COMMITTEE REPORT

March 31, 2009

**H. 3590**

Introduced by Reps. Edge, Clemmons, Hardwick, Hearn and Viers

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Read the first time February 19, 2009.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 3590) to amend the Code of Laws of South Carolina, 1976, by adding Article 9 to Chapter 10, Title 4 enacting the “Local Option Tourism Development Fee Act” so as to allow, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

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

“Article 9

Local Option Tourism Development Fee

Section 4‑10‑910. This article may be cited as the ‘Local Option Tourism Development Fee Act’.

Section 4‑10‑920. For purposes of this article:

(1) ‘County’ means a county in which revenues of the state accommodations tax imposed pursuant to Section 12‑36‑920 have aggregated at least fourteen million dollars in a fiscal year.

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

(3) ‘Municipality’ means a municipal corporation created pursuant to Chapter 1, Title 5 or a municipal government as the use of the term dictates.

Section 4‑10‑930. (A) Subject to the requirements of this article, a municipality may impose in the municipality a fee not to exceed one percent for not more than ten years for the purposes provided in Section 4‑10‑970 by:

(1) an ordinance adopted by a supermajority of the municipal council which must be at least two‑thirds of the members of a municipal council; or

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

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

(2) The ballot must read substantially as follows:

‘Must a one percent fee on the gross proceeds of sales or sales price of all amounts subject to the sales and use tax imposed pursuant to Chapter 36, Title 12, but not the gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 and the gross proceeds of sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons, be levied in \_\_\_\_\_\_\_\_\_\_ for the purpose of tourism advertisement and promotion directed at non‑South Carolina residents?’

Yes 

No 

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

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

(C)(1) Upon the adoption of a resolution calling for a referendum to rescind the fee by the municipal council, the municipal election commission shall conduct a referendum in the same manner provided in subsection (B) on the question of rescinding the fee imposed by this section. The state election laws apply to the referendum mutatis mutandis. The municipal election commission shall publish the results of the referendum and certify them to the municipal council. The fee must be rescinded in the municipality upon the certification of the results if a majority of the qualified electors voting in the referendum vote in favor of rescinding the fee.

(2) The ballot must read substantially as follows:

‘Must the one percent local fee levied in \_\_\_\_\_\_\_\_\_\_ pursuant to Section 4‑10‑930 of the 1976 Code be rescinded?’

Yes 

No 

(3) A referendum for rescission of this fee may not be held earlier than two years after the fee has been levied in the municipality. If a majority of the qualified electors voting in the rescission referendum vote against rescinding the fee, no further rescission referendums may be held for a period of twenty‑four months on the first Tuesday following the first Monday in November of even numbered years. If a majority of the qualified electors vote in favor of rescinding the tax, the fee may not be reimposed in the municipality for a period of two years.

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

(E) Once a certified copy of the ordinance or referendum results is filed with the Department of Revenue, for the period of imposition provided in that ordinance or referendum, the department may not accept as filed any additional ordinance or referendum results from the municipality that in any way relates to the fee allowed to be imposed pursuant to this chapter except an ordinance or the referendum results reducing or repealing the existing fee. The department shall accept for filing a certified copy of an ordinance or referendum results reducing or repealing the fee and that reduction or repeal applies in the manner provided in Section 4‑10‑930(D) for imposition.

Section 4‑10‑940. (A) The fee allowed by this article is an amount not to exceed one percent of the gross proceeds of sales or sales price of all amounts subject to the sales and use tax imposed pursuant to Chapter 36, Title 12.

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

(C) The fee authorized by this article is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36, Title 12 and the enforcement provisions of Chapter 54, Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 and the gross proceeds of sales of unprepared food that lawfully may be purchased with United State Department of Agriculture food coupons are exempt from the fee imposed by this article. The fee imposed by this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36, Title 12.

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

(E) The revenues of the fee imposed pursuant to this article must be remitted to the Department of Revenue and placed on deposit with the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues and interest quarterly based on point of collection to the treasurer of the municipality in which the fee is imposed and the revenues must be used only for the purposes provided in Section 4‑10‑970. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocations. However, allocations made as a result of municipal code errors must be corrected prospectively.

Section 4‑10‑960. The Department of Revenue shall furnish data to the State Treasurer and to the municipal treasurers receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to municipalities upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12‑54‑240. A person violating this section is subject to the penalties provided in Section 12‑54‑240.

Section 4‑10‑970. (A)(1) Except as provided in item (2) of this subsection, all revenues and interest of the fee must be used exclusively for tourism advertisement and promotion directed at non‑South Carolina residents.

(2) Revenues received in the third and subsequent years of imposition must be used as provided in item (1) except that up to twenty percent may be used for property tax rollbacks on owner‑occupied real property or tourism‑related capital projects, or a combination of these purposes, but no less than twenty percent of these funds must be used for property tax rollback on owner occupied property. No capital project is eligible to be funded directly or indirectly with fee revenues unless the project consists of construction of new or renovation of existing tourism‑related facilities intended to grow or maintain the overnight tourism market in the city.

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

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

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

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

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

(C) There may be at least one regional tourism promoter in each county that may receive funds from municipalities imposing a fee pursuant to this section to promote regional tourism.”

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

Renumber sections to conform.

Amend title to conform.

DANIEL T. COOPER for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 9 TO CHAPTER 10, TITLE 4 ENACTING THE “LOCAL OPTION TOURISM DEVELOPMENT FEE ACT” SO AS TO ALLOW A COUNTY IN WHICH AT LEAST FOURTEEN MILLION DOLLARS OF STATE ACCOMMODATIONS TAX REVENUES HAVE BEEN COLLECTED IN A FISCAL YEAR AND A MUNICIPALITY LOCATED IN SUCH A COUNTY TO IMPOSE A FEE NOT TO EXCEED ONE PERCENT OF AMOUNTS SUBJECT TO TAX PURSUANT TO CHAPTER 36, TITLE 12, THE SOUTH CAROLINA SALES AND USE TAX ACT, FOR NOT MORE THAN TEN YEARS, TO PROVIDE THAT THE COUNTY MAY IMPOSE THE FEE BY ORDINANCE IN THE UNINCORPORATED AREAS OF THE COUNTY AND A MUNICIPALITY MAY IMPOSE THE FEE BY ORDINANCE IN THE MUNICIPALITY, TO PROVIDE FOR THE ADMINISTRATION OF THE FEE, AND TO PROVIDE THAT USES FOR WHICH THE FEE REVENUE MUST BE APPLIED, INCLUDING TOURISM PROMOTION, PROPERTY TAX ROLLBACK, AND CAPITAL PROJECTS PROMOTING TOURISM CAUSES.

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 9

Local Option Tourism Development Fee

Section 4‑10‑910. This article may be cited as the ‘Local Option Tourism Development Fee Act’.

Section 4‑10‑920. For purposes of this article:

(1) ‘County area’ means a county and all municipalities within its geographical boundaries in which revenues of the state accommodations tax imposed pursuant to Section 12‑36‑920 have aggregated at least fourteen million dollars in a fiscal year.

(2) ‘County’ means the unincorporated areas of a county area or county government as the use of the term dictates.

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

(4) ‘Municipality’ means a municipal corporation created pursuant to Chapter 1 of Title 5 or a municipal government as the use of the term dictates.

Section 4‑10‑930. (A) Subject to the requirements of this article:

(1) a county by ordinance may impose in the county a fee not to exceed one percent for not more than ten years for the purposes provided pursuant to Section 4‑10‑970;

(2) a municipality by ordinance may impose in the municipality a fee not to exceed one percent for not more than ten years for the purposes provided in Section 4‑10‑970.

(B) 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 county or municipality files a certified copy of the imposition ordinance with the South Carolina Department of Revenue.

(C) Once a certified copy of the ordinance is filed with the Department of Revenue, for the period of imposition provided in that ordinance, the department may not accept as filed any additional ordinance from the county or municipality that in any way relates to the fee allowed to be imposed pursuant to this chapter except an ordinance reducing or repealing the existing fee. The department shall accept for filing a certified copy of an ordinance reducing or repealing the fee and that reduction or repeal applies in the manner provided in Section 4‑10‑930(B) for imposition.

Section 4‑10‑940. (A) The fee allowed by this article is an amount not to exceed one percent of the gross proceeds of sales or sales price of all amounts subject to the sales and use tax imposed pursuant to Chapter 36 of Title 12.

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

(C) The fee authorized by this article is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36 of Title 12 and the enforcement provisions of Chapter 54 of Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 and the gross proceeds of sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons are exempt from the fee imposed by this article. The fee imposed by this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36 of Title 12.

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

(E) The revenues of the fee imposed pursuant to this article must be remitted to the Department 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 quarterly based on point of collection to the treasurer of the county or municipality in which the fee is imposed and the revenues must be used only for the purposes provided in Section 4‑10‑970. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocations. However, allocations made as a result of municipal or county code errors must be corrected prospectively.

Section 4‑10‑960. The Department of Revenue shall furnish data to the State Treasurer and to the county and municipal treasurers receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to counties and municipalities upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12‑54‑240. A person violating this section is subject to the penalties provided in Section 12‑54‑240.

Section 4‑10‑970. (A)(1) Except as provided in item (2) of this subsection, all revenues of the fee must be used exclusively for tourism advertisement and promotion directed at non‑South Carolina residents.

(2) Revenues received in the fourth year of imposition must be used as provided in item (1) except that up to ten percent may be used for property tax rollbacks or tourism‑related capital projects, or a combination of these purposes. After year four, the ten percent use allowed pursuant to this item may be increased to twenty percent. No capital project is eligible to be funded directly or indirectly with fee revenues unless the project consists of construction of new or renovation of existing tourism‑related facilities intended to grow or maintain the overnight tourism market in the county or city.

(3) The additional uses of fee revenue allowed pursuant to item (2) of this subsection are allowed only by ordinance enacted by a recorded vote of at least a two‑thirds majority of the members of the governing body but not less than three‑fifths of the total membership of the governing body.

(B) The county or municipality shall designate one organization within its jurisdiction to receive the revenues and conduct the promotional activities provided pursuant to subsection (A)(1). This organization must be a nonprofit destination marketing organization representing a broad cross‑section of tourism interests within the county or municipality imposing the fee. In addition, before an organization may be designated, it must certify to the imposing county or municipality that:

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

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

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

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

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

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