

# REPORT OF THE LICENSES, FEES AND OTHER TAXES SUBCOMMITTEE

(Rutherford, Huggins, Dillard & Gagnon - Staff Contact: Stephanie Meetze)

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## SENATE BILL 984

S. 984 -- Senators Hembree, Massey, Gustafson and Rankin: A BILL TO AMEND SECTION 6-1-300, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS PERTAINING TO THE AUTHORITY OF LOCAL GOVERNMENTS TO ASSESS TAXES AND FEES, SO AS TO PROVIDE THAT A SERVICE OR USER FEE MUST BE USED TO THE NONEXCLUSIVE BENEFIT OF THE PAYERS; AND TO AMEND SECTION 6-1-330, RELATING TO A SERVICE OR USER FEE, SO AS TO PROVIDE THAT A PROVISION APPLIES TO AN ENTIRE ARTICLE.

***Summary of Bill:***

This bill specifies that a service or user fee levied by local government must benefit the payer regardless of whether members of the general public benefit in the same manner. Establishes new requirements for revenue generated by service or user fees. Restricts a county from reinstating a road maintenance fee without subsequently reducing property taxes by the same amount. Requires counties to publish the amount collected annually on each user or service fee imposed pursuant to Section 6-1-300

Amendment adds language adding the effective date, upon approval of the Governor.

***Estimated Revenue Impact:***

No fiscal impact to the General Fund

***Subcommittee Recommendation:***

Favorable with Amendment

***Full Committee Recommendation:***

***Other Notes/Comments:***

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***2<sup>nd</sup> Reading:***

***Amendments:***

***2<sup>nd</sup> Reading Vote:***

HOUSE  
AMENDMENT

THIS AMENDMENT  
ADOPTED

GOOD/DOWNEY  
APRIL 25, 2022

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CLERK OF THE HOUSE

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THE LICENSES, FEES AND OTHER TAXES SUBCOMMITTEE  
PROPOSES THE FOLLOWING AMENDMENT NO. TO S. 984  
(COUNCIL\DG\984C001.NBD.DG22):

REFERENCE IS TO PRINTER'S DATE 4/7/22-S.

**AMEND THE BILL, AS AND IF AMENDED, BY  
STRIKING SECTION 4 AND INSERTING:**

**/ SECTION 4. NOTWITHSTANDING SECTION  
8-21-30, ET SEQ., NO PUBLIC OFFICER SHALL BE  
PERSONALLY LIABLE FOR ANY AMOUNT CHARGED  
PURSUANT TO SECTION 1.**

**SECTION 5. THIS ACT TAKES EFFECT UPON  
APPROVAL BY THE GOVERNOR AND APPLIES  
RETROACTIVELY TO ANY SERVICE OR FEE  
IMPOSED AFTER DECEMBER 31, 1996. /**

**RENUMBER SECTIONS TO CONFORM.**  
**AMEND TITLE TO CONFORM.**



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
**(803)734-3780 • RFA.SC.GOV/IMPACTS**

*This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.*

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<b>Bill Number:</b>	S. 0984	Introduced on January 13, 2022
<b>Author:</b>	Hembree	
<b>Subject:</b>	Service Fee	
<b>Requestor:</b>	Senate Finance	
<b>RFA Analyst(s):</b>	Tipton	
<b>Impact Date:</b>	March 29, 2022	

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### **Fiscal Impact Summary**

This bill redefines service or user fee to specify that any fee levied by local governments must benefit the payer regardless of whether members of the general public benefit in the same manner and establishes new requirements for revenue generated by service or user fees.

The SC Supreme Court's 2021 opinion in *Burns v. Greenville County Council* determined that service charges that are uniformly imposed on payers that do not benefit the payers in a manner different from the members of the general public are taxes. Counties are only allowed to implement value-based property taxes or those taxes specifically authorized by the General Assembly. The Municipal Association of South Carolina (MASC) and the South Carolina Association of Counties (SCAC) indicate that absent a bill, local governments will be required to repeal an unknown number of fees as they are considered unauthorized taxes.

MASC and SCAC report that under the provisions of this bill, local governments may collect service or user fees in the manner in which they currently operate. Additionally, any service or user fees repealed by local governments following the *Burns* decision would be eligible for reinstatement. As a result, this bill may increase local revenue by approximately \$500,000 for the City of Aiken and \$1,000,000 for the Town of Hilton Head beginning in FY 2022-23.

### **Explanation of Fiscal Impact**

**Introduced on January 13, 2022**

**State Expenditure**

N/A

**State Revenue**

N/A

**Local Expenditure**

N/A

## Local Revenue

The South Carolina Supreme Court's 2021 opinion in *Burns v. Greenville County Council* determined that any service charges enacted after 1996 that are uniformly imposed on payers that do not benefit the payers in a manner different to the members of the general public are taxes. Pursuant to Section 6-1-310, local governments may not impose a new tax after December 31, 1996, unless specifically authorized by the General Assembly, unless it is an ad valorem tax.

This bill strikes the requirement that service or user fees levied by local governments must benefit the payer in some manner different from the members of the general public not paying the fee. Additionally, this bill specifies revenue generated by service or user fees must:

- Benefit the payer even if the general public also benefits,
- May only be used for the specific improvement contemplated,
- May not exceed the cost of the improvement, and
- Must be uniformly imposed on all payers.

MASC and SCAC report that absent a bill, local government fee revenue will decrease following the *Burns* decision. The amount of the revenue loss will depend upon the number of unlawful fees that local governments currently impose. MASC indicates that the number of fees that would be deemed unlawful is currently unknown, and therefore the local revenue impact of no legislation to the municipalities is undetermined.

SCAC reports that approximately \$364,000,000 in service fees was collected statewide in FY 2020-21. SCAC further reports that road and vehicle service fees similar to the subject of the *Burns* decision generated approximately \$73,000,000 statewide. The number of fees that could be deemed unlawful are currently unknown, and, absent legislation, the potential local revenue reduction is undetermined.

MASC and SCAC indicate that under the provisions of this bill, local governments may collect service or user fees in the manner in which they currently operate. Additionally, any service or user fees repealed by local governments following the *Burns* decision would be eligible for reinstatement. According to MASC, the City of Aiken and Town of Hilton Head repealed or suspended road service fees resulting in a \$500,000 loss for the City of Aiken and \$1,000,000 loss for the Town of Hilton Head in FY 2021-22. Therefore, this bill may increase local revenue by approximately \$500,000 for the City of Aiken and \$1,000,000 for the Town of Hilton Head beginning FY 2022-23.



Frank A. Rainwater, Executive Director

**South Carolina General Assembly**  
124th Session, 2021-2022

**S. 984**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Hembree, Massey, Gustafson and Rankin

Document Path: I:\council\bill\nbd\11309dg22.docx

Introduced in the Senate on January 13, 2022

Introduced in the House on April 19, 2022

Last Amended on April 7, 2022

Currently residing in the House Committee on **Ways and Means**

Summary: Service fee

**HISTORY OF LEGISLATIVE ACTIONS**

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
1/13/2022	Senate	Introduced and read first time ( <u>Senate Journal-page 3</u> )
1/13/2022	Senate	Referred to Committee on <b>Finance</b> ( <u>Senate Journal-page 3</u> )
3/29/2022	Senate	Committee report: Favorable <b>Finance</b> ( <u>Senate Journal-page 15</u> )
3/31/2022	Senate	Read second time ( <u>Senate Journal-page 42</u> )
4/7/2022	Senate	Amended ( <u>Senate Journal-page 19</u> )
4/7/2022	Senate	Read third time and sent to House ( <u>Senate Journal-page 19</u> )
4/7/2022	Senate	Roll call Ayes-32 Nays-7 ( <u>Senate Journal-page 19</u> )
4/19/2022	House	Introduced and read first time ( <u>House Journal-page 211</u> )
4/19/2022	House	Referred to Committee on <b>Ways and Means</b> ( <u>House Journal-page 211</u> )

View the latest [legislative information](#) at the website

**VERSIONS OF THIS BILL**

[1/13/2022](#)

[3/29/2022](#)

[4/19/2022](#)

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

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4 AS PASSED BY THE SENATE

5 April 7, 2022

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**S. 984**

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9 Introduced by Senators Hembree, Massey, Gustafson and Rankin

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11 S. Printed 4/7/22--S.

[SEC 4/19/22 4:20 PM]

12 Read the first time January 13, 2022.

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## A BILL

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11 TO AMEND SECTION 6-1-300, CODE OF LAWS OF SOUTH  
12 CAROLINA, 1976, RELATING TO DEFINITIONS  
13 PERTAINING TO THE AUTHORITY OF LOCAL  
14 GOVERNMENTS TO ASSESS TAXES AND FEES, SO AS TO  
15 PROVIDE THAT A SERVICE OR USER FEE MUST BE USED  
16 TO THE NONEXCLUSIVE BENEFIT OF THE PAYERS; AND  
17 TO AMEND SECTION 6-1-330, RELATING TO A SERVICE OR  
18 USER FEE, SO AS TO PROVIDE THAT A PROVISION  
19 APPLIES TO AN ENTIRE ARTICLE.

20 Amend Title To Conform

21

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

24

25 SECTION 1. Section 6-1-300(6) of the 1976 Code is amended to  
26 read:

27

28 “(6) ‘Service or user fee’ means a charge required to be paid in  
29 return for a particular government service or program ~~made~~  
30 ~~available to the payer that benefits the payer in some manner~~  
31 ~~different from the members of the general public not paying the fee.~~  
32 ‘Service or user fee’ also includes ‘uniform service charges’. The  
33 revenue generated from the fee must:

34 (a) be used to the benefit of the payers, even if the general  
35 public also benefits;

36 (b) only be used for the specific improvement  
37 contemplated;

38 (c) not exceed the cost of the improvement; and

39 (d) be uniformly imposed on all payers.”

40

41 SECTION 2. Section 6-1-330(A) of the 1976 Code is amended to  
42 read:



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

13  
14 SECTION 3. Section 6-1-330 of the 1976 Code is amended by  
15 adding appropriately lettered new subsections to read:

16  
17 “( ) A local governing body that repealed a road maintenance fee  
18 after June 30, 2021, and subsequently approved a millage increase  
19 for road maintenance, must repeal the millage imposed to replace  
20 the previous road maintenance fee before reimposing the road  
21 maintenance fee.

22 ( ) A local governing body that imposes a user or service fee  
23 pursuant to Section 6-1-300(6) must publish the amount of dollars  
24 annually collected on each fee on the county’s website.”

25  
26 SECTION 4. Notwithstanding Section 8-21-30, et seq., no public  
27 officer shall be personally liable for any amount charged pursuant  
28 to SECTION 1. This SECTION applies retroactively to any service  
29 or fee imposed after December 31, 1996.

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