AMENDED

June 1, 2010

**S. 1054**

Introduced by Senators Pinckney, Malloy, Matthews, Anderson and Nicholson

S. Printed 6/1/10--H.

Read the first time April 13, 2010.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT 1/**

This bill is expected to reduce general fund sales and use tax revenue by an estimated $4,500,000 in FY2011-12, and each fiscal year through FY2026-27. The collection of the EIA penny and the Homestead Exemption Fund penny is not affected by this legislation.

## Explanation of amendment (February 3, 2010) - By the Senate Finance Committee

This amendment would strike all after the enacting words and insert the following:

This bill would add Section 4-1-180 to allow counties that create a multicounty business park to designate a portion or that entire park as a designated economic development site for “extraordinary commercial facilities” to be reimbursed sales tax revenue collected from retail sales within facilities located at a multicounty business park. The reimbursement rate would equal three-fourths of the total sales tax revenue collected in the designated economic development site. The sales tax revenue would be transferred from the General Fund of the State and allocated to the counties in a multicounty business park agreement pursuant to Section 4-1-170 and Section 13 of Article VIII of the Constitution of this State. Only sales tax revenue collected pursuant to Section 12-36-2620(1), the first four pennies of sales tax revenue, is transferred back to the counties. The collection of the EIA penny, pursuant to Section 12-36-2620(2), and the Homestead Exemption Fund penny, pursuant to Section 12-36-1110, is not affected by this legislation.

To qualify as a designated economic development site, the commercial facility must meet the following conditions: the extraordinary commercial facility must have capital investment of at least $200,000,000; there must be at least 1,250 new jobs maintained for at least one year; and the facility must generate at least $6,000,000 in total sales tax receipts each year. The qualified capital investment must either be placed in service, or have a certificate of occupancy issued, after July 1, 2009. The qualified new jobs must be created at the time the facility is initially staffed. To maintain receipt of payments, the counties must file an annual report with the Department of Revenue showing the number of employees for the most recent four quarters. If at any time the number of jobs falls below an average of 625 jobs for the most recent four quarters, the receipt of payments shall be suspended until the next filing of an annual report that shows an average of 625 jobs during the next reporting period. If a county is receiving payments for the state and if an annual report shows fewer than 625 jobs during the reporting period, the counties must return a pro rata portion of the payments during the amount of time the county was out of compliance with the job requirement. The suspension period would not end until the counties have fully reimbursed the Department of Revenue. This bill does not help to create productive capacity that sells product outside the state. Because the facility adds to an already well established retail sector, it is difficult to expect that the facility will create new sales, but will shift sales from existing retailers and not add to sales that would otherwise occur in the absence of the provision. Based upon the qualifications of a designated economic development site in a multicounty business park, multiplying $6,000,000 by 0.75 yields a reduction in general fund sales and use tax revenue of an estimated $4,500,000 in FY2011-12, and each fiscal year through FY2026-27. The provisions of Section 4-1-180 expire five years from the effective date of this section.

## Explanation of bill filed January 14, 2010

This bill would add Section 4-1-180 to allow counties that create a multicounty business park to designate a portion or that entire park as a designated economic development site for “extraordinary commercial facilities” to be reimbursed sales tax revenue collected from retail sales within facilities located at a multicounty business park. The reimbursement rate would equal three-fourths of the total sales tax revenue collected in the designated economic development site. The sales tax revenue would be transferred from the General Fund of the State and allocated to the counties in a multicounty business park agreement pursuant to Section 4-1-170 and Section 13 of Article VIII of the Constitution of this State. Only sales tax revenue collected pursuant to Section 12-36-2620(1), the first four pennies of sales tax revenue, is transferred back to the counties. The collection of the EIA penny, pursuant to Section 12-36-2620(2), and the Homestead Exemption Fund penny, pursuant to Section 12-36-1110, is not affected by this legislation.

To qualify as a designated economic development site, the commercial facility must meet the following conditions: the extraordinary commercial facility must have capital investment of at least $100,000,000; there must be at least 1,000 new jobs at the time the facility is initially staffed; and the facility must generate at least $6,000,000 in total sales tax receipts each year. The qualified capital investment must either be placed in service, or have a certificate of occupancy issued, after July 1, 2009. The qualified new jobs must be created at the time the facility is initially staffed. If at any time the number of jobs falls below an average of 500 jobs for the most recent four quarters, the receipt of payments shall be suspended until the next filing of an annual report that shows an average of 500 jobs during the next reporting period. This bill does not help to create productive capacity that sells product outside the state. Because the facility adds to an already well established retail sector, it is difficult to expect that the facility will create new sales, but rather will shift sales from existing retailers and not add to sales that would otherwise occur in the absence of the provision. Based upon the qualifications of a designated economic development site in a multicounty business park, multiplying $6,000,000 by 0.75 yields a reduction in general fund sales and use tax revenue of an estimated $4,500,000 in FY2009-10, and each fiscal year through FY2013-14. The provisions of Section 4-1-180 expire five years from the effective date of this section.

*Approved By:*

William C. Gillespie

Board of Economic Advisors

1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**A** **BILL**

TO AMEND CHAPTER 1, TITLE 4 OF THE 1976 CODE, RELATING TO EXTRAORDINARY COMMERCIAL FACILITIES, BY ADDING SECTION 4‑1‑180 TO ALLOW COUNTIES THAT CREATE A MULTICOUNTY BUSINESS PARK TO DESIGNATE A PORTION OR ALL OF THAT PARK AS A DESIGNATED ECONOMIC DEVELOPMENT SITE FOR EXTRAORDINARY COMMERCIAL FACILITIES.

Amend Title To Conform

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

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

“Article 11

Local Option Extraordinary Commercial Facilities Fee

Section 4‑10‑1110. This article may be cited as the ‘Local Option Extraordinary Commercial Facilities Fee Act’.

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

(1) ‘Designated economic development site’ means a geographic area which has been designated as part of a multicounty park pursuant Article VIII, Section 13 of the South Carolina Constitution, 1895, and Section 4‑1‑170. The municipality or the county making a designation of a designated economic development site shall notify the South Carolina Department of Revenue of the boundaries of the designated economic development site.

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

(3) ‘Infrastructure’ means Infrastructure as described in and consistent with the provisions of Section 4–29–68(A).

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

(5) ‘Imposing jurisdiction’ means the municipality or county enacting the imposition ordinance for the fee or its governing body, as appropriate.

Section 4‑10‑1125. (A) If the designated economic development site is located in jurisdictions with separate and distinct stormwater ordinances, the standards and controls of the most stringent ordinance apply in the entire site. Similarly, if the site is within a single jurisdiction for purposes of a stormwater ordinance and stormwater from the site is discharged into watercourses in adjoining jurisdictions, the most stringent stormwater ordinance of the adjoining jurisdictions apply in the entire site.

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

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

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

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

Section 4‑10‑1130. (A) Subject to the requirements of this article, a municipality or county by ordinance may impose exclusively in the proposed designated economic development site a fee on all retailers located in the site not to exceed one percent for not more than twenty years. The fee shall be imposed on the gross proceeds of sales or sales price of all amounts subject to the sales and use tax imposed pursuant to Chapter 36, Title 12, but not the gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 and the gross proceeds of sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons, for the purposes provided in Section 4‑10‑1160 upon approval of a majority of qualified electors voting in a referendum held pursuant to this section.

(B)(1) Upon the enactment of an ordinance imposing the fee and providing for a referendum, the appropriate election commission shall conduct a referendum in the imposing jurisdiction on the first Tuesday ninety days after the adoption of the ordinance. The state election laws apply to the referendum, mutatis mutandis. The election commission shall publish the results of the referendum and certify them to the imposing jurisdiction. The fee must not be imposed in the designated economic development site, unless a majority of the qualified electors voting in the referendum approve the question.

(2) The ballot must read substantially as follows:

‘Must a one percent fee on the gross proceeds of sales or sales price of all amounts subject to the sales and use tax imposed pursuant to Chapter 36, Title 12, but not the gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 and the gross proceeds of sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons, be levied for twenty years within the \_\_\_\_\_ designated economic development site for the purpose of providing funding to defray the cost of infrastructure at the \_\_\_\_\_\_\_\_\_ designated economic development site?

Yes 

No ’

(3) If the question is not approved at the initial referendum, the imposing jurisdiction by ordinance may provide for another referendum on the question. However, following the initial referendum, a referendum for this purpose must not be held more often than once in a twenty‑four month period on the Tuesday following the first Monday in November in even‑numbered years.

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

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

(D) Once the filings required pursuant to subsection (C) are filed with the Department of Revenue, for the period of imposition provided, the department may not accept as filed any additional ordinance or referendum results from the imposing jurisdiction that in any way relates to the fee allowed to be imposed pursuant to this article except an ordinance enacted by a supermajority of the imposing jurisdiction which must be at least two‑thirds of the members of the governing body or results of a referendum conducted with the same requirements set forth in subsection (B) rescinding the existing fee. The Department of Revenue shall accept for filing a certified copy of an ordinance or referendum results rescinding the fee and such rescission shall apply in the manner provided in Section 4‑10‑1130 for imposition.

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

Section 4‑10‑1140. (A) The fee imposed pursuant to this article must be administered and collected by the Department of Revenue in the same manner that sales and use taxes are collected. The department may prescribe amounts that may be added to the sales price because of the fee.

(B) The fee authorized by this article is in addition to all other state and local sales and use taxes and applies to the gross proceeds of sales in the designated economic development site that is subject to the tax imposed by Chapter 36, Title 12 and the enforcement provisions of Chapter 54, Title 12.

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

(D) The revenues of the fee imposed pursuant to this article must be remitted to the Department of Revenue and placed on deposit with the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues and interest quarterly to the treasurer of the imposing jurisdiction and the revenues must be used only for the purposes provided in Section 4‑10‑1160. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocations. However, allocations made as a result of code errors must be corrected prospectively.

Section 4‑10‑1150. The Department of Revenue shall furnish data to the State Treasurer and to the treasurers receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to imposing jurisdictions upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12‑54‑240. A person violating this section is subject to the penalties provided in Section 12‑54‑240.

Section 4‑10‑1160. (A) All fee revenues and interest on the fee revenues must be used exclusively for infrastructure located in the designated economic development site from which such fees were collected.

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

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

(D) In addition to other requirements, reimbursement of infrastructure costs requires ‘Preferred Treatment’ to local and state vendors. Contracts between the private entity and vendors performing reimbursed infrastructure work must go to local vendors within a forty‑five mile radius of the ‘Trade Area’ as first priority, state vendors as a second priority, and all others as third priority. To qualify for ‘Preferred Treatment’, the vendor’s bid must be qualified and within (1) ten percent of the lowest qualified bid for amounts less than five million dollars, (2) five percent on amounts five million to fifteen million dollars, and (3) the lesser of three percent or one million dollars on amounts above fifteen million dollars. Reimbursed infrastructure work that is specialized and not normally performed in the ‘Trade Area’ is exempt from this requirement.

(E) There is established the Designated Economic Development Site Oversight Commission consisting of three members appointed as follows:

(1) a resident of the imposing jurisdiction in which the designated economic development site is located, appointed by the mayor if the site is wholly within the municipality, otherwise appointed by the county council;

(2) one member appointed by the Speaker of the House of Representatives; and

(3) one member appointed by the President Pro Tempore of the Senate.

Members shall serve at the pleasure of their appointing authority. In addition to other duties assigned to the commission pursuant to this article, no funds derived from the Local Option Extraordinary Commercial Facilities Fee may be disbursed unless the commission certifies in writing to the governing body of the entity imposing the fee that the members of the commission have examined the request for reimbursement and determined unanimously that all requirements imposed by this article with respect to the request have been complied with.

Any changes in definitions or requirements provided in this article may not be administratively waived or revised without the unanimous approval of commission.

Section 4‑10‑1170. If any provision of this Article is determined to be invalid or unenforceable for any reason, then such provision shall be struck but the balance of this Article shall continue in full force and effect. In particular, if any provision is determined to be invalid or unenforceable by virtue of the commerce clause of the United States Constitution or as violative of the separation of powers provisions of the South Carolina Constitution, such provisions are hereby determined to be not required for the enforcement of the balance of the provisions hereof.”

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