COMMITTEE REPORT

April 17, 2018

**H. 3529**

Introduced by Reps. Bedingfield, Sandifer, Hamilton, Forrester, Atwater, Yow, Clemmons, Crawford, Fry, Hill, Lowe, Pitts, Putnam, Anderson, Martin, G.R. Smith, Williams, Hixon, Henegan and Henderson

S. Printed 4/17/18--S.

Read the first time February 8, 2018.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 3529) to amend the Code of Laws of South Carolina, 1976, by adding Chapter 77 to Title 39 so as to provide that any regulation regarding the use, disposition, sale, 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, page 2, by striking lines 26 through 30 and inserting:

/ (C) Nothing in this chapter may be construed as applying to the use of auxiliary containers within the boundaries of a State, county, or municipal park; on a property owned by a county or municipality, including, but not limited to, coastal tidelands and wetlands; or on a public beach, river, or other body of water maintained by a county or municipality. A county or municipality that elects to enact an ordinance pertaining to the use of auxiliary containers on the exempted properties listed herein may fine a person or business in violation of the ordinance up to one thousand dollars per violation. /

Renumber sections to conform.

Amend title to conform.

THOMAS C. ALEXANDER for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Local Expenditure**

This bill defines an auxiliary container as a bag, cup, package, container, bottle, or other packaging that is designed to consume or transport food or beverage from a food service or retail facility. This bill restricts enacting laws and regulations regarding the use, sale, or taxation of auxiliary containers to the General Assembly. Any county or municipality that has ordinances or regulations pertaining to the use, sale, or taxation of auxiliary containers is superseded by this bill. The provisions of this bill do not apply to the use of auxiliary containers within the boundaries of state parks, coastal tidelands, wetlands, or public beaches maintained by any county or municipality.

The provisions of this bill do not apply to auxiliary container regulations adopted before January 31, 2018, including regulations with a delayed implementation date or that are conditioned on future municipal action. A municipality located within a county that has adopted an ordinance before January 31, 2018, may pass the same or similar ordinance as the county within which it is located.

The Revenue and Fiscal Affairs Office contacted forty-six counties and the Municipal Association of South Carolina (MASC) regarding the expenditure impact of this bill. Charleston, Clarendon, Fairfield, Florence, Greenville, Hampton, Horry, Lancaster, and Pickens counties all indicated there will be no expenditure impact since they do not have auxiliary container ban ordinances in their localities. On the municipal level, the Isle of Palms banned businesses from offering auxiliary containers in 2015 and Folly Beach did the same in 2016. In each case, there was no expected cost associated with enforcing the ban. Additionally, this bill would not affect their auxiliary container bans because their ordinances went into effect prior to January 31, 2018. The MASC indicated they do not expect an expenditure impact from this bill for all other municipalities.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 77 TO TITLE 39 SO AS TO PROVIDE THAT ANY REGULATION REGARDING THE USE, DISPOSITION, SALE, OR ANY IMPOSITION OF ANY PROHIBITION, RESTRICTION, FEE IMPOSITION, OR TAXATION OF AUXILIARY CONTAINERS MUST BE DONE ONLY BY THE GENERAL ASSEMBLY, TO DEFINE AUXILIARY CONTAINER, TO PROVIDE FOR LEGISLATIVE FINDINGS, AND TO PROVIDE FOR EXCEPTIONS.

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

SECTION 1. Title 39 of the 1976 Code is amended by adding:

“CHAPTER 77

Auxiliary Containers

Section 39‑77‑10. The General Assembly finds that:

(1) prudent regulation of auxiliary containers is crucial to the welfare of the state’s economy;

(2) retail and food establishments are sensitive to the costs and regulation of auxiliary containers; and

(3) if individual political subdivisions of the State regulate auxiliary containers, there exists the potential for varying regulations which could lead to unnecessary increased costs for retail and food establishments to comply with the regulations.

Section 39‑77‑20. As used in this chapter, ‘auxiliary container’ means a bag, cup, package, container, bottle, or other packaging that is:

(1) designed to be either reusable or single‑use;

(2) made of cloth, paper, plastic, including foamed or expanded plastic, cardboard, expanded polystyrene, corrugated material, aluminum, glass, postconsumer recycled, or similar material or substrates, including coated, laminated, or multilayer substrates; and

(3) designed for, but not limited to, consuming, transporting, or protecting merchandise, food, or beverages from or at a food service or retail facility.

Section 39-77-30. (A) Any regulation regarding the use, disposition, sale, or any imposition of any prohibition, restriction, fee imposition, or taxation of auxiliary containers must be done only by the General Assembly. This chapter supersedes and preempts any ordinance enacted by a political subdivision that purports to regulate the use, disposition, sale, or any imposition of any prohibition, restriction, fee imposition, or taxation of auxiliary containers at the retail, manufacturer, or distributor level.

(B) Nothing in this chapter may be construed to prohibit or limit any county or municipal ordinance regulating solid waste, any agreement pertaining to the disposal of solid waste, curbside recycling program, designated residential or commercial recycling locations, or commercial recycling program.

(C) The provisions of this chapter do not apply to the use of auxiliary containers within the boundaries of a State park, on a property owned by a county or municipality including, but not limited to, coastal tidelands and wetlands, or on a public beach, river, or other body of water maintained by a county or municipality.

(D) The provisions of this chapter do not apply to auxiliary container regulations adopted before January 31, 2018, including regulations with a delayed implementation date or that are conditioned on future municipal action. A municipality located within a county that has adopted an ordinance before January 31, 2018, may pass the same or similar ordinance as the county within which it is located.”

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

‑‑‑‑XX‑‑‑‑