CHAPTER 1

General Provisions

ARTICLE 1

General Provisions

**SECTION 6‑1‑10.** Power of political subdivisions to proceed under legislation dealing with bankruptcy or composition of indebtedness.

The consent of the State is hereby granted to, and all appropriate powers are hereby conferred upon, any county, municipal corporation, township, school district, drainage district or other taxing or governmental unit organized under the laws of the State to institute any appropriate action and in any other respect to proceed under and take advantage of and avail itself of the benefits and privileges conferred, and to accept the burdens and obligations created, by any existing act of the Congress of the United States and any future enactment of the Congress of the United States relating to bankruptcy or the composition of indebtedness on the part of the counties, municipal corporations, townships, school districts, drainage districts and other taxing or governmental units or any of them.

HISTORY: 1962 Code Section 1‑71; 1952 Code Section 1‑71; 1942 Code Section 7041‑1; 1939 (41) 10.

CROSS REFERENCES

Constitutional provisions regarding local government, generally, see SC Const, Art 8.

LIBRARY REFERENCES

Bankruptcy 3481.

Westlaw Key Number Search: 51k3481.

C.J.S. Bankruptcy Sections 361 to 367.

RESEARCH REFERENCES

ALR Library

57 ALR, Federal 2nd Series 121 , Eligibility for Chapter 9 Bankruptcy Relief, Applicable to Municipalities, Pursuant to 11 U.S.C.A. S109(C).

NOTES OF DECISIONS

In general 1

1. In general

The York County Natural Gas Authority is an agency or instrumentality qualified as a petitioner for the benefits of the bankruptcy statute. Mozingo v. York County Natural Gas Authority (C.A.4 (S.C.) 1965) 352 F.2d 78, certiorari denied 86 S.Ct. 1277, 383 U.S. 970, 16 L.Ed.2d 310.

South Carolina statute authorizing any county, municipality, or other governmental unit organized under laws of the state to institute any appropriate action in order to avail itself of benefits and privileges of federal bankruptcy law provided the necessary authorization for county hospital, as entity established by county pursuant to the power conferred on it by the South Carolina Home Rule Act, to file for Chapter 9 relief. In re Barnwell County Hosp. (Bkrtcy.D.S.C. 2012) 471 B.R. 849. Bankruptcy 2232

Nonprofit corporation organized under South Carolina law to assist the South Carolina Department of Transportation (SCDOT) in the financing, acquisition, construction and operation of turnpikes, highway projects and other transportation facilities qualified as “municipality,” which, since it was insolvent and authorized by South Carolina statute to avail itself of all benefits and privileges accorded under any Act of Congress, was eligible to be a Chapter 9 debtor. In re Connector 2000 Ass’n, Inc. (Bkrtcy.D.S.C. 2011) 447 B.R. 752. Bankruptcy 2232

**SECTION 6‑1‑20.** Contractual agreements to provide joint public facilities and services authorized.

Local governments, including counties, municipalities and special service districts, may enter into contractual agreements with each other to provide joint public facilities and services when considered mutually desirable.

The governing body of each local government entering into such agreements for joint public facilities and services shall approve the contractual agreement and be parties thereto.

The provisions of this section shall not be construed to restrict the powers of the participating local governments nor permit the levy of taxes not otherwise authorized by law.

HISTORY: 1962 Code Section 1‑75; 1967 (55) 267.

LIBRARY REFERENCES

Municipal Corporations 226.

Westlaw Key Number Search: 268k226.

C.J.S. Municipal Corporations Sections 894 to 895, 897, 899 to 900.

Attorney General’s Opinions

Whether or not a city police officer could exercise law enforcement authority outside the city limits and assist in the investigation of accidents and the control of traffic instant to a traffic accident at an intersection located just outside the city limits would depend on whether the officer was in pursuit of an offender or whether an agreement between jurisdictions pursuant to one of the referenced statutory provisions existed by which an officer was specifically authorized to act outside his jurisdiction. However, if a city police officer should answer a call outside his municipal jurisdiction, exclusive of such situations, the officer’s actions outside his jurisdiction would be limited to those of a non‑legal nature. Any actions beyond such could subject a municipality to liability and, thus, should be avoided. 1986 Op Atty Gen, No. 86‑79, p 248.

**SECTION 6‑1‑30.** Counties and municipalities authorized to implement Title I of the Housing and Community Development Act of 1974.

All counties and municipalities of this State may by appropriate resolution or ordinance implement the provisions of Title I of the Housing and Community Development Act of 1974, Public Law 93‑383, enacted by the Congress of the United States, and shall be authorized to engage in all community development activities encompassed therein, including, but not limited to, the application for funds; designation of officials for administration of grants; acquisition of eligible property; appropriation of funds for eligible projects, property rehabilitation loans, grants and loan guarantees, relocation assistance, planning, management and administrative costs; and the execution of all plans, contracts, certifications, applications, agreements, indemnities, reports, guarantees and other documents required thereby. Local governments may enter into mutual contracts to accomplish the purposes of this section.

HISTORY: 1975 (59) 109.

LIBRARY REFERENCES

United States 82(4).

Westlaw Key Number Search: 393k82(4).

C.J.S. United States Section 155.

**SECTION 6‑1‑35.** Preservation and protection of cemeteries.

(A) Counties and municipalities are authorized to preserve and protect any cemetery located within its jurisdiction which the county or municipality determines has been abandoned or is not being maintained and are further authorized to expend public funds and use county or municipal inmate labor, in the manner authorized by law, in connection with the cemetery.

(B) As used in this section, the term “preserve and protect” means to keep safe from destruction, peril, or other adversity and may include the placement of signs, markers, fencing, or other appropriate features so as to identify the site as a cemetery and so as to aid in the preservation and protection of the abandoned cemetery.

HISTORY: 1989 Act No. 125, Section 1.

LIBRARY REFERENCES

Cemeteries 3.

Westlaw Key Number Search: 71k3.

C.J.S. Cemeteries Sections 3 to 4, 11.

**SECTION 6‑1‑40.** Interstate extension of water and sewer systems.

No water or sewage system owned or operated by a county, municipality, special purpose district, or political subdivision created, organized, or existing under the laws of any other state may be extended, leased, or operated in the unincorporated area of any county of this State unless the county governing body wherein the system is proposed to be extended, leased, or operated has by ordinance approved and authorized the extension, lease, or operation.

HISTORY: 1984 Act No. 448.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

**SECTION 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, Section 2; 2006 Act No. 388, Pt IV, Section 2.C, eff June 10, 2006; 2007 Act No. 57, Section 2.A, eff June 6, 2007.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

Effect of Amendment

The 2006 amendment rewrote this section.

The 2007 amendment, in the third sentence, substituted “January” for “November” in two places.

LIBRARY REFERENCES

States 123.

Westlaw Key Number Search: 360k123.

C.J.S. States Section 226.

**SECTION 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, Section 132A7; 1997 Act No. 155, Part II, Sections 71A, 72A.

LIBRARY REFERENCES

Municipal Corporations 72.

Westlaw Key Number Search: 268k72.

C.J.S. Municipal Corporations Section 189.

RESEARCH REFERENCES

ALR Library

82 ALR 6th 497 , Validity, Construction, and Application of State Constitutional and Statutory Balanced Budget Provisions.

NOTES OF DECISIONS

Validity of statute as enacted in 1994 1

1. Validity of statute as enacted in 1994

Statute, as enacted in 1994, requiring real estate transfer fees collected by local governments to be remitted to state did not violate home rule provision of State Constitution as General Assembly was constitutionally empowered to determine parameters of local government authority. Town of Hilton Head Island v. Morris (S.C. 1997) 324 S.C. 30, 484 S.E.2d 104. Municipal Corporations 72

Statute, as enacted in 1994, requiring real estate transfer fees collected by local governments to be remitted to state was “general law” for purposes of constitutional provision permitting legislature to pass general law regarding powers of local government as statute applied to all real estate transfer fees. Town of Hilton Head Island v. Morris (S.C. 1997) 324 S.C. 30, 484 S.E.2d 104. Municipal Corporations 72

Statute, as enacted in 1994, requiring real estate transfer fees collected by local governments to be remitted to state did not levy tax and, thus, did not violate constitutional requirement that property tax levies be uniform. Town of Hilton Head Island v. Morris (S.C. 1997) 324 S.C. 30, 484 S.E.2d 104. Taxation 2122

Statute, as enacted in 1994, which required real estate transfer fees collected by local governments to be remitted to state did not violate constitutional requirement that state legislature provide for balanced budget, in absence of any evidence that legislature incurred shortfall from relying on revenue from transfer fees or used surplus from fees for improper purpose. Town of Hilton Head Island v. Morris (S.C. 1997) 324 S.C. 30, 484 S.E.2d 104. States 121

Statute, as enacted in 1994, which required real estate transfer fees collected by local governments to be remitted to state was not unconstitutional classification under equal protection clause as statute applied to all local governments that were similarly situated. Town of Hilton Head Island v. Morris (S.C. 1997) 324 S.C. 30, 484 S.E.2d 104. Constitutional Law 3565; Municipal Corporations 879

Statute, as enacted in 1994, exempting local governments which imposed real estate transfer fees prior to certain date from paying to state all transfer fees collected for period of time was not arbitrary classification in violation of equal protection clause as classification reasonably related to proper legislative purpose of allowing local governments which previously relied on transfer fees to phase out fees as source of revenue. Town of Hilton Head Island v. Morris (S.C. 1997) 324 S.C. 30, 484 S.E.2d 104. Constitutional Law 3565; Municipal Corporations 879

Statute, as enacted in 1994, which required real estate transfer fees collected by local governments to be remitted to state and was enacted as part of general appropriations act did not violate constitutional provision requiring that every statute relate to one subject which is reflected in title as statute related to raising and spending tax monies on political subdivisions. Town of Hilton Head Island v. Morris (S.C. 1997) 324 S.C. 30, 484 S.E.2d 104. Municipal Corporations 879; Statutes 1617(12)

**SECTION 6‑1‑75.** Allocation of aid to counties based on population of annexed areas.

Where a portion of one county is annexed to another county, the total amount allocated by the General Assembly under Aid to Subdivisions to the two counties must not exceed the total which would be allocated to the two counties separately. However, the population of the annexed areas must be taken into consideration in determining the proportionate share of the total allocation due to each county.

HISTORY: 1995 Act No. 145, Part II, Section 40.

LIBRARY REFERENCES

States 123.

Westlaw Key Number Search: 360k123.

C.J.S. States Section 226.

**SECTION 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, Section 9A.

LIBRARY REFERENCES

Counties 159.

Municipal Corporations 885.

Schools 92(3).

Westlaw Key Number Searches: 104k159; 268k885; 345k92(3).

C.J.S. Counties Section 196.

C.J.S. Schools and School Districts Sections 502, 511.

C.J.S. Municipal Corporations Sections 1628 to 1629.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 6‑1‑85.** Monitor, review of tax burden borne by certain classes of property; determination and estimation of tax incidence; publication of reports.

(A) The Office of Research and Statistics of the Revenue and Fiscal Affairs Office, shall monitor and review the tax burden borne by the classes of property listed in Article X, Section 1 of the State Constitution. To determine the tax burden of each class of property, the Office of Research and Statistics may use a ratio that compares total property taxes paid by the property class divided by the total fair market value of the property class. The Department of Revenue shall provide to the Office of Research and Statistics the information on assessed values and fair market values of properties as collected in accordance with Section 59‑20‑20(3).

(B) The Office of Research and Statistics of the Revenue and Fiscal Affairs Office, shall develop a methodology to determine and estimate tax incidence. A tax incidence statement, prepared by the Office of Research and Statistics, must be attached to any bill or resolution that has the potential to cause a shift in tax incidence. The tax incidence refers to the ultimate payer of a tax.

(C) The Office of Research and Statistics of the Revenue and Fiscal Affairs Office, may consult with outside experts with respect to fulfilling the requirements of subsections (A) and (B) of this section.

(D) Reports of the Office of Research and Statistics of the Revenue and Fiscal Affairs Office required under this section must be published and reported to the Governor, the members of the State Fiscal Accountability Authority, the members of the General Assembly and made available to the public.

HISTORY: 1997 Act No. 138, Section 6.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

LIBRARY REFERENCES

Taxation 80.

Westlaw Key Number Search: 371k80.

C.J.S. Taxation Sections 112 to 114, 135 to 138.

**SECTION 6‑1‑90.** Authorization of gifts to certain volunteer service personnel.

(A) Notwithstanding another provision of law, the governing body of a local government may authorize the distribution of a gratuitous year‑end or holiday monetary or other type of gift to the following categories of volunteer service personnel:

(1) reserve law enforcement officers;

(2) volunteer firefighters; or

(3) volunteer emergency medical service personnel.

(B) If the governing body of a local government elects to authorize the distribution of a gratuitous year‑end or holiday monetary or other type of gift, it shall ensure all personnel in that respective category bequeathed pursuant to this section are treated equally.

HISTORY: 2013 Act No. 76, Section 2, eff June 13, 2013.

Editor’s Note

2013 Act No. 76, Section 1, provides as follows:

“SECTION 1. This act shall be known as the ‘Volunteer Service Personnel Appreciation Act’.”

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 38, Emoluments of Office, Perquisites, and Bonuses.

**SECTION 6‑1‑110.** Moratorium prohibited; notification requirement.

No municipality or county may adopt an ordinance which imposes a moratorium on a construction project for which a permit has been granted without giving a two‑week notice in a newspaper of general circulation in the county in which the project is located. No moratorium may be imposed without at least two readings which are a week apart.

HISTORY: 1996 Act No. 357, Section 1.

LIBRARY REFERENCES

Zoning and Planning 86.

Westlaw Key Number Search: 414k86.

C.J.S. Zoning and Land Planning Section 192.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 6‑1‑120.** Confidentiality of county or municipal taxpayer information.

(A) Except in accordance with a proper judicial order or as otherwise provided by the Freedom of Information Act, it is unlawful for an officer or employee of a county or municipality, or the agent of such an officer or employee to divulge or make known in any manner the financial information, or other information indicative of units of goods or services sold, provided by a taxpayer included in a report, tax return, or application required to be filed by the taxpayer with that county or municipality pursuant to a county or municipal ordinance imposing a:

(1) tax authorized under Article 5 or Article 7;

(2) business license tax authorized under Section 4‑9‑30(12) or Section 5‑7‑30;

(3) fee the measure of which is:

(a) gross proceeds of sales of goods or services; or

(b) paid admissions to a place of amusement.

(B) Nothing in this section prohibits the:

(1) publication of statistics classified to prevent the identification of particular reports, returns, or applications and the information on them;

(2) inspection of reports, returns, or applications and the information included on them by an officer or employee of the county or municipality, or an agent retained by an officer or employee, in connection with audits of the taxpayer, appeals by the taxpayer, and collection efforts in connection with the tax or fee which is the subject of the return, report, or application;

(3) sharing of data between public officials or employees in the performance of their duties, including the specific sharing of data as provided in Article 8 of this chapter, the Fairness in Lodging Act.

(C) A person who knowingly violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both. In addition, if the person convicted is an officer or employee of the county or municipality, the offender must be dismissed from the office or position held and is disqualified from holding a public office in this State for five years following the conviction.

HISTORY: 1999 Act No. 111, Section 1; 2000 Act No. 269, Section 1; 2014 Act No. 261 (S.985), Section 2, eff June 9, 2014.

Effect of Amendment

2014 Act No. 261, Section 2, in subsection (B)(3), inserted the reference to the Fairness in Lodging Act.

LIBRARY REFERENCES

Records 55.

Westlaw Key Number Search: 326k55.

C.J.S. Records Section 101.

Attorney General’s Opinions

As long as it is within the performance of their duties, there appears to be no limitation on sharing information between public officials and public employees within separate offices. S.C. Op.Atty.Gen. (October 31, 2012) 2012 WL 5705584.

**SECTION 6‑1‑130.** Political subdivisions; scope of authority to set minimum wage rates.

(A) For purposes of this section “political subdivision” includes, but is not limited to a municipality, county, school district, special purpose district, or public service district.

(B) A political subdivision of this State may not establish, mandate, or otherwise require a minimum wage rate that exceeds the federal minimum wage rate set forth in Section 6 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206. Also, a political subdivision of this State may not establish, mandate, or otherwise require a minimum wage rate related to employee wages that are exempt under 29 U.S.C. 201 et seq., the Fair Labor Standards Act of 1938.

(C) This section does not limit the authority of political subdivisions to establish wage rates in contracts to which they are a party.

(D) For purposes of this section, “wage” has the same meaning set forth in Section 3(m) of the Fair Labor Standards Act of 1938, 29 U.S.C. 203(m).

HISTORY: 2002 Act No. 243, Section 1.

LIBRARY REFERENCES

Labor Relations 1268.

Westlaw Key Number Search: 232Ak1268.

C.J.S. Labor Relations Sections 1141 to 1142.

**SECTION 6‑1‑140.** Advisory referenda regarding activities of local or regional hospitals.

Notwithstanding any other provision of law, for political subdivisions of this State that were created to operate hospitals on a local or regional basis, which receive Medicaid funds to directly provide health care services, and whose governing body is not a county board, committee, or commission within the meaning of Section 4‑9‑170, the ability to call for or conduct advisory referenda regarding their activities shall rest solely with the governing board of the political subdivision or a governmental body which appoints the board, including a county legislative delegation.

HISTORY: 2004 Act No. 272, Section 1, eff July 16, 2004.

**SECTION 6‑1‑150.** Derelict mobile homes; removal and sale.

(A) For purposes of this section:

(1) “Derelict mobile home” means a mobile home:

(a) that is:

(i) not connected to electricity or not connected to a source of safe potable water supply sufficient for normal residential needs, or both;

(ii) not connected to a Department of Health and Environmental Control approved wastewater disposal system; or

(iii) unoccupied for a period of at least thirty days and for which there is clear and convincing evidence that the occupant does not intend to return on a temporary or permanent basis; and

(b) that is so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin‑infested that it creates a hazard to the health or safety of the occupants, the persons using the mobile home, or the public.

(2) “Landowner” means the owner of real property on which a derelict mobile home is located.

(3) “Local governing body” means the governing body of a county or municipality.

(4) “Local official” means the office or agency that is responsible for inspecting or zoning property in a county or a municipality.

(5) “Mobile home” means a structure, not including a modular home, designed for temporary or permanent habitation and constructed to permit its transport on wheels, temporarily or permanently attached to its frame, from its place of construction or sale to a location where it is intended to be a housing unit or a storage unit. For purposes of this section only, “mobile home” includes both mobile and manufactured homes.

(B)(1) If a landowner seeks to have a mobile home removed from his property and sold, the landowner may apply to a magistrate and follow the procedures in Section 29‑15‑10. The landowner does not have to have the mobile home determined to be a derelict mobile home in order to have it removed from his property and sold following the procedures of Section 29‑15‑10.

(2) If a landowner seeks to have a mobile home determined to be derelict so it may be removed from the landowner’s property and destroyed, the landowner must:

(a) apply to the local official to have the mobile home inspected;

(b) receive written confirmation from the local official that the mobile home has been inspected and meets the requirements for removal and disposal and provided in this section;

(c) file the required pleadings with the magistrate to seek to have the mobile home removed from the property and destroyed, and follow the procedures in Section 29‑15‑10 to notify the owner of the mobile home and any lienholders that the local official has determined the mobile home is a derelict mobile home and that the matter is the subject of a proceeding in the magistrates court; and

(d) post a notice on each door of the mobile home for thirty consecutive days reading substantially as follows:

“NOTICE

This mobile home is the subject of a proceeding in the magistrates court to determine if it will be removed from this property. For further information, please contact: (name and telephone number of landowner seeking removal) or (name and telephone number of magistrates court where action is pending).

(Date of Notice)”

(3) If, in a court proceeding with the proper notice, the magistrate determines that the mobile home is derelict, as provided in this section, and orders the derelict mobile home to be removed and destroyed, the landowner must remove and dispose of the derelict mobile home and send proof of the removal and disposal to the county auditor as provided in Section 12‑49‑85(D).

(C)(1) If a local official determines that a derelict mobile home has value for which it may be sold, the local official may apply to a magistrate and follow the procedures in Section 29‑15‑10 to notify the owner of the mobile home and any lienholders that the local official has determined the mobile home is a derelict mobile home and has filed the required pleadings with the magistrate to seek to have the mobile home removed from the property and sold.

(2) If a local official seeks to remove and destroy a derelict mobile home, the local official must follow the procedures in Section 29‑15‑10 to notify the owner of the mobile home and any lienholders that the local official has determined the mobile home is a derelict mobile home and has filed the required pleadings with the magistrate to seek to have the mobile home removed from the property and destroyed.

(3) In addition to the notice requirements in the magistrates court, in order to (a) remove and sell, or (b) remove and destroy a derelict mobile home, a local official must post a notice on each door of the mobile home for thirty consecutive days reading substantially as follows:

“NOTICE

This mobile home is the subject of a proceeding in the magistrates court to determine if it will be removed from this property. For further information, please contact: (name and telephone number of local government office seeking removal) or (name and telephone number of magistrates court where action is pending).

(Date of Notice)”

(4) In a court proceeding with the proper notice, a magistrate must determine whether a derelict mobile home may be either (a) removed and sold, or (b) removed and destroyed. In order for the mobile home to be removed and destroyed, it must meet the requirements of a derelict mobile home as defined in this section.

(5) If the magistrate determines that the mobile home is derelict and is to be removed and sold, the local official must follow the procedures in Section 29‑15‑10.

(6) If the magistrate determines that the mobile home is derelict and is to be removed and destroyed, the local official or the landowner must remove and dispose of the derelict mobile home and send proof of the removal and disposal to the county auditor as provided in Section 12‑49‑85(D).

(D)(1) All costs of removal and disposal are the responsibility of the owner of the derelict mobile home, and may be waived only by order of the magistrates court or if a local governing body has a program that covers removal and disposal costs.

(2) A lienholder of the derelict mobile home is not responsible for the costs of removal and disposal unless the lienholder or his agent effects a recovery of the mobile home under its lien and subsequently the lienholder or his agent knowingly abandons the mobile home on the property and allows the mobile home to become a derelict mobile home.

(3) If the landowner is the owner of the derelict mobile home and is unwilling or unable to pay the costs of removal and disposal, a lien for the costs of removal and disposal may be placed on the landowner’s real property where the derelict mobile home was located.

(E) To defray the costs of location, identification, and inspection of derelict mobile homes, a local governing body may impose a registration fee of no more than twenty‑five dollars to be paid when a manufactured home or mobile home is registered with the county or municipality. This fee may be in addition to all other fees and charges relating to a manufactured home or mobile home and may be required to be paid before electrical connection.

HISTORY: 2007 Act No. 45, Section 1, eff June 4, 2007.

**SECTION 6‑1‑160.** Authority to adopt policy to permit invocation to open meeting of public body; definitions.

(A) For purposes of this section:

(1) “Public invocation” means a prayer or invocation delivered in a method provided pursuant to subsection (B) to open the public meeting of a deliberative public body. In order to comply with applicable constitutional law, a public invocation must not:

(a) be exploited to proselytize or advance any one, or to disparage any other faith or belief; or

(b) coerce participation by observers of the invocation.

(2) “Deliberative public body” includes, but is not limited to, a state board or commission; the governing body of a county or municipal government; a school district board; a branch or division of a county or municipal government; and a special purpose or public service district.

(B) A deliberative public body may adopt a policy to permit a public invocation as defined in subsection (A)(1) before each meeting of the public body, for the benefit of the public body. The policy may allow for a public invocation to be offered on a voluntary basis, at the beginning of the meeting, by:

(1) one of the public officials, elected or appointed to the deliberative public body;

(2) a chaplain elected by the public officials of the deliberative public body; or

(3) an invocation speaker selected on an objective basis from among a wide pool of religious leaders serving established religious congregations in the local community in which the deliberative public body meets. To ensure objectivity in the selection, the deliberative public body may, but is not required to, compile a list of known, established religious congregations and assemblies, and invite a “religious leader” from each congregation and assembly to give a public invocation on a first‑come, first‑served basis. The invitation may contain, in addition to scheduling and other general information, the following statement: “A religious leader is free to offer a public invocation according to the dictates of his own conscience, but, in order to comply with applicable constitutional law, the [name of deliberative public body issuing the invitation] requests that the public invocation opportunity not be exploited to proselytize or advance any one, or to disparage any other faith or belief; or coerce participation by observers of the invocation”.

(C) In order that deliberative public bodies may have access to advice on the current status of the law concerning public invocations, the Attorney General’s office shall prepare a statement of the applicable constitutional law and, upon request, make that statement available to a member of the General Assembly or a deliberative public body. As necessary, the Attorney General’s office shall update this statement to reflect any changes made in the law. The Attorney General’s office may make the statement available through the most economical and convenient method including, but not limited to, posting the statement on a website.

(D) The Attorney General shall defend any deliberative public body against a facial challenge to the constitutionality of this act.

(E) Nothing in this section prohibits a deliberative public body from developing its own policy on public invocations based upon advice from legal counsel.

HISTORY: 2008 Act No. 241, Section 2 eff May 27, 2008; 2016 Act No. 198 (S.233), Section 2, eff June 3, 2016.

Editor’s Note

2008 Act No. 241, Section 1 provides as follows:

“This act may be cited as the ‘South Carolina Public Invocation Act’.”

2016 Act No. 198, preamble and Section 1, provide as follows:

“Whereas, state and local governing bodies across the nation have long maintained a tradition of solemnizing their proceedings by allowing for an opening invocation before each meeting for the benefit and blessing of those public bodies; and

“Whereas, such invocations before deliberative public bodies have been consistently upheld as constitutional by American courts, including the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit; and

“Whereas, in Marsh v. Chambers, 463 U.S. 783, 786 (1983), the United States Supreme Court rejected a challenge to the Nebraska Legislature’s practice of opening each day of its sessions with a prayer by a chaplain paid with taxpayer dollars, and specifically concluded, ‘The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom’; and

“Whereas, the United States Supreme Court clarified in Marsh, 463 U.S. at 794‑795, ‘The content of [such] prayer is not of concern to judges where . . . there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief’; and

“Whereas, in Simpson v. Chesterfield County Board of Supervisors, 404 F.3d 276 (4th Cir. 2004), cert. denied, the United States Court of Appeals for the Fourth Circuit reviewed and specifically approved the policy of a county board in which various clergy in the county’s religious community were invited to present invocations before meetings of the board; and

“Whereas, the Fourth Circuit’s ruling in Simpson can be distinguished from its earlier decision in Wynne v. Town of Great Falls, 376 F.3d 292, 298 (4th Cir. 2004, cert. denied) (citing Marsh, 463 U.S. at 794), where the court found a town council ‘improperly “exploited” a “prayer opportunity” to “advance” one religion over others’; and

“Whereas, in Town of Greece v. Galloway, 134 S.Ct. 1811 (2014), the United States Supreme Court subsequently held a town’s practice of opening its town board meetings with sectarian prayers by guest religious leaders expressing the beliefs of one faith did not violate the Establishment Clause; and

“Whereas, the Galloway Court rejected an argument that the Establishment Clause requires nonsectarian or ecumenical prayer, holding the explicitly sectarian nature of the prayers was not outside the tradition recognized in Marsh and reasoning a rule that requires prayers to be nonsectarian would force the legislatures and courts to act impermissibly as ‘supervisors and censors of religious speech’; and

“Whereas, the Galloway Court held that prayer practice is permissible so long as it is consistent with the tradition of lending ‘gravity to public business’; ‘there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief’; the town does not discriminate against minority faiths in determining who may offer a prayer; and the prayer does not coerce participation by nonadherents; and

“Whereas, the Galloway Court explained that ‘[a]bsent a pattern of prayers that over time denigrate, proselytize, or betray an impermissible government purpose, a challenge based solely on the content of a prayer will not likely establish a constitutional violation’; and

“Whereas, the General Assembly passed Act 241 of 2008 before the United States Supreme Court issued Galloway and now wishes to amend the act to incorporate Galloway’s holding; and

“Whereas, this act signifies the General Assembly’s belief that deliberate public bodies in this State may adopt policies that will permit public invocations in a constitutionally permissible fashion. This act does not signify the General Assembly’s belief in the limits of constitutional law, nor preempt the deliberative public body from exercising a constitutional right to permit public invocations pursuant to a policy other than that set forth in this act.”

“SECTION 1. This act may be cited as the ‘South Carolina Public Prayer and Invocation Act’.”

Effect of Amendment

2016 Act No. 198, Section 1, rewrote (A) through (B).

Attorney General’s Opinions

Analysis of U.S. Supreme Court decision Town of Greece v. Galloway, 134 S.Ct. 1811 (2014), and public invocations pursuant to this section. S.C. Op.Atty.Gen. (September 3, 2014) 2014 WL 4659412.

A court would likely conclude that the Marsh exception for deliberative bodies applies to a school board as “a board meeting is fundamentally a meeting of adults, open to the public and conducted for the purpose of doing public business”. S.C. Op.Atty.Gen. (January 28, 2013) 2013 WL 482679.

Under this section, a legislative or deliberative body may open its proceedings with a nonsectarian prayer only. S.C. Op.Atty.Gen. (January 28, 2013) 2013 WL 482679.

Use of students to give invocations at school board meetings runs the risk of transforming what otherwise may be a deliberative body into a body more akin to the school for purposes of the Establishment Clause. S.C. Op.Atty.Gen. (January 28, 2013) 2013 WL 482679.

**SECTION 6‑1‑170.** Preemption of local ordinance relating to immigration; civil actions.

(A) For purposes of this section, “political subdivision” includes, but is not limited to, a municipality, county, school district, special purpose district, or public service district.

(B) A political subdivision of this State may not enact any ordinance or policy that limits or prohibits a law enforcement officer, local official, or local government employee from seeking to enforce a state law with regard to immigration.

(C) A political subdivision of this State may not enact any ordinance or policy that limits or prohibits a law enforcement officer, local official, or local government employee from communicating to appropriate federal or state officials with regard to the immigration status of any person within this State.

(D) A city, county, municipality, or other local government or political subdivision may not enact any ordinance, policy, regulation, or other legislation pertaining to the employment, licensing, permitting, or otherwise doing business with a person based upon that person’s authorization to work in the United States that exceeds or otherwise conflicts with federal law or that is in conflict with state law. An enactment found to be in conflict with federal or state law is void.

(E)(1) Notwithstanding any other provision of law, a resident of a political subdivision in this State may bring a civil action in the circuit court in which the resident and political subdivision are located to enjoin:

(a) an enactment by the political subdivision of any ordinance or policy that intentionally limits or prohibits a law enforcement officer, local official, or local government employee from seeking to enforce a state law with regard to immigration;

(b) an enactment by the political subdivision of any ordinance or policy that intentionally limits or prohibits a law enforcement officer, local official, or local government employee from communicating to appropriate federal or state officials regarding the immigration status of a person within this State; or

(c) an enactment by the political subdivision of any ordinance, policy, regulation, or other legislation pertaining to the employment, licensing, permitting, or otherwise doing business with a person based upon that person’s authorization to work in the United States, which intentionally exceeds or conflicts with federal law or that intentionally conflicts with state law.

(2) A person who is not a resident of the political subdivision may not bring an action against the political subdivision pursuant to this subsection. The action must be brought against the political subdivision and not against an employee of the political subdivision acting in the employee’s individual capacity.

(3) If the court finds that the political subdivision has intentionally violated this section, the court shall enjoin the enactment, action, policy, or practice, and may enter a judgment against the political subdivision of not less than one thousand dollars nor more than five thousand dollars for each day that the enactment, action, policy, or practice remains or remained in effect. The proceeds from any such judgment must be used to reimburse the resident’s reasonable attorney’s fees. Any remaining proceeds must be used to cover the administrative costs of implementing, investigating, and enforcing the provisions of Chapter 8, Title 41.

HISTORY: 2008 Act No. 280, Section 18, eff June 4, 2008; 2011 Act No. 69, Section 1, eff January 1, 2012.

Effect of Amendment

The 2011 amendment added subsection (E).

United States Supreme Court Annotations

Deportation or removal, federal law preempts most of Arizona immigration law, see Arizona v. U.S., 2012, 132 S.Ct. 2492, 567 U.S. 387, 183 L.Ed.2d 351, on remand 689 F.3d 1132. Aliens, Immigration, and Citizenship 103; States 18.43

Attorney General’s Opinions

An E911 dispatcher would not be required to be a United States citizen to be a certified Class 4 telecommunications officer. S.C. Op.Atty.Gen. (May 22, 2015) 2015 WL 3525224.

Notes of Decisions

Standing 1

1. Standing

Various immigration rights groups and individuals lacked standing to bring their constitutional challenge to section of newly‑adopted South Carolina immigration law that simply authorized private civil actions against local political subdivisions who failed to enforce law, in absence of any concrete and particularized injury that was actual and imminent as result of that section. U.S. v. South Carolina, 2011, 840 F.Supp.2d 898, modified in part 906 F.Supp.2d 463, affirmed 720 F.3d 518. Constitutional Law 695

ARTICLE 3

Authority of Local Governments to Assess Taxes and Fees

**SECTION 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, Section 7.

CROSS REFERENCES

South Carolina Abandoned Buildings Revitalization Act, eligibility for credit, see Section 12‑67‑140.

Attorney General’s Opinions

A court would likely find the proposed public safety fee fails to satisfy one or more of prongs of the four‑part test for the validity of a uniform service charge. Consequently, a court would likely find the public safety fee is a tax, and it would then proceed to determine whether the tax is consistent with the laws of this State, including the restrictions on property tax increases. S.C. Op.Atty.Gen. (August 24, 2011) 2011 WL 3918170.

**SECTION 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, Section 7.

LIBRARY REFERENCES

Municipal Corporations 73.

Westlaw Key Number Search: 268k73.

C.J.S. Municipal Corporations Section 190.

Attorney General’s Opinions

Discussion of whether a county or municipality is prohibited from raising taxes or implementing a fee beyond the actual cost of a service without specific statutory authority. S.C. Op.Atty.Gen. (April 26, 2017) 2017 WL 1955651.

**SECTION 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, Section 7; 2008 Act No. 412, Section 1, eff June 25, 2008.

Effect of Amendment

The 2008 amendment designated subsection (A) and added subsection (B) relating to real estate professionals and auctioneers.

LIBRARY REFERENCES

Licenses 5.5.

Westlaw Key Number Search: 238k5.5.

C.J.S. Licenses Sections 10 to 12.

**SECTION 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, Section 7; 1999 Act No. 114, Section 4; 2005 Act No. 145, Section 6, eff June 7, 2005; 2006 Act No. 388, Pt II, Section 2.A, eff January 1, 2007; 2007 Act No. 57, Section 3, eff June 6, 2007; 2007 Act No. 110, Section 34.A, eff June 21, 2007; 2007 Act No. 116, Section 40, eff June 28, 2007, applicable for tax years beginning after 2007; 2008 Act No. 410, Section 1, eff June 25, 2008; 2011 Act No. 57, Sections 2.A, 2.B, eff June 14, 2011; 2014 Act No. 249 (S.964), Sections 1. 2, eff June 6, 2014; 2016 Act No. 276 (H.4762), Section 1, eff June 15, 2016.

Code Commissioner’s Note

At the direction of the Code Commissioner, subsection (A) appears as amended by 2007 Act No. 57, Section 3 which includes the changes made by the subsequent 2007 amendments.

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

Effect of Amendment

The 2005 amendment, in subsection (A), in the first sentence substituted “in the average of the twelve monthly consumer price indexes for the most recent twelve‑month period consisting of January through December of the” for “in the consumer price index for the”.

The 2006 amendment, in subsection (A), at the end of the first sentence added the clause starting with “, plus, beginning in 2007,”; rewrote subsections (B) and (C); and deleted subsection (F).

The first 2007 amendment, in subsection (A), in the first sentence substituted “indices” for “indexes” and added the second and third sentences; and, in subsection (E), in the introductory clause substituted “in this article” for “herein” and at the end substituted “that are more restrictive than the limit provided pursuant to subsection (A) of this section” for “as currently in the existing law”.

The second and third 2007 amendments by Acts 110 and 116, in subsection (A), added an identical sentence pertaining to reduction in population as the fifth sentence added by the first 2007 amendment.

The 2008 amendment added paragraphs (B)(6) and (7).

The 2011 amendment, in subsection (A), designated the existing text as paragraph (1) and added paragraph (2); and added subsection (F).

2014 Act No. 249, Sections 1, 2, added subsections (G) and (H).

2016 Act No. 276, Section 1, in (B)(7), inserted “or national”.

CROSS REFERENCES

West Florence Fire District, district functions, power to raise funds, millage levy, see Section 4‑23‑1015.

LIBRARY REFERENCES

Municipal Corporations 956(2).

Westlaw Key Number Search: 268k956(2).

C.J.S. Municipal Corporations Sections 1736 to 1738.

Attorney General’s Opinions

New municipalities are not prohibited from creating and implementing a property tax, even though the General Assembly disfavors tax increases and new taxes. S.C. Op.Atty.Gen. (January 20, 2017) 2017 WL 569539.

The Fort Mill School District No. 4 of York County would be limited to an increase in millage that is the lower of the increase allowed by this section or the increase allowed by 1990 Act No. 744. S.C. Op.Atty.Gen. (April 14, 2016) 2016 WL 1711848.

The Town of Edgefield cannot reinstate its former millage rate of 81 mills, instead, the millage rate must be calculated pursuant to Section 6‑l‑320(A) unless the Town establishes the applicability of a specific exception to the cap. S.C. Op.Atty.Gen. (July 9, 2014) 2014 WL 3640923.

Discussion of whether a substitution of an operating property tax millage would count as a municipal property tax increase in excess of the millage cap as determined by this section. S.C. Op.Atty.Gen. (April 28, 2014) 2014 WL 1809641.

The Board of Trustees of the School District is the local governing body, and has the authority to increase the millage rate for one of the purposes set forth in Section 6‑1‑320(B) without the approval of County Council. S.C. Op.Atty.Gen. (March 30, 2012) 2012 WL 1154974.

Counties that experience an overall decrease in property values in a reassessment year should employ the rollback calculation provided in Section 12‑37‑251. S.C. Op.Atty.Gen. (June 28, 2011) 2011 WL 2648717.

Although the Holly Springs Fire District Commission successfully employed one of the exceptions listed in section 6‑1‑320(B) allowing the District to exceed the millage rate cap in 2008, if it wishes to exceed the general millage rate in 2009, it must reestablish that one of the exceptions under section 6‑1‑320(B) is applicable, and also approve the increase by a two‑thirds vote. S.C. Op.Atty.Gen. (Oct. 26, 2010) 2010 WL 4391632.

NOTES OF DECISIONS

In general 1

1. In general

Municipality erred in using nonstatutory variables as adjustments from total property tax revenue for preceding year, in calculating the rollback millage rate in reassessment year; statute governing calculation of rollback millage rate did not permit any adjustments to property tax revenue, and municipality deducted 7.5% for expected successful appeals of valuations by taxpayers, and adjusted revenue to reflect 86% collection rate. Angus v. City of Myrtle Beach (S.C. 2005) 363 S.C. 1, 609 S.E.2d 808, rehearing denied. Municipal Corporations 956(2)

**SECTION 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, Section 7; 2009 Act No. 75, Section 2, eff June 16, 2009.

Effect of Amendment

The 2009 amendment added subsection (D) relating to imposition of stormwater, sediment, or erosion control fees on agricultural, forest, or undeveloped lands.

LIBRARY REFERENCES

Municipal Corporations 961.

Westlaw Key Number Search: 268k961.

C.J.S. Municipal Corporations Sections 1739, 1742, 1748.

Attorney General’s Opinions

Discussion of whether a county or municipality is prohibited from raising taxes or implementing a fee beyond the actual cost of a service without specific statutory authority. S.C. Op.Atty.Gen. (April 26, 2017) 2017 WL 1955651.

This section does not conflict with Section 4‑9‑30 and it does not prohibit a county from requiring a three‑fourths super majority vote to implement a service fee. S.C. Op.Atty.Gen. (March 14, 2017) 2017 WL 1095386.

Discussion of whether Greenwood County, as the owner of Lake Greenwood, is authorized to charge an annual fee on docks as registering encroachments, and whether an encroachment agreement by Greenwood County would be authorized as a part of their permit process in registering encroachments. S.C. Op.Atty.Gen. (May 28, 2013) 2013 WL 2450879.

Discussion regarding a proposal to add the cost of fire service fees to the billing cycles of the existing and future customers of a city‑owned Department of Public Utilities. S.C. Op.Atty.Gen. (August 23, 2012) 2012 WL 3875116.

A court would likely find the proposed public safety fee fails to satisfy one or more of prongs of the four‑part test for the validity of a uniform service charge. Consequently, a court would likely find the public safety fee is a tax, and it would then proceed to determine whether the tax is consistent with the laws of this State, including the restrictions on property tax increases. S.C. Op.Atty.Gen. (August 24, 2011) 2011 WL 3918170.

So long as the fee charge for a development site review is valid in all other respects, a County can assess a per square foot fee for this review. S.C. Op.Atty.Gen. (Feb. 24, 2010) 2010 WL 928440.

Notes of Decisions

Summary Judgment 1

1. Summary Judgment

Genuine issues of material fact as to whether city adequately funded ongoing operating and maintenance expenses, and satisfied the specific statutory set‑asides, as a precondition for diverting $4.5 million from its water and sewer enterprise fund into its general fund each year, precluded summary judgment in action brought by objectors challenging city’s use of water and sewer revenues. Azar v. City of Columbia (S.C. 2015) 414 S.C. 307, 778 S.E.2d 315, rehearing denied. Judgment 181(15.1)

Genuine issue of material fact as to what nexus, if any, existed between economic development costs and city’s provision of water and sewer services, precluded summary judgment in action brought by objectors challenging city’s use of water and sewer funds based on statutory provision that required revenues obtained through service or user fees to be spent on costs related to the city’s provision of water and sewer services. Azar v. City of Columbia (S.C. 2015) 414 S.C. 307, 778 S.E.2d 315, rehearing denied. Judgment 181(15.1)

ARTICLE 5

Local Accommodations Tax

CROSS REFERENCES

Beach Preservation Act, fees remitted to local governing body, see Section 6‑1‑660.

Fairness in Lodging Act, sharing of data between implementing jurisdictions and Department of Revenue, notices in annual property tax notices, civil penalties, see Section 6‑1‑820.

**SECTION 6‑1‑500.** Short title.

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

HISTORY: 1997 Act No. 138, Section 8.

**SECTION 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, Section 8.

RESEARCH REFERENCES

ALR Library

61 ALR 6th 387 , Obligation of Online Travel Companies to Collect and Remit Hotel Occupancy Taxes.

58 ALR 4th 274 , Tax on Hotel‑Motel Room Occupancy.

Encyclopedias

S.C. Jur. Hotels, Motels and Other Lodgings Section 26, Taxes.

NOTES OF DECISIONS

In general 1

1. In general

District court was not clearly erroneous, so as to warrant reconsideration, in concluding that South Carolina statute defining “local accommodations tax” was applicable, not only to persons located within the municipality, but to any person, no matter where they were located, who was engaged in the business of renting out accommodations located within the municipality, in light of the principles of statutory construction, the clear purpose of the law, and the absurd results which otherwise would have logically followed. City of Charleston, S.C. v. Hotels.com, LP, 2008, 586 F.Supp.2d 538. Innkeepers 4

South Carolina statute, which defined “local accommodations tax” as a tax “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,” permitted municipalities to levy accommodations taxes against those engaged in the practice of providing hotel rooms within the municipal boundaries, regardless of the providers’ physical location. City of Charleston, S.C. v. Hotels.com, LP, 2007, 520 F.Supp.2d 757, reconsideration denied 586 F.Supp.2d 538. Innkeepers 4

Online sellers and online resellers of hotel rooms supplied accommodations to consumers, who accessed their websites to book and pay for hotel rooms, without interacting with or paying the hotels at all until they arrived, and, thus, sellers and resellers were “in the business of furnishing accommodations,” within the meaning of South Carolina statute defining “local accommodations tax.” City of Charleston, S.C. v. Hotels.com, LP, 2007, 520 F.Supp.2d 757, reconsideration denied 586 F.Supp.2d 538. Innkeepers 4

**SECTION 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, Section 8.

CROSS REFERENCES

Beach preservation fee, referendum, see Section 6‑1‑630.

“Qualified coastal municipality” defined, see Section 6‑1‑620.

LIBRARY REFERENCES

Innkeepers 4.

Westlaw Key Number Search: 213k4.

C.J.S. Inn, Hotels and Eating Places Sections 8 to 9.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hotels, Motels and Other Lodgings Section 26, Taxes.

Attorney General’s Opinions

The funds collected by the local accommodations tax may be spent on advertisement to promote over‑night stays specifically or more broadly to promote tourism or tourist services which may have an effect on overnight stays. S.C. Op.Atty.Gen. (February 7, 2017) 2017 WL 1017491.

NOTES OF DECISIONS

In general 1

1. In general

Accommodations Tax Act and Hospitality Tax Act do not permit county to divest municipality of portion of its tax rate when municipality has previously imposed full accommodations and/or hospitality tax authorized by those statutes. City of Hardeeville v. Jasper County (S.C. 2000) 340 S.C. 39, 530 S.E.2d 374. Innkeepers 4; Taxation 3611

**SECTION 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, Section 8; 1999 Act No. 93, Section 13; 2002 Act No. 312, Section 1; 2006 Act No. 314, Section 1, eff June 1, 2006; 2010 Act No. 290, Section 35, eff January 1, 2011.

Effect of Amendment

The 2006 amendment, in subsection (B), designated subparagraph (1) and added subparagraph (2).

The 2010 amendment, in paragraph (B)(2), substituted “fifty” for “twenty”.

LIBRARY REFERENCES

Innkeepers 4.

Westlaw Key Number Search: 213k4.

C.J.S. Inn, Hotels and Eating Places Sections 8 to 9.

**SECTION 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, Section 8.

CROSS REFERENCES

Beach preservation fee, referendum, see Section 6‑1‑630.

“Qualified coastal municipality” defined, see Section 6‑1‑620.

LIBRARY REFERENCES

Innkeepers 4.

Westlaw Key Number Search: 213k4.

C.J.S. Inn, Hotels and Eating Places Sections 8 to 9.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hotels, Motels and Other Lodgings Section 26, Taxes.

LAW REVIEW AND JOURNAL COMMENTARIES

Remote seller sales and use tax law: How proposed law will impact South Carolina. James Bull Sterling, 65 S.C. L. Rev. 827 (Summer 2014).

**SECTION 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, Section 8.

LIBRARY REFERENCES

Municipal Corporations 36(4).

Westlaw Key Number Search: 268k36(4).

C.J.S. Municipal Corporations Sections 74 to 75.

**SECTION 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, Section 8.

**SECTION 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, Section 63A.

LIBRARY REFERENCES

Innkeepers 4.

Westlaw Key Number Search: 213k4.

C.J.S. Inn, Hotels and Eating Places Sections 8 to 9.

ARTICLE 6

Beach Preservation Act

**SECTION 6‑1‑610.** Short title.

This article may be cited as the “Beach Preservation Act”.

HISTORY: 2014 Act No. 188 (S.503), Section 1, eff June 2, 2014.

**SECTION 6‑1‑620.** Definitions.

As used in this article:

(1) “Beach preservation fee” means a fee imposed on the gross proceeds derived from the rental or charges for accommodations furnished to transients for consideration within the jurisdiction of the governing body which are subject to the tax imposed pursuant to Section 12‑36‑920(A).

(2) “Governing body” means the governing body of a qualified coastal municipality.

(3) “Qualified coastal municipality” means a municipality bordering on the Atlantic Ocean that has a public beach within its corporate limits and which imposes a local accommodations tax pursuant to Section 6‑1‑520 that does not exceed one and one‑half percent pursuant to the limitations imposed pursuant to Section 6‑1‑540.

HISTORY: 2014 Act No. 188 (S.503), Section 1, eff June 2, 2014.

**SECTION 6‑1‑630.** Beach preservation fee; referendum.

(A) The governing body of a qualified coastal municipality by ordinance, subject to a referendum, may impose a beach preservation fee not to exceed one percent.

(B) Upon the adoption of an ordinance calling for a referendum, the county election commission shall conduct a referendum at the time specified in the ordinance on the question of implementing a one percent beach preservation fee. The state election laws apply to the referendum, mutatis mutandis. The county election commission shall publish the results of the referendum to certify them to the governing body. The beach preservation fee must not be imposed unless a majority of the qualified electors residing in the municipality voting in the referendum vote in favor of the referendum.

(C)(1) The ballot must read substantially as follows:

“Must an additional one percent beach preservation fee be added to the accommodations tax for the purpose of nourishment, renourishment, maintenance, erosion mitigation, and monitoring of beaches, dune restoration and maintenance, including planting of grass, sea oats, or other vegetation useful in preserving the dune system, and maintenance of public beach accesses within the corporate limits of \_\_\_\_\_.

Yes \_\_\_

No \_\_\_

(2) If the question is not approved at the initial referendum, the governing body may, by an ordinance meeting the requirements of this section, 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.

(3) Once a week for the four weeks immediately preceding the referendum, the governing body of the municipality shall publish notice in a newspaper of general circulation within the jurisdiction a description of and the specific uses for the beach preservation fee. The governing body also must publish notice on its website in the same manner.

(D) The fee authorized by this article is in addition to all other local accommodations taxes imposed pursuant to Section 6‑1‑520 and must not be deemed cumulative with the local accommodations tax or fee rate for the purposes of Section 6‑1‑540.

(E) All proceeds from the beach preservation fee must be kept in a separate fund segregated from the governing body’s general fund. All interest generated by the beach preservation fee fund must be credited to the beach preservation fee fund.

HISTORY: 2014 Act No. 188 (S.503), Section 1, eff June 2, 2014.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 6‑1‑640.** Use of revenue generated by beach preservation fee.

The revenue generated by the beach preservation fee must be used exclusively for the following purposes:

(1) nourishment, renourishment, maintenance, erosion mitigation, and monitoring of the beaches within the corporate limits of the qualified coastal municipality;

(2) dune restoration and maintenance, including planting of grass, sea oats, or other vegetation useful in preserving the dune system within the corporate limits of the qualified coastal municipality; and

(3) maintenance of public beach accesses within the corporate limits of the qualified coastal municipality.

HISTORY: 2014 Act No. 188 (S.503), Section 1, eff June 2, 2014.

**SECTION 6‑1‑650.** Notice of dropped rental property.

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

HISTORY: 2014 Act No. 188 (S.503), Section 1, eff June 2, 2014.

**SECTION 6‑1‑660.** Fees remitted to local governing body.

The fee provided for pursuant to this article must be remitted to the local governing body on a monthly basis when the estimated amount of the average of the total of the tax imposed pursuant to Article 5 of this chapter and this article is more than fifty dollars a month, on a quarterly basis when the estimated amount of such average is twenty‑five dollars to fifty dollars a month, and on an annual basis when the estimated amount of such average is less than twenty‑five dollars a month.

HISTORY: 2014 Act No. 188 (S.503), Section 1, eff June 2, 2014.

ARTICLE 7

Local Hospitality Tax

**SECTION 6‑1‑700.** Short title.

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

HISTORY: 1997 Act No. 138, Section 9.

**SECTION 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, Section 9.

**SECTION 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, Section 9.

LIBRARY REFERENCES

Taxation 1208.

Westlaw Key Number Search: 371k1208.

C.J.S. Taxation Sections 1990, 1999.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hotels, Motels and Other Lodgings Section 26, Taxes.

Attorney General’s Opinions

Discussion of whether the Gaffney City Council may use funds from the local hospitality tax collected pursuant to South Carolina Code Section 6‑1‑720 et seq. to repair roads. S.C. Op.Atty.Gen. (March 27, 2014) 2014 WL 1511521.

NOTES OF DECISIONS

In general 1

1. In general

Accommodations Tax Act and Hospitality Tax Act do not permit county to divest municipality of portion of its tax rate when municipality has previously imposed full accommodations and/or hospitality tax authorized by those statutes. City of Hardeeville v. Jasper County (S.C. 2000) 340 S.C. 39, 530 S.E.2d 374. Innkeepers 4; Taxation 3611

**SECTION 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, Section 9; 1999 Act No. 93, Section 14; 2006 Act No. 314, Section 2, eff June 1, 2006; 2010 Act No. 290, Section 36, eff January 1, 2011.

Effect of Amendment

The 2006 amendment, in subsection (B), designated subparagraph (1) and added subparagraph (2).

The 2010 amendment, in subsection (B)(2), substituted “fifty” for “twenty”.

LIBRARY REFERENCES

Taxation 1344.1.

Westlaw Key Number Search: 371k1344.1.

C.J.S. Taxation Section 2071.

Attorney General’s Opinions

Whether revenue from the Local Hospitality Tax established by the City of Goose Creek may be used to pay for a recreational facility. S.C. Op.Atty.Gen. (February 17, 2015) 2015 WL 836506.

Discussion of whether the Gaffney City Council may use funds from the local hospitality tax collected pursuant to South Carolina Code Section 6‑1‑720 et seq. to repair roads. S.C. Op.Atty.Gen. (March 27, 2014) 2014 WL 1511521.

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 section 6‑1‑730(A). S.C. Op.Atty.Gen. (Dec. 5, 2011) 2011 WL 6959374.

If Clarendon County collects at least nine hundred thousand dollars in accommodations taxes and the building it is renovating is in fact tourism‑related, it may use its hospitality tax revenue for the maintenance and operation of such a building. S.C. Op.Atty.Gen. (June 10, 2010) 2010 WL 2678689.

**SECTION 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, Section 9.

LIBRARY REFERENCES

Taxation 1281.

Westlaw Key Number Search: 371k1281.

C.J.S. Taxation Sections 2035 to 2036.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hotels, Motels and Other Lodgings Section 26, Taxes.

**SECTION 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, Section 9.

LIBRARY REFERENCES

Municipal Corporations 36(4).

Westlaw Key Number Search: 268k36(4).

C.J.S. Municipal Corporations Sections 74 to 75.

**SECTION 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, Section 10; 2010 Act No. 284, Section 1, eff upon approval (became law without the Governor’s signature on June 28, 2010).

Code Commissioner’s Note

This section was classified as Section 6‑1‑760 at the direction of the Code Commissioner.

Effect of Amendment

The 2010 amendment rewrote this section.

**SECTION 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, Section 63B.

LIBRARY REFERENCES

Taxation 1331.

Westlaw Key Number Search: 371k1331.

C.J.S. Taxation Section 2055.

ARTICLE 8

Fairness in Lodging Act

CROSS REFERENCES

Confidentiality of county or municipal taxpayer information, see Section 6‑1‑120.

Department of Revenue, mandated powers and duties, see Section 12‑4‑310.

Disclosure of records of and reports and returns filed with Department of Revenue by employees and agents of department and state auditor’s office prohibited, penalties, see Section 12‑54‑240.

**SECTION 6‑1‑810.** Short title; findings.

(A) This article may be cited as the “Fairness in Lodging Act”.

(B) The General Assembly finds that:

(1) providing lodging accommodations for tourists is a major business in this State;

(2) there are instances where individuals who rent residential accommodations to tourists are failing to collect and remit the local accommodations tax imposed pursuant to Article 5 of this chapter and the state sales tax on accommodations imposed pursuant to Section 12‑36‑920;

(3) those who fail to collect and remit local and state taxes on providing accommodations to transients are competing unfairly against those who dutifully meet these legal obligations;

(4) by the enactment of the Fairness in Lodging Act, municipalities and counties are provided the option to exercise additional enforcement authority with respect to these taxes and to engage in active cooperation with the South Carolina Department of Revenue in data sharing, to provide comprehensive enforcement of the applicable accommodations tax laws so as to promote a more equal competitive playing field for those engaged in this State in the business of renting accommodations to tourists.

HISTORY: 2014 Act No. 261 (S.985), Section 1, eff June 9, 2014.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hotels, Motels and Other Lodgings Section 26, Taxes.

**SECTION 6‑1‑815.** Implementation of article by municipality or county.

(A) The governing body of a municipality or county by ordinance may implement the provisions of this article if it imposes the local accommodations tax provided pursuant to Article 5 of this title. This article applies in the applicable jurisdiction when a certified copy of the implementation ordinance is provided to the Director of the South Carolina Department of Revenue.

(B) The provisions of this article do not apply to any residential real property lawfully assessed for property tax purposes pursuant to Section 12‑43‑220(c) when all rental income on the property is not included in gross income for federal income tax purposes pursuant to Internal Revenue Code Section 280A(g).

HISTORY: 2014 Act No. 261 (S.985), Section 1, eff June 9, 2014.

**SECTION 6‑1‑820.** Sharing of data between implementing jurisdictions and Department of Revenue; notices in annual property tax notices; civil penalties.

(A) When the provisions of this article apply in an implementing jurisdiction, the South Carolina Department of Revenue, and the implementing jurisdiction using returns and copies of returns and other documents filed with or otherwise available to them shall share data helpful to both the department and the implementing jurisdiction in determining possible instances of noncompliance.

(B) Implementing jurisdictions shall include or cause to be included notices in annual property tax notices for parcels of residential real property assessed for property tax purposes pursuant to Section 12‑43‑220(e) as the implementing jurisdiction determines appropriate. These notices must provide details of local accommodations tax and state sales tax on accommodations required to be paid by persons renting residential real property to tourists in the implementing jurisdiction and the intention of the implementing jurisdiction vigorously to enforce these requirements. Details must include specific information on obtaining additional information with respect to these requirements and the names, addresses, and telephone numbers of officials of implementing jurisdictions that are able to answer questions, provide forms, and assist in compliance. Counties must be reimbursed by implementing municipalities for extra expenses incurred by a county in providing these notices.

(C) In addition to other penalties and interest imposed by the ordinance of an implementing jurisdiction for failure to comply with local accommodations tax requirements imposed pursuant to Article 5 of this chapter required of owners in the business of renting residential accommodations to tourists, the jurisdiction may impose, with respect to a single rental property, a one‑time civil penalty for noncompliance for failure to collect and remit local accommodations tax of not less than five hundred dollars nor more than two thousand dollars for each seven days the property was rented. This additional penalty may not be imposed unless the owner has received the notice provided pursuant to subsection (B). For purposes of enforcement and collection, this penalty is deemed property tax on the rental property.

HISTORY: 2014 Act No. 261 (S.985), Section 1, eff June 9, 2014.

**SECTION 6‑1‑825.** Identification of “rent by owner” websites; requests to post statement on websites regarding licensing, fees, and taxes.

The South Carolina Department of Revenue shall identify websites containing “rent by owner” vacation rental opportunities and request them to post a statement on the website that the owner of South Carolina rental properties is required to be licensed and to collect applicable local and state fees and taxes.

HISTORY: 2014 Act No. 261 (S.985), Section 1, eff June 9, 2014.

ARTICLE 9

Development Impact Fees

**SECTION 6‑1‑910.** Short title.

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

HISTORY: 1999 Act No. 118, Section 1.

**SECTION 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, Section 1; 2016 Act No. 229 (H.4416), Section 2, eff June 3, 2016.

Effect of Amendment

2016 Act No. 229, Section 2, added (18)(i), relating to certain public education facilities.

Attorney General’s Opinions

The Legislature, not the County, must act to exempt small businesses from road impact fees. S.C. Op.Atty.Gen. (Oct. 18, 2010) 2010 WL 4391638.

Counties have the authority to impose a road impact fee on new development by churches and other non profit entities, but do not have the authority to exempt those entities from the fee. S.C. Op.Atty.Gen. (Oct. 18, 2010) 2010 WL 4391638.

Counties have the authority to impose a road impact fee on development by School Districts, but do not have the authority to exempt the school districts from the road impact fee. S.C. Op.Atty.Gen. (Oct. 18, 2010) 2010 WL 4391638.

**SECTION 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, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

NOTES OF DECISIONS

In general 1

1. In general

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 Council of Town of Summerville (S.C. 2006) 369 S.C. 498, 632 S.E.2d 864. Zoning And Planning 1382(4)

**SECTION 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, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

NOTES OF DECISIONS

In general 1

1. In general

Calculation of fees in town’s development impact fee ordinance was sufficient under the Development Impact Fee Act, 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 (S.C. 2006) 369 S.C. 498, 632 S.E.2d 864. Zoning And Planning 1382(4)

**SECTION 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, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

**SECTION 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, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

NOTES OF DECISIONS

In general 1

1. In general

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 Council of Town of Summerville (S.C. 2006) 369 S.C. 498, 632 S.E.2d 864. Zoning And Planning 1382(4)

**SECTION 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;

(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, Section 1; 2016 Act No. 229 (H.4416), Section 1, eff June 3, 2016.

Effect of Amendment

2016 Act No. 229, Section 1, added (8) and (9), relating to certain schools and volunteer fire departments.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

**SECTION 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, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

NOTES OF DECISIONS

In general 1

1. In general

Calculation of fees in town’s development impact fee ordinance was sufficient under the Development Impact Fee Act, 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 (S.C. 2006) 369 S.C. 498, 632 S.E.2d 864. Zoning And Planning 1382(4)

**SECTION 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, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

NOTES OF DECISIONS

In general 1

1. In general

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 (S.C. 2006) 369 S.C. 498, 632 S.E.2d 864. Zoning And Planning 1382(4)

**SECTION 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, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

**SECTION 6‑1‑1010.** Accounting; expenditures.

(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, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

**SECTION 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, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

**SECTION 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, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

**SECTION 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, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

**SECTION 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, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

**SECTION 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, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

**SECTION 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, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

**SECTION 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, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

**SECTION 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, Section 1.

LIBRARY REFERENCES

Municipal Corporations 36(4).

Westlaw Key Number Search: 268k36(4).

C.J.S. Municipal Corporations Sections 74 to 75.

**SECTION 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, Section 1.

LIBRARY REFERENCES

Municipal Corporations 956(1).

Westlaw Key Number Search: 268k956(1).

C.J.S. Municipal Corporations Sections 1725 to 1726, 1728 to 1731, 1733 to 1734.

**SECTION 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, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.