~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 24, 2012

**S. 1167**

Introduced by Senator Lourie

S. Printed 5/24/12--H.

Read the first time April 17, 2012.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (S. 1167) to amend the Code of Laws of South Carolina, 1976, by adding Section 31‑6‑85 so as to allow a municipality and one or more taxing districts to, 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 SECTION 3 in its entirety and inserting:

SECTION 3. Section 31‑6‑80 of the 1976 Code, as last amended by Act 109 of 2005, is further amended to read:

“Section 31‑6‑80. (A) Prior to the issuance of any obligations under this chapter, the municipality shall set forth by way of ordinance the following:

~~(a)~~(1) a copy of the redevelopment plan containing a statement of the objectives of a municipality with regard to the plan;

~~(b)~~(2) a statement indicating the need for and proposed use of the proceeds of the obligations in relationship to the redevelopment plan;

~~(c)~~(3) a statement containing the cost estimates of the redevelopment plan and redevelopment project and the projected sources of revenue to be used to meet the costs including estimates of tax increments and the total amount of indebtedness to be incurred;

~~(d)~~(4) a list of all real property in the redevelopment project area;

~~(e)~~(5) the duration of the redevelopment plan;

~~(f)~~(6) a statement of the estimated impact of the redevelopment plan upon the revenues of all taxing districts in which a redevelopment project area is located;

~~(g)~~(7) findings that:

~~(i)~~(a) the redevelopment project area is an agricultural, blighted, or conservation area and that private initiatives are unlikely to alleviate these conditions without substantial public assistance;

~~(ii)~~(b) property values in the area would remain static or decline without public intervention; and

~~(iii)~~(c) redevelopment is in the interest of the health, safety, and general welfare of the citizens of the municipality.

(B) Before approving any redevelopment plan under this chapter, the governing body of the municipality must hold a public hearing on the redevelopment plan after published notice in a newspaper of general circulation in the county in which the municipality and any taxing district affected by the redevelopment plan is located not less than fifteen days and not more than thirty days prior to the hearing. The notice shall include:

(1) the time and place of the public hearing;

(2) the boundaries of the proposed redevelopment project area;

(3) a notification that all interested persons will be given an opportunity to be heard at the public hearing;

(4) a description of the redevelopment plan and redevelopment project; and

(5) the maximum estimated term of obligations to be issued under the redevelopment plan.

(C) Not less than forty‑five days prior to the date set for the public hearing, the municipality shall give notice to all taxing districts of which taxable property is included in the redevelopment project area, and in addition to the other requirements of the notice set forth in the section, the notice shall request each taxing district to submit comments to the municipality concerning the subject matter of the hearing prior to the date of the public hearing.

(D) If a taxing district does not file an objection to the redevelopment plan at or prior to the date of the public hearing, the taxing district is considered to have consented to the redevelopment plan and the issuance of obligations under this chapter to finance the redevelopment project, provided that the actual term of obligations issued is equal to or less than the term stated in the notice of public hearing. The municipality may issue obligations to finance the redevelopment project to the extent that each affected taxing district consents to the redevelopment plan. The tax increment for a taxing district that does not consent to the redevelopment plan must not be included in the special tax allocation fund.

(E) Prior to the adoption of an ordinance approving a redevelopment plan pursuant to Section 31‑6‑80, changes may be made in the redevelopment plan ~~which do not alter the exterior boundaries or do not substantially affect the general land use established in the plan or substantially change the nature of the redevelopment project,~~ that do not add parcels to or expand the exterior boundaries of the redevelopment project area, change general land uses established pursuant to the redevelopment plan or the proposed use of the proceeds of the obligations in relationship to the redevelopment plan, or extend the maximum amount or term of obligations to be issued under the redevelopment plan, without further hearing or notice, provided that notice of the changes is given by mail to each affected taxing district and by publication in a newspaper or newspapers of general circulation within the taxing districts not less than ten days prior to the adoption of the changes by ordinance. Notice of the adoption of the ordinance must be published by the municipality in a newspaper having general circulation in the affected taxing districts. Any interested party may, within twenty days after the date of publication of the notice of adoption of the redevelopment plan, but not afterwards, challenge the validity of such adoption by action de novo in the court of common pleas in the county in which the redevelopment plan is located.

~~After adoption of an ordinance approving a redevelopment plan, any alteration in the exterior boundaries, general land uses established pursuant to the redevelopment plan, maximum term of maturity of obligations to be issued under the plan, the redevelopment project must be approved by resolution of each affected taxing district in accordance with the procedures provided in this chapter for the initial approval of a redevelopment project and designation of a redevelopment project area. If the redevelopment project or portion of it is to be located outside of the redevelopment project area, the municipality shall by resolution make a specific finding of benefit to the redevelopment project area and provide written notice to the affected taxing district. No further action is required of the municipality.~~

(F)(1) Subsequent to the adoption of an ordinance approving a redevelopment plan pursuant to Section 31‑6‑80, the municipality may by ordinance make changes to the redevelopment plan that do not add parcels to or expand the exterior boundaries of the redevelopment project area, change general land uses established pursuant to the redevelopment plan, change the proposed use of the proceeds of the obligations in relationship to the redevelopment plan, or extend the maximum amount or term of obligations to be issued under the redevelopment plan, in accordance with the following procedures:

(a) The municipality must provide notice of the proposed changes by mail to each affected taxing district. The proposed changes shall become effective only with respect to affected taxing districts that consent to the proposed changes by resolution of the governing body of the taxing districts.

(b) The municipality must publish notice of the adoption of the ordinance in a newspaper having general circulation in the affected taxing districts. Any interested party may, within twenty days after the date of publication of the notice of adoption of the redevelopment plan, but not afterwards, challenge the validity of the adoption by action de novo in the court of common pleas in the county in which the redevelopment plan is located.

(2) Subsequent to the adoption of an ordinance approving a redevelopment plan pursuant to Section 31‑6‑80, the municipality may by ordinance make changes to the redevelopment plan that adds parcels to or expands the exterior boundaries of the redevelopment project area, to general land uses established pursuant to the redevelopment plan, to the proposed use of the proceeds of the obligations in relationship to the redevelopment plan, or to extend the maximum amount or term of obligations to be issued under the redevelopment plan, in accordance with the procedures provided in this chapter for the initial approval of a redevelopment project and designation of a redevelopment project area.

(3) If the redevelopment project or portion of it is to be located outside of the redevelopment project area, the municipality shall by resolution make a specific finding of benefit to the redevelopment project area and provide written notice to the affected taxing district. No further action is required of the municipality.” /

Amend the bill further, by adding the following appropriately numbered SECTIONS to read:

/ SECTION \_\_. Section 4‑10‑310 of the 1976 Code is amended to read:

“Section 4-10-310. (A) Subject to the requirements of this article, the county governing body may impose a one percent sales and use tax by ordinance, subject to a referendum, within the county area for a specific purpose or purposes and for a limited amount of time. The revenues collected pursuant to this article may be used to defray debt service on bonds issued to pay for projects authorized in this article. However, at no time may any portion of the county area be subject to more than one percent sales tax levied pursuant to this article, pursuant to Chapter 37, Title 4, or pursuant to any local law enacted by the General Assembly.

(B) Where a county is prohibited from imposing a tax pursuant to this article because it is currently subject to a sales and use tax for school districts pursuant to a local law, a municipality within such county may impose a capital projects tax pursuant to Article 11 of this chapter.”

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

“Article 11

Municipal Capital Projects Sales Tax Act

Section 4‑10‑1110. This act may be cited as the ‘Municipal Capital Projects Sales Tax Act’.

Section 4‑10‑1120. Subject to a referendum to be held in the municipality and the other requirements of this article, the municipal governing body may impose, or reimpose as applicable, a sales and use tax not exceeding one percent, for a specific purpose or purposes and for a limited amount of time. The revenues collected pursuant to this article may be pledged as security for, and used to defray debt service on, bonds issued to pay for projects authorized in this article if allowed by Section 4‑10‑310.

Section 4‑10‑1130. (A) A municipality that imposes a local hospitality tax, pursuant to Article 7, Chapter 1, Title 6, not including a municipality that consents to the county’s imposition, may not impose a capital project sales tax under the provisions of this article.

(B) Notwithstanding the provisions of subsection (A), a municipal governing body, by ordinance, may elect to suspend the collection of its local hospitality tax and implement a capital project sales tax pursuant to this article at a rate that may not exceed one percent. A suspension must be effective upon the date set by the ordinance, but no later than the date the capital project sales tax is imposed pursuant to this article. The suspension shall continue until the capital project sales tax terminates. During the suspension, the entire local hospitality tax must be considered in place for purposes of Section 6‑1‑740.

(C) If the sales and use tax is not approved by referendum or is otherwise terminated pursuant to the provisions of this act, the suspension must be lifted and the local hospitality tax must be reinstated at its prior collection rate.

Section 4‑10‑1140. (A) The sales and use tax authorized pursuant to this article must be initially authorized by an ordinance of the municipal governing body. The ordinance must specify:

(1) the rate of the sales and use tax, not to exceed one percent;

(2) the terms of the referendum question, as formulated by the municipal governing body and in substantial conformance with subsection (D), that are to appear on the ballot;

(3) the capital projects for which the proceeds of the tax are to be used, which may include projects located within or without, or both within and without, the boundaries of the municipality and may include the following types of projects:

(a) highways, roads, streets, and bridges;

(b) administration buildings, civic centers, museums, parks, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, parking facilities, and courthouses;

(c) cultural, recreational, and historic facilities;

(d) water and sewer projects;

(e) flood control projects and storm water management facilities;

(f) acquisition of land for active and passive recreational needs, preservation of historic sites, protection of natural resources, and public facilities;

(g) beach access and beach renourishment;

(h) jointly operated projects of the municipality, county, special purpose district, and school district, or a combination of those entities, for the projects delineated in subitems (a) through (g) of this subsection;

(i) a combination of the projects described in subitems (a) through (h) of this item;

(4) the maximum time, stated in terms of calendar or fiscal years or quarters, or a combination of those terms, not to exceed eight years from the date of imposition or seven years from the date of reimposition, for which the tax may be imposed;

(5) the maximum cost of each project and the aggregate cost of all projects proposed;

(6) the expected annual revenues to be derived from the levy of the sales and use tax; and

(7) any other condition precedent, as determined by the commission, to the imposition of the sales and use tax authorized pursuant to this article or condition or restriction on the use of sales and use tax revenue collected pursuant to this article.

(B) When the tax authorized pursuant to this article is imposed for more than one purpose or project, the authorizing ordinance must identify each purpose or project and establish an order of priority in which the net proceeds are to be expended. Alternatively, the authorizing ordinance may set forth a formula or system by which multiple projects may be simultaneously funded.

(C) Upon receipt of the ordinance, the municipal election commission, as applicable, must conduct a referendum on the question of imposing or reimposing the sales and use tax in the municipality. The referendum for this purpose must be held at the time of a general election, as defined in Chapter 1, Title 7 and a referendum to reimpose an existing tax may be held only once. Two weeks before the referendum the election commission must publish, in a newspaper of general circulation in the municipality, the question that is to appear on the ballot, with the list of projects and the maximum cost of the projects. This notice is in lieu of any other notice otherwise required by law.

(D) The referendum question to be on the ballot must read substantially as follows:

‘Must a special \_\_\_ percent sales and use tax be [imposed or reimposed] in (municipality) for not more than (time) to raise the amounts specified for the following purposes?

(1) $\_\_\_\_\_\_\_\_ for \_\_\_\_\_\_\_\_\_\_

(2) $\_\_\_\_\_\_\_\_ for \_\_\_\_\_\_\_\_\_\_

(3) etc.

Yes 

No 

(E) All qualified electors desiring to vote in favor of imposing the tax for the stated purposes shall vote ‘yes’ and all qualified electors opposed to levying the tax shall vote ‘no’. If a majority of the votes cast are in favor of imposing the tax, then the tax is imposed pursuant to this article and the authorizing ordinance. The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and no later than November thirtieth immediately following the referendum, shall certify the result to the municipal governing body and to the Department of Revenue. Expenses of the referendum must be paid by the municipality.

(F) Upon receipt of the returns of the referendum, the municipal governing body, by resolution, shall declare the results of the referendum. The results of the referendum, as declared by resolution of the municipal governing body, are not open to question except by a suit or proceeding instituted within thirty days from the date the resolution is adopted.

Section 4‑10‑1150. (A) If the sales and use tax is approved in the referendum, the tax is imposed on the first of May next following the date of the referendum. If the reimposition of an existing sales and use tax is authorized by the referendum pursuant to the terms of this article, the reimposed tax must be imposed immediately following the termination of the earlier tax and the reimposed tax shall terminate on or before seven years from the date of its imposition.

(B) Upon the approval of the sales and use tax by referendum, the municipality, pursuant to Section 14(10), Article X of the Constitution of the State, is authorized to issue bonds and pledge the revenues derived from the collection of the sales and use tax as security for the bonds. Bonds may be issued by utilizing the procedures of Section 4‑29‑68, Chapter 17, Title 6, or Chapter 21, Title 6, and the proceeds of any bonds must be used for the purposes enumerated in the authorizing ordinance and the referendum. In no event shall the term of the bonds exceed the period that the sales and use tax is imposed or reimposed. Alternatively, and provided the proceeds are expended as provided in this article, the sales and use tax may be applied to pay debt service on general obligation bonds.

(C) The tax terminates on the final day of the maximum time period specified for its imposition or reimposition.

(D) Once the tax is terminated and all bonds secured by the tax or payable from the tax have matured, any excess funds must be applied toward a project for which the tax was imposed or reimposed, otherwise for a purpose authorized in Section 4‑10‑1140(A)(3).

Section 4‑10‑1160. (A) The tax levied pursuant to this article must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected. The department may prescribe amounts that may be added to the sales price because of the tax.

(B) The tax authorized in 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 pursuant to 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 are exempt from the tax imposed pursuant to this article. The gross proceeds of the sale of items of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons also are exempt from the tax imposed pursuant to this article. The tax imposed pursuant to this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36, Title 12.

(C) A taxpayer required to remit taxes under Article 13, Chapter 36, Title 12 must identify the municipality in which the personal property purchased at retail is stored, used, or consumed in this State.

(D) A utility is required to report sales in the municipality in which the consumption of the tangible personal property occurs.

(E) A taxpayer subject to the tax imposed by Section 12‑36‑920, who owns or manages rental units in more than one municipality, must report separately in his sales tax return the total gross proceeds from business done in each municipality.

(F) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied pursuant to this article in a municipality, either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the sales and use tax provided in this article if a verified copy of the contract is filed with the Department of Revenue within six months after the imposition date of the sales and use tax provided for in this article.

(G) Notwithstanding the imposition date of the sales and use tax authorized pursuant to this article, with respect to services that are billed regularly on a monthly basis, the sales and use tax authorized pursuant to this article is imposed beginning on the first day of the billing period beginning on or after the imposition date.

Section 4‑10‑1170. The revenues of the tax collected 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 to the municipal treasurer and the revenues must be used only for the purposes stated in the authorizing ordinance and approved in the referendum. 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 city or county code errors must be corrected prospectively.

Section 4‑10‑1180. 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 4‑10‑1190. Annually, and only in the month of June, funds collected by the department from the municipal capital project sales tax, which are not identified as to the governmental unit due the tax, must be transferred, after reasonable effort by the department to determine the appropriate governmental unit, to the Office of the State Treasurer. The State Treasurer shall distribute these funds to each participating municipality on a proportional basis, based upon each municipality’s current fiscal year sales and use tax collections. Any such supplemental revenues received by a municipality must be used only for the purposes stated in the authorizing ordinance.” /

Renumber sections to conform.

Amend title to conform.

W. BRIAN WHITE for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 31‑6‑85 SO AS TO ALLOW A MUNICIPALITY AND ONE OR MORE TAXING DISTRICTS TO PROVIDE BY INTERGOVERNMENTAL AGREEMENT FOR PARTIAL OR MODIFIED PARTICIPATION IN A REDEVELOPMENT PROJECT; AND TO AMEND SECTION 31‑6‑80, SO AS TO CLARIFY AN AMENDMENT TO THE TAX INCREMENT FINANCING LAW.

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

SECTION 1. The General Assembly finds and determines that the legislative findings contained in Section 31‑6‑20 of the 1976 Code remain true and correct as of the effective date of this act. The General Assembly further finds and determines that it would further the purposes of the Tax Increment Financing Law, Sections 31‑6‑10 et seq. of the 1976 Code, and would be in the public interest, to explicitly confirm the ability of municipalities and one or more taxing districts to provide by intergovernmental agreement for partial or modified participation in a redevelopment project. The General Assembly further finds that such intergovernmental agreements are consistent with and permissible under existing law, and accordingly the purpose of this act is to explicitly confirm the validity and enforceability of such intergovernmental agreements, whether entered into prior or subsequent to the effective date of this act. This act may not be construed to create a negative implication that any such intergovernmental agreement entered into prior to the effective date of this act is not valid or enforceable.

SECTION 2. Chapter 6, Title 31 of the 1976 Code is amended by adding:

“Section 31‑6‑85. The municipality and one or more taxing districts may at any time provide by intergovernmental agreement that such taxing district or taxing districts will participate in a redevelopment project on a partial or modified basis. Such intergovernmental agreement shall become effective, and shall be valid and enforceable for the entire duration thereof, upon its approval by ordinance enacted by the municipality and by ordinance or resolution, whichever is applicable, enacted or approved by the affected taxing district or taxing districts.”

SECTION 3. The final two undesignated paragraphs of Section 31‑6‑80 of the 1976 Code are amended to read:

“~~Prior to the adoption of an ordinance approving a redevelopment plan pursuant to Section 31‑6‑80, changes may be made in the redevelopment plan which do not alter the exterior boundaries or do not substantially affect the general land use established in the plan or substantially change the nature of the redevelopment project, without further hearing or notice, provided that notice of the changes is given by mail to each affected taxing district and by publication in a newspaper or newspapers of general circulation within the taxing districts not less than ten days prior to the adoption of the changes by ordinance. Notice of the adoption of the ordinance must be published by the municipality in a newspaper having general circulation in the affected taxing districts. Any interested party may, within twenty days after the date of publication of the notice of adoption of the redevelopment plan, but not afterwards, challenge the validity of such adoption by action de novo in the court of common pleas in the county in which the redevelopment plan is located.~~

~~After adoption of an ordinance approving a redevelopment plan, any alteration in the exterior boundaries, general land uses established pursuant to the redevelopment plan, maximum term of maturity of obligations to be issued under the plan, the redevelopment project must be approved by resolution of each affected taxing district in accordance with the procedures provided in this chapter for the initial approval of a redevelopment project and designation of a redevelopment project area. If the redevelopment project or portion of it is to be located outside of the redevelopment project area, the municipality shall by resolution make a specific finding of benefit to the redevelopment project area and provide written notice to the affected taxing district. No further action is required of the municipality.~~

Prior to the adoption of an ordinance approving a redevelopment plan pursuant to Section 31‑6‑80, changes may be made in the redevelopment plan that do not add parcels to or expand the exterior boundaries of the redevelopment project area, do not change the proposed use of the proceeds of the obligations in relationship to the redevelopment plan, and do not extend the maximum amount or term of obligations to be issued under the redevelopment plan, without further hearing or notice, provided that notice of the changes is given by mail to each affected taxing district and by publication in a newspaper or newspapers of general circulation within the taxing districts not less than ten days prior to the adoption of the changes by ordinance. Notice of the adoption of the ordinance must be published by the municipality in a newspaper having general circulation in the affected taxing districts. Any interested party may, within twenty days after the date of publication of the notice of adoption of the redevelopment plan, but not afterwards, challenge the validity of such adoption by action de novo in the court of common pleas in the county in which the redevelopment plan is located.

Subsequent to the adoption of an ordinance approving a redevelopment plan pursuant to Section 31‑6‑80, the municipality may by ordinance make changes to the redevelopment plan that do not add parcels to or expand the exterior boundaries of the redevelopment project area, do not change the proposed use of the proceeds of the obligations in relationship to the redevelopment plan, and do not extend the maximum amount or term of obligations to be issued under the redevelopment plan, in accordance with the following procedures:

(a) The municipality must provide notice of the proposed changes by mail to each affected taxing district. The proposed changes shall become effective only with respect to affected taxing districts that consent to such proposed changes by resolution of the governing body of such taxing districts.

(b) The municipality must publish notice of the adoption of the ordinance in a newspaper having general circulation in the affected taxing districts. Any interested party may, within twenty days after the date of publication of the notice of adoption of the redevelopment plan, but not afterwards, challenge the validity of such adoption by action de novo in the court of common pleas in the county in which the redevelopment plan is located.

Subsequent to the adoption of an ordinance approving a redevelopment plan pursuant to Section 31‑6‑80, the municipality may by ordinance make changes to the redevelopment plan that add parcels to or expand the exterior boundaries of the redevelopment project area, change the proposed use of the proceeds of the obligations in relationship to the redevelopment plan, or extend the maximum amount or term of obligations to be issued under the redevelopment plan, in accordance with the procedures provided in this chapter for the initial approval of a redevelopment project and designation of a redevelopment project area.

If the redevelopment project or portion of it is to be located outside of the redevelopment project area, the municipality shall by resolution make a specific finding of benefit to the redevelopment project area and provide written notice to the affected taxing district. No further action is required of the municipality.”

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect upon approval by the Governor.

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