing projects must promote home ownership.
- All local governments that have adopted a local comprehensive plan must solicit input for their analysis required in Section 6-29-510(D)(6) of the Code from homebuilders, developers, contractors, and housing finance experts.
- S. 284 was signed by the Governor on 5/19/23.



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- The bill also creates a Land Development Study Committee:
  - The study committee would seek assistance from several governmental agencies and private organizations, including SCAC.
- On or before the sixth year of the Act's effective date, various agencies shall issue a report to the General Assembly on the effect S. 284 / Act 57 has had on tourism and workforce housing.
- Includes a sunset of December 31, 2030, on the ability of a local government to use Accommodations Tax revenues for workforce housing.



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# Tourism Expenditure Review Committee (TERC) Memorandum



Mitchell M. Willoughby, R. Walker Humphrey II, Andrew J. D'Antoni, Elizabeth Dick, Elizabeth L. Carrall, Margaret M. O'Shields, Hunter R. Pope, John M.S. Hoefler, J. Patrick Hudson, Elizabeth S. Mabry, of counsel, \*New admitted in California, \*\*New admitted in Texas, CHARLESTON 133 River Landing Drive, Suite 200, Charleston, SC 29492, Phone 843.631.4426, Fax 843.631.4430, COLUMBIA 330 Richard Street, Columbia, SC 29201, Phone 803.252.3300, Fax 803.256.8092

- Memorandum released to TERC on September 18, 2023, with interpretations of several statutory changes authorized by Act No. 57 of 2023.
Advisory in nature and not intended to provide legal guidance.

### MEMORANDUM

To: Tourism Expenditure Review Committee
From: R. Walker Humphrey, II, Esq. Willoughby Humphrey & D'Antoni, PA
Date: September 18, 2023
Re: Act 57 and Workforce Housing

### Introduction

Last session, the General Assembly enacted Act 57, which allows state accommodations tax revenues to fund workforce housing expenditures. This memorandum presents an overview of Act 57 and addresses several questions about Act 57's requirements. A copy of Act 57 is attached to this memorandum for your convenience.

Because Act 57 was ratified less than four months ago, there are no court decisions interpreting its provisions. Any answer to these questions therefore cannot be free from doubt. But we have endeavored to answer TERC's questions using the Act's plain language and the overall legislative purpose of ensuring that state accommodations tax revenues are devoted to tourism-related expenditures.

### Background

State law imposes a 7% tax on accommodations which consists of three components: (1) a 4% tax credited to the state public school building fund, (2) a 1% tax deposited in the South Carolina Education Improvement Act of 1984 Fund, and (3) a 2% local accommodations tax ("A-tax") which is credited quarterly to the local governments where the tax was collected. S.C. Code Ann. § 12-36-2630. The A-tax funds are to be used as follows:

- (1) The first \$25,000 is deposited in the local government's general fund;

# SC Attorney General's Opinion on Act No. 57 of 2023



ALAN WILSON, Attorney General

October 16, 2023

Curtis L. Coltrane, Esq., Coltrane & Wilkins, LLC, Post Office Box 6808, Hilton Head Island, SC 29938

Dear Mr. Coltrane:

We received your letter requesting an opinion of this Office concerning Act 57 of 2023 and "the ability of local governments to utilize general fund money in the form of grants or donations to private entities for the development workforce housing." Your letter contains three questions, which we will address in turn.

### Law/Analysis

- Does section 6-4-104(3)(b) authorize the dedication of fifteen percent of the entire amount of the accommodations tax allocations to a local government, or does it authorize the dedication of fifteen percent of the "65%" fund described in 6-4-104(1)?

In order to provide some background to your question, we note that South Carolina law imposes a statewide seven percent sales tax on "the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transiently by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration." S.C. Code Ann. § 12-36-200(A) (Supp. 2022). Section 12-36-203(b) of the South Carolina Code (2014) explains that two percent of this tax is "local accommodations tax, which must be credited to the political subdivisions of the State in accordance with Chapter 4, Title 6." Section 6-4-19 of the South Carolina Code (2014 & Supp. 2022) governs the allocation of such revenue in country areas collecting more than fifty thousand dollars from the local portion of the accommodations tax and reads as follows:

- (1) The first twenty-five thousand dollars must be allocated to the general fund of the municipality or county and is exempt from all other requirements of this chapter.
(2) Five percent of the balance must be allocated to the general fund of the municipality or county and is exempt from all other requirements of this chapter.

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## SC Attorney General's Opinion on Act No. 57 of 2023

### Addressed Five Questions:

1. Does Section 6-4-10(4)(b)(ix) authorize the dedication of fifteen percent of the entire amount of the accommodations tax allocation to a local government, or does it authorize the dedication of fifteen percent of the "65%" fund described in 6-4-10(4)?
2. May a local government allocate all or any part of the fund described in Section 6-4-10(4)(b)(ix) to a non-profit organization to be used to develop workforce housing, so long as the non-profit organization complies with the requirements of the statute?
3. May a local government allocate all or any part of the fund described in Section 6-1-520(A)(7) to a non-profit organization to be used to develop workforce housing, so long as the non-profit organization complies with the requirements of the statutes?
4. Would making a donation or grant from the local government's general fund to a non-profit entity that develops affordable housing for the workforce (i.e.. Habitat for Humanity or similar) meet the public purpose requirement of Article X, Section 5 of the South Carolina Constitution?
5. Would making a donation or grant from the local government's general fund to a non-profit entity that develops affordable housing for the workforce (i.e.. Habitat for Humanity or similar) violate the prohibition against pledging the credit of the State set out in Article X, Section 11 of the South Carolina Constitution?



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## SC Attorney General's Opinion on Act No. 57 of 2023

1. Does Section 6-4-10(4)(b)(ix) authorize the dedication of fifteen percent of the entire amount of the accommodations tax allocation to a local government, or does it authorize the dedication of fifteen percent of the "65%" fund described in 6-4-10(4)?

*"The plain language of Section 6-4-10(4)(b)(ix) indicates that the Legislature's intent for the fifteen percent limitation on expenditures of accommodation tax revenue on the development of workforce housing is to be based on fifteen percent of the annual local accommodations tax revenue allocated to local government under Section 6-4-10, rather than the amount of funds allocated for just tourism-related expenditures."*



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## SC Attorney General's Opinion on Act No. 57 of 2023

2. May a local government allocate all or any part of the fund described in Section 6-4-10(4)(b)(ix) to a non-profit organization to be used to develop workforce housing, so long as the non-profit organization complies with the requirements of the statute?

*"A local government can allocate funds for the development of workforce housing to non-profit and for-profit entities so long as the expenditures satisfies the four-part test expressed by the Supreme Court in Nichols v. South Carolina Research Authority ... and the expenditure complies with the requirements set forth in Section 6-4-10(4)(b)(ix)."*



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## SC Attorney General's Opinion on Act No. 57 of 2023

3. May a local government allocate all or any part of the fund described in Section 6-1-520(A)(7) to a non-profit organization to be used to develop workforce housing, so long as the non-profit organization complies with the requirements of the statutes?

*"...we similarly conclude that if the expenditure satisfies the public purpose requirement as well as the Nichols factors and the requirements set forth in Section 6-1-520(A)(7), we believe it is within the local governments discretion to allocate funds to a non-profit, nonsectarian entity.?"*



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## SC Attorney General's Opinion on Act No. 57 of 2023

**Questions 4 and 5 regarding donations or grants from a local government's general fund for workforce housing were analyzed and addressed together:**

*"We believe a donation or grant to a non-profit entity for the development of workforce housing from a local government's general fund is permissible under Sections 5 and 11 of Article X of the South Carolina Constitution so long as the donation or grant serves a public purpose and the funds are used in the performance of a public function which is within the authority of the local government and the local government maintains some level of control to ensure the funds are used for the purposes for which they were allocated."*



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## Thank You!

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