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**S. 387**

**STATUS INFORMATION**

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Currently residing in the Senate Committee on **Finance**

Summary: Alternate Local Option Tourism Development Fee Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/19/2011 Senate Introduced and read first time ([Senate Journal‑page 3](file:///h:\sj%20archive\2011\01-19-11.docx))

1/19/2011 Senate Referred to Committee on **Finance** ([Senate Journal‑page 3](file:///h:\sj%20archive\2011\01-19-11.docx))

**VERSIONS OF THIS BILL**

[1/19/2011](file:///p:\pprever\2011-12\387_20110119.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 10 TO CHAPTER 10, TITLE 4 SO AS TO ENACT THE “LOCAL OPTION EXTRAORDINARY COMMERCIAL FACILITIES FEE ACT”, TO DEFINE NECESSARY TERMS, TO SPECIFY WHICH STORMWATER ORDINANCES APPLY, TO PROVIDE THAT A MUNICIPALITY MAY IMPOSE A FEE NOT TO EXCEED TWO PERCENT ON RETAILERS WITHIN A DESIGNATED ECONOMIC DEVELOPMENT SITE, TO PROVIDE THAT THE REVENUE FROM THE FEE SHALL BE USED TO OFFSET INFRASTRUCTURE COSTS, TO PROVIDE THE MANNER IN WHICH THE FEE MAY BE IMPOSED, TO PROVIDE THE MANNER IN WHICH THE FEE SHALL BE COLLECTED; AND BY ADDING ARTICLE 11 TO CHAPTER 10, TITLE 4 SO AS TO ENACT THE “ALTERNATE LOCAL OPTION TOURISM DEVELOPMENT FEE ACT”, TO DEFINE NECESSARY TERMS, TO PROVIDE THAT A MUNICIPALITY MAY IMPOSE A FEE NOT TO EXCEED ONE PERCENT FOR TOURISM ADVERTISEMENT AND PROMOTION DIRECTED AT NON‑SOUTH CAROLINA RESIDENTS, AND TO PROVIDE THE MANNER IN WHICH THE FEE MAY BE IMPOSED.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 10, Title 4 of the 1976 Code is amended by adding:

“Article 10

Local Option Extraordinary Commercial Facilities Fee

Section 4‑10‑1010. This article may be cited as the ‘Local Option Extraordinary Commercial Facilities Fee Act’.

Section 4‑10‑1020. For purposes of this article:

(1) ‘Designated economic development site’ means a geographic area which has been designated as a multicounty park pursuant Section 13, Article VIII of the South Carolina Constitution, 1895, and Section 4‑1‑170, which meets the following qualifying criteria: (i) the amount of new capital investment within the site is not less than an aggregate amount of one hundred million dollars; and (ii) the aggregate number of new full‑time jobs within the site is not less than one thousand two hundred fifty that are maintained for at least one year. After the first year of maintaining one thousand two hundred fifty new full‑time jobs, the site must maintain at least six hundred twenty‑five full‑time jobs for each year thereafter. The number of new jobs may be based on a quarterly report filed with the South Carolina Department of Employment and Workforce or the United States Bureau of Labor Statistics; except that a certificate based on those reports need not include copies of the reports so as to ensure the maintenance of privacy of information in the reports. The municipality making a designation of a designated economic development site shall notify the South Carolina Department of Revenue of the boundaries of the designated economic development site.

(2) ‘Fee’ means the local option extraordinary commercial facilities fee allowed to be imposed as provided in this article.

(3) ‘Infrastructure’ means:

(a) water and sewer projects and road construction and improvement projects. These projects include: planning, engineering, rights of way, drainage, curb and gutter, parking lots, parking lot lighting, flashing lights or signals, gates at crossway, resurfacing or widening, turn lanes, and acceleration lanes;

(b) fiber‑optic cable;

(c) rail spurs; and

(d) site preparation, which includes surveying, environmental and geotechnical study and mitigation, clearing, filling, and grading.

‘Infrastructure’ does not include buildings, fixtures, land acquisition, or other similar items.

‘Infrastructure’ includes only those projects for which costs were incurred after the initial identification of a site as a proposed designated economic development site.

(4) ‘Municipality’ means a municipal corporation created pursuant to Chapter 1, Title 5 or a municipal government as the use of the term dictates, located in a county as defined by subsection (1).

(5) ‘New capital investment’ means private capital investment within the designated economic development site by the owners of the properties which comprise the site which is incurred after the initial identification of the site as a proposed designated economic development site. New capital investment shall not include any costs incurred for the acquisition of land comprising the designated economic development site.

(6) ‘New job’ means a new full‑time job created in this State at the time a new facility is initially staffed.

Section 4‑10‑1025. (A) If the designated economic development site is located in jurisdictions with separate and distinct stormwater ordinances, the standards and controls of the most stringent ordinance apply in the entire site. Similarly, if the site is within a single jurisdiction for purposes of a stormwater ordinance and stormwater from the site is discharged into watercourses in adjoining jurisdictions, the most stringent stormwater ordinance of the adjoining jurisdictions apply in the entire site.

(B) An applicant for the reimbursement provisions of this article must submit a fully developed stormwater plan/model demonstrating its compliance with the applicable stormwater ordinance and the plan/model must be certified by the applicable jurisdiction’s stormwater authority.

(C) An applicant for the reimbursement provisions of this chapter shall pay for third party compliance monitoring of stormwater discharges, both water quality and quantity, for twenty years following completion of construction and initial occupancy of retail space. This responsibility remains with the original developer or its assigns for the twenty years and its duty under this requirement may not be assigned or transferred. The third party monitor selected by the developer must be approved by the oversight commission.

(D) Failure to meet stormwater discharges as modeled by the applicant and approved by the applicable jurisdiction results in the loss of the reimbursement provisions set out in this article if so determined by the oversight commission.

(E) The South Carolina Department of Health and Environmental Control shall enforce compliance with subsection (C) with respect to monitoring requirements and as modeled pursuant to subsection (B) with respect to stormwater discharges.

Section 4‑10‑1030. (A) Subject to the requirements of this article, a municipality may impose exclusively in the proposed designated economic development site a fee on all retailers located in the site not to exceed two percent for not more than twenty years. The fee shall be imposed on the gross proceeds of sales or sales price of all amounts subject to the sales and use tax imposed pursuant to Chapter 36, Title 12, but not the gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 and the gross proceeds of sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons, for the purposes provided in Section 4‑10‑1060 by:

(1) an ordinance adopted by a supermajority of the municipal council which must be at least two‑thirds of the members of a municipal council. However, if the fee is imposed by ordinance, the fee may not exceed one percent on the gross proceeds of sales or sales price of all amounts subject to the sales and use tax imposed pursuant to Chapter 36, Title 12, but not the gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 and the gross proceeds of sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons; or

(2) the approval of a majority of qualified electors voting in a referendum held pursuant to this section called by a majority of the members of the municipal council.

In the case of an imposition by ordinance, the text of the ordinance must contain a detailed statement that the designated economic development site will meet the requirements set forth in Section 4‑10‑1020(1) before the municipality may pay any infrastructure reimbursement. Regardless of the method of imposition, if the site fails to maintain the requirements set forth in Section 4‑10‑1020(1), the municipality may include, at the municipal council’s discretion, provisions in the ordinance which may suspend or repeal the fee, or require the owners of the site to refund to the municipality any fee revenues expended on infrastructure within the site on a pro rata basis or otherwise, as the council may deem necessary or appropriate.

(B)(1) Upon the adoption of a resolution calling for a referendum by the municipal council, the municipal election commission in each municipality shall conduct a referendum on the first Tuesday ninety days after the adoption of the resolution on the question of implementing the fee within the municipality. The state election laws apply to the referendum, mutatis mutandis. The municipal election commission shall publish the results of the referendum and certify them to the municipal council. The fee must not be imposed in the municipality, unless a majority of the qualified electors voting in the referendum approve the question.

(2) The ballot must read substantially as follows:

‘Must a [one or two] percent fee on the gross proceeds of sales or sales price of all amounts subject to the sales and use tax imposed pursuant to Chapter 36, Title 12, but not the gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 and the gross proceeds of sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons, be levied for the purpose of providing funding to defray the cost of infrastructure at the \_\_\_\_\_\_\_\_\_ designated economic development site, which will invest at least one hundred million dollars, and create at least one thousand two hundred fifty new jobs for at least the first year and shall maintain at least six hundred twenty‑five jobs thereafter?

Yes 

No ’

(3) If the question is not approved at the initial referendum, the municipal 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 a twenty‑four month period on the Tuesday following the first Monday in November in even‑numbered years.

(4) Two weeks before the referendum, the municipal council shall publish in a newspaper of general circulation within the jurisdiction a description of and the uses for the fee and a copy of the referendum question.

(C) The imposition date of the fee allowed pursuant to this article is the first day of the first month beginning more than sixty days after the municipality files a certified copy of the imposition ordinance or the certification of the results of the referendum with the South Carolina Department of Revenue.

(D) Once a certified copy of the ordinance or referendum results is filed with the Department of Revenue, for the period of imposition provided in that ordinance or referendum, the department may not accept as filed any additional ordinance or referendum results from the municipality that in any way relates to the fee allowed to be imposed pursuant to this article except an ordinance enacted by a supermajority of the municipal council which must be at least two‑thirds of the members of a municipal council or results of a referendum conducted with the same requirements set forth in subsection (B) rescinding the existing fee. The Department of Revenue shall accept for filing a certified copy of an ordinance or referendum results rescinding the fee and such rescission shall apply in the manner provided in this section for imposition.

(E) The municipality shall rescind the fee on all, or a portion of, the site upon written petition of all of the property owners in the entire site.

Section 4‑10‑1040. (A) The fee allowed by this article is an amount not to exceed two percent on the gross proceeds of sales or sales price of all amounts subject to the sales and use tax imposed pursuant to Chapter 36, Title 12, but not the gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 and the gross proceeds of sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons.

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

(C) The fee authorized by this article is in addition to all other state and local sales and use taxes and applies to the gross proceeds of sales in the designated economic development site 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 and the gross proceeds of sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons are exempt from the fee imposed by this article. The fee imposed by this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36, Title 12.

(D) The provisions of subsections (C), (D), (E), (F), and (G) of Section 4‑10‑350 apply for fee payors and the fee allowed to be imposed pursuant to this article, including further identification of point of sale jurisdictions, mutatis mutandis.

(E)(1) The revenues of the fee imposed pursuant to 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 and interest quarterly based on point of collection to the treasurer of the municipality in which the fee is imposed and the revenues must be used only for the purposes provided in Section 4‑10‑1060. 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 municipal code errors must be corrected prospectively.

(2) Prior to a designated economic development site meeting the criteria set forth in Section 4‑10‑1020(1), upon receipt of the revenues and interest from the Department of Revenue, the municipality shall deposit the revenue in a separate account. Any interest accrued in the account shall be credited to the account. The municipality may not expend any funds for the reimbursement of infrastructure until the designated economic development site meets the criteria set forth in Section 4‑10‑1020(1).

Section 4‑10‑1050. The Department of Revenue shall furnish data to the State Treasurer and to the municipal treasurers receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to 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.

Section 4‑10‑1060. (A) All fee revenues and interest on the fee revenues must be used exclusively for infrastructure located in the designated economic development site from which the fees were collected.

(B) A municipality may treat the fees as revenue from a multicounty park pursuant to Section 13, Article VIII of the South Carolina Constitution, 1895, and Section 4‑1‑170. The municipality may use the fees as provided in Section 4‑1‑175 as if such fees were revenues from payment in lieu of taxes, provided that the fees only may be used for the purposes specified in this section.

(C) Fee revenues from a designated economic development site may be used to reimburse an owner of property located in the designated economic development site for its investment in infrastructure only if: (a) the owner shall have actually expended in qualifying infrastructure not less than the amount to be reimbursed, and (b) the Department of Revenue certifies that (i) the items or activities for which the reimbursement is requested qualify as infrastructure as defined in this article, and (ii) the amount actually expended by the owner on eligible infrastructure is accurate and eligible for reimbursement.”

SECTION 2. Chapter 10, Title 4 of the 1976 Code is amended by adding:

“Article 11

Alternate Local Option Tourism Development Fee

Section 4‑10‑1110. This article may be cited as the ‘Alternate Local Option Tourism Development Fee Act’.

Section 4‑10‑1120. For purposes of this article:

(1) ‘County’ means a county in which revenues of the state accommodations tax imposed pursuant to Section 12‑36‑920 have aggregated at least five million dollars in a fiscal year and a per capita personal income of at least forty thousand dollars.

(2) ‘Fee’ means the local option tourism development fee allowed to be imposed as provided in this article.

(3) ‘Municipality’ means a municipal corporation created pursuant to Chapter 1, Title 5 or a municipal government or governing body as the use of the term dictates, located in a county as defined by item (1) of this section.

(4) ‘Per capita personal income’ means the latest reported per capita personal income as calculated by the Bureau of Economic Analysis of the United States Department of Commerce.

Section 4‑10‑1130. (A) Subject to the requirements of this article, a municipality by ordinance may impose in the municipality a fee not to exceed one percent for not more than ten years for the purposes provided in Section 4‑10‑1160 by the approval of a majority of qualified electors voting in a referendum held pursuant to this section called by a majority of the members of the municipal council.

(B)(1) Upon the adoption of a resolution calling for a referendum by the municipal council, the municipal election commission in each municipality shall conduct a referendum on the first Tuesday ninety days after the adoption of the resolution on the question of implementing the fee within the municipality. The state election laws apply to the referendum, mutatis mutandis. The municipal election commission shall publish the results of the referendum and certify them to the municipal council. The fee must not be imposed in the municipality, unless a majority of the qualified electors voting in the referendum approve the question.

(2) The ballot must read substantially as follows:

‘Must a one percent fee on the gross proceeds of sales or sales price of all amounts subject to the sales and use tax imposed pursuant to Chapter 36, Title 12, but not the gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 and the gross proceeds of sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons, be levied in \_\_\_\_\_\_\_\_\_\_ for the purpose of tourism advertisement and promotion directed at non‑South Carolina residents with the possibility that up to thirty percent be used to provide credits against municipal property taxes in the manner that the municipality shall provide by ordinance and no more than twenty percent of the fee revenues may be used to fund tourism related capital projects?

Yes 

No ’

(3) If the question is not approved at the initial referendum, the municipal 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 a twenty‑four month period on the Tuesday following the first Monday in November in even‑numbered years.

(4) Two weeks before the referendum, the municipal council shall publish in a newspaper of general circulation within the jurisdiction a description of and the uses for the fee.

(C) The imposition date of the fee allowed pursuant to this article is the first day of the first month beginning more than sixty days after the municipality files a certified copy of the imposition ordinance or the certification of the results of the referendum with the South Carolina Department of Revenue.

(D) Once a certified copy of the ordinance or referendum results is filed with the Department of Revenue, for the period of imposition provided in that ordinance or referendum, the department may not accept as filed any additional ordinance or referendum results from the municipality that in any way relates to the fee allowed to be imposed pursuant to this chapter.

Section 4‑10‑1140. (A) The fee allowed by this article is an amount not to exceed one percent of the gross proceeds of sales or sales price of all amounts subject to the sales and use tax imposed pursuant to Chapter 36, Title 12.

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

(C) The fee 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 municipality 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 and the gross proceeds of sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons are exempt from the fee imposed by this article. The fee imposed by this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36, Title 12.

(D) The provisions of subsections (C), (D), (E), (F), and (G) of Section 4‑10‑350 apply for fee payors and the fee allowed to be imposed pursuant to this article, including further identification of point of sale jurisdictions, mutatis mutandis.

(E) The revenues of the fee imposed pursuant to this article must be remitted to the department and placed on deposit with the State Treasurer and credited to a fund separate and distinct from the general fund of the State. Earnings on this fund must be credited to it and earnings are considered fee revenues. After deducting the amount of any refunds made and costs to the department of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the fee revenues quarterly to the treasurer of the municipality in which the fee is imposed and the revenues must be used only for the purposes provided in Section 4‑10‑1160. 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 municipal code errors must be corrected prospectively.

Section 4‑10‑1150. (A)(1) The Department of Revenue shall furnish data to the State Treasurer and to the municipal treasurers receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to 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.

Section 4‑10‑1160. (A)(1) Except as provided in item (2) of this subsection, fee revenues must be used exclusively for tourism advertisement and promotion directed at non‑South Carolina residents.

(2) Fee revenues received each year of imposition must be used as provided in item (1) except that up to thirty percent may be used to provide credits against municipal property taxes in the manner that the municipality shall provide by ordinance and no more than twenty percent of the fee revenues may be used to fund capital projects.

(B) The municipality shall designate no more than two organizations within the county to receive fee revenues to conduct the promotional activities provided pursuant to subsection (A)(1). These organizations must be nonprofit destination marketing organizations representing a broad cross section of tourism interests within the county. In addition, before an organization may be designated, it must certify to the imposing municipality that:

(1) its promotional and advertising programs are based on research‑based outcomes;

(2) the organization has a proven record of success in creating new and repeat visitation to the county;

(3) it has sufficient resources to create, plan, implement, and measure the marketing program generated by the fee revenues and the infrastructure to assure proper business controls; and

(4) it will use the funds only for the purposes provided pursuant to subsection (B)(1) or (D) of this section.

(C) the receiving organization must present an annual marketing plan and budget to the municipal council or its designee for review and approval before implementation.

(D) Capital projects funded by fee revenues must directly relate to the promotion of tourism.

(E) Municipalities located in the same county that are imposing a fee pursuant to this article jointly may designate a regional tourism promoter located in the county to promote tourism in the municipalities imposing the fee. The regional tourism promoter must be designated in the manner provided in subsection (B) and may only promote tourism to non‑South Carolina residents.”

SECTION 3. This act takes effect upon approval by the Governor.

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