**South Carolina General Assembly**

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**H. 3781**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Chalk

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Introduced in the House on March 26, 2009

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

Summary: Assessments for real estate development

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/26/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\03-26-09.docx)‑3

3/26/2009 House Referred to Committee on **Ways and Means**

**VERSIONS OF THIS BILL**

[3/26/2009](file:///p:\pprever\2009-10\3781_20090326.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 10 TO CHAPTER 1, TITLE 6 SO AS TO AUTHORIZE ASSESSMENTS BE LEVIED AGAINST PARCELS OF PROPERTY, TO PROVIDE THE PROCEEDS BE USED TO OFFSET THE IMPACT OF DEVELOPMENT ON CERTAIN GOVERNMENTAL ENTITIES, AND PROVIDE FOR THE COLLECTION OF THESE ASSESSMENTS.

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

SECTION 1. Chapter 1, Title 6 of the 1976 Code is amended by adding:

“Article 10

Assessments for Real Estate Development

Section 6‑1‑3010. As used in this article:

(1) ‘Assessing entity’ means a county, municipality, school district, special purpose district, or public service district.

(2) ‘Assessment’ means a fee levied on a parcel of property in a development by an assessing entity to defray all or part of the cost of a developer’s project.

(3) ‘Capital improvements’ mean improvement with a useful life of five years or more, by construction or the action, which increase or increased the service capacity of a public facility.

(4) ‘Project’ means a particular development on an identified parcel of land.

(5) ‘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.

(6) ‘Public facilities’ mean:

(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) schools and school facilities.

(7) ‘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.

(8) ‘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.

Section 6‑1‑3020. (A) Only an assessing entity may impose an assessment.

(B) An assessing entity may provide by ordinance or by resolution, in the case of a special purpose district, that the actual cost of the establishment and construction of a public facility constructed by the assessing entity or so much of the actual cost as the assessing entity considers appropriate, must be assessed upon the lots and parcels of land according to the extent an assessment is considered to be equitable. If the area to be served is part of a development plan or zoned for residential use, then an assessment may be levied by the assessing entity on a parcel or on a unit basis. As used in this section, ‘assessment’ includes assessments levied on a parcel or on a unit basis. The assessing entity may provide by ordinance or resolution, in the case of a special purpose district, that the assessments to be levied in connection with the improvements may be paid in equal installments covering a period of not exceeding twenty years. The deferred payments are payable annually within the period that county taxes are payable and late payments must be penalized to the same extent as in the case of county taxes.

(C) An assessment may be imposed as follows:

(1) The ordinance or resolution, in the case of a special purpose district providing for the assessments, shall designate by a general description the improvement to be made and the street or parts of the work is to be effected and the actual cost of it and the amount of the cost to be assessed upon all abutting property. The ordinance or resolution, in the case of a special purpose district, shall not become effective until at least seven days after it shall have been published in a newspaper of general circulation in the assessing entity. The ordinance or resolution, in the case of a special purpose district, may incorporate by reference plats and engineering reports and other data on file in the assessing entity’s office provided that the place of filing and reasonable hours for inspection by interested persons are specified in the ordinance or resolution, in the case of a special purpose district. Within thirty days of the publication, the assessing entity shall prepare in poster form a notice advising of the proposed assessments and generally describing the area to be affected and shall deliver the notice to the register of deeds or, if none, to the clerk of court of each county where the affected property is located. The register of deeds or clerk of court prominently shall display a notice in his office until the assessment roll has been filed. Failure to provide or post this notice does not affect the validity of an assessment.

(2) Upon the completion of the construction, the assessing entity shall compute and ascertain the total cost of it and shall make an assessment of the total cost or so much of it as it considers appropriate. For that purpose the assessing entity shall make out an assessment roll in which must be entered the names of the persons assessed and the amount assessed against their respective properties with a brief description of the lots or parcels of land assessed.

(3) Immediately after the assessment roll has been completed, the assessing entity shall post it in the assessing entity’s office for inspection by interested parties, and shall cause to be published at least once in a newspaper of general circulation within the district a notice of completion of the assessment roll setting forth a description in general terms of the improvements and the time fixed for the meeting of the assessing entity for a hearing of objections in respect of assessments.

(4) As soon as practicable after the completion of the assessment roll and before the publication of the notice the assessing entity shall mail to the owner or owners of each lot or parcel of land against which an assessment is to be levied at his address, if any, appearing on the records of the county treasurer, a notice stating the nature of the improvement, the total cost, the amount to be assessed against the particular property, together with the terms and conditions upon which the assessment may be paid. This notice also must contain a brief description of the particular property involved together with a statement that the amount assessed constitutes a lien against the property superior to all other liens except property taxes. The notice also must state the time and place fixed for the meeting of the assessing entity for a hearing of objections in respect of the assessments. A property owner who fails, not later than three days before the date set for the meeting, to file with the assessing entity a written objection to the assessments against his property is deemed to have waived all rights to object to the assessment, and the notice prescribed must state that fact.

(5) At the time and place specified for the meeting, or at some other time to which it may adjourn, the assessing entity shall hear the objections of all persons who have filed written notice of objection within the time as provided for in item (4) who may appear and make proof in relation to either in person or by their attorney. The assessing entity then may make corrections in the assessment roll as it considers proper, confirm the corrections, set it aside, and provide for a new assessment. Whenever the assessing entity confirms an assessment roll, either as originally prepared or as corrected, the secretary of the assessing entity shall file a certified copy in the office of the register of deeds or, if none, in the office of the clerk of court of common pleas of each county in which any property lies, and against which any assessments have been levied. At the time of filing the assessments recorded in the assessment roll it constitutes and is a lien on the real property against which the assessments are superior to all other liens and encumbrances except only the lien for property taxes.

(6) After the assessment roll has been confirmed, a certified copy must be delivered to the treasurer of each county in which an assessment is levied. The treasurer of each county shall prepare and keep a separate book or books in connection with it and shall proceed to collect the assessment in the manner of county taxes and remit these collections on or before April fifteenth of each year upon the direction of the assessing entity. Each year the county treasurer shall mail out notices of assessments at the same time county tax notices are mailed. Past due assessments must be turned over by the respective county treasurers to the county sheriff or delinquent tax collector who shall proceed to collect in the same manner as unpaid county taxes are collected. The collecting official likewise shall keep separate records in connection with past due assessments and remit all sums collected upon the direction of the assessing entity.

(7) Immediately upon the confirmation of an assessment, the assessing entity shall mail a written notice to a person who has filed a written objection as provided in this section of the amount of the assessment finally confirmed against his property. If a person is dissatisfied with the amount of the confirmed assessment, within ten days after the mailing of the notice confirming the assessment, he may give written notice to the assessing entity of his intent to appeal it to the court of common pleas for the county in which his property is assessed, or any part of it, is located. He shall within five days after giving the notice to the assessing entity serve upon the assessing entity a statement of facts upon which he bases his appeal. An appeal does not delay or stop the construction of the improvements or affect the validity of the assessments confirmed and not appealed. The appeal must be tried at the next term of court as other actions at law with priority over all other cases.

(8) The assessing entity may correct, cancel, or remit an assessment and may remit, cancel, or adjust the interest or penalties of an assessment and is empowered, when in its judgment there is irregularity, omission, error, or lack of jurisdiction in the proceedings relating to it, to set aside the whole of an assessment made by it and make a reassessment.

(9) If the assessing entity provides that an assessment may be paid in equal annual installments, then the assessment is deemed to be due and payable in the equal annual installments prescribed by the assessing entity and shall bear interest at a rate prescribed by the assessing entity not to exceed the same rate of interest paid by the assessing entity on monies it borrowed to make the improvements for which the assessment was levied not to exceed the interest rate limitation as prescribed by law from the date of the confirmation of the assessment roll, payable with the annual installment. A property owner has the right at any time in his option to prepay in full the assessment against his property by the payment of the balance due plus interest calculated to the date of prepayment. If a property owner fails or neglects to pay an installment when it becomes due and payable, then the assessing entity, at its option, may declare all of the installments remaining unpaid at once due and payable and the property must be sold by the county sheriff in the same manner and with the same right of redemption as are prescribed by law for the sale of land for unpaid property taxes.

(10) Monies realized from assessments must be kept in a separate and distinct fund either on deposit with the county treasurer or, in the discretion of the assessing entity, in a bank located within the county in which the district is located and used first to defray the cost to the extent prescribed by the assessing entity in the ordinance or resolution, in the case of a special purpose district, providing for assessments of the establishment and construction of the improvements in connection with which the assessments were levied, or second to provide debt service on bonds issued by the district to defray the costs of the construction, and for no other purpose. If a district issues bonds and uses only a portion of the proceeds of them to defray all or a part of the cost of constructing improvements, monies derived from the assessments must be used to provide debt service to the extent prescribed in the ordinance or resolution, in the case of a special purpose district, providing for the imposition of the assessments and authorizing the issuance of the bonds. Nothing contained in this article may be construed to authorize borrowing by a district.

(11) Monies received by the assessing entity from assessments and deposited by it, to the extent practicable, may be invested in the discretion of the assessing entity in obligations of the United States of America, obligations of an agency of the United States of America, or obligations guaranteed by an agency of the United States of America, maturing in this fashion as to provide cash monies for the principal and interest payments of bonds payable when due. Income derived from the investment must be applied to the same purpose to which the invested funds are applicable.

(12) If monies derived from the assessments are held by the county treasurer, the funds must be secured in the same manner as county funds. If these funds are deposited in a bank, the amount of the deposits in excess of the amount insured by the Federal Deposit Insurance Corporation must be secured by direct obligations of the United States or by obligations of an agency of the United States or by obligations guaranteed by an agency of the United States. Nothing in this article may be construed to prohibit the assessing entity from requiring additional security as it considers appropriate.

Section 6‑1‑3030. (A) The assessment for each assessing entity 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 assessment 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 assessment must be calculated in accordance with generally accepted accounting principles.”

SECTION 2. This act takes effect upon approval by the Governor.

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