**A** **BILL**

TO ENACT THE “COUNTY GREEN SPACE SALES TAX ACT”; TO AMEND CHAPTER 10, TITLE 4 OF THE 1976 CODE, RELATING TO COUNTY LOCAL SALES AND USE TAXES, BY ADDING ARTICLE 10, TO CREATE THE COUNTY GREEN SPACE SALES TAX, TO IMPOSE THE TAX, TO PROVIDE FOR THE CONTENTS OF THE BALLOT AND THE PURPOSE FOR WHICH TAX PROCEEDS MAY BE USED, TO PROVIDE FOR THE IMPOSITION AND TERMINATION OF THE TAX, TO PROVIDE THAT THE DEPARTMENT OF REVENUE SHALL ADMINISTER AND COLLECT THE TAX, TO PROVIDE FOR DISTRIBUTIONS TO COUNTIES AND CONFIDENTIALITY, AND TO PROVIDE FOR UNIDENTIFIED FUNDS, TRANSFERS, AND SUPPLEMENTAL DISTRIBUTIONS.

Whereas, South Carolina’s coastal geography consists of 187 miles of oceanfront shoreline and 2,876 miles of tidal shorelines, and includes 500,000 acres of salt marshes that represent twenty percent of all the salt marshes on the United States’ Atlantic coast, all of which underpin extensive recreational and commercial fisheries, thriving coastal tourism, important maritime industries, and critical natural defenses for people against storms; and

Whereas, according to the Census Bureau, South Carolina is the sixth‑fastest‑growing state in the nation, and in particular, the coastal portions of the State contain three of the top twenty fastest‑growing metropolitan areas in the nation, Myrtle Beach, Hilton Head Island, and Charleston, and is projected in the coming years to continue experiencing steady population growth and the expansion of urban and suburban land uses; and

Whereas, although this rapid growth will bring prosperity and new opportunities to South Carolina, it will also put additional pressures on our State’s coastal lands and waters, in that the development and the accompanying infrastructure will result in the destruction of natural wetlands, marshes, and waterways, thereby hampering the functioning of these systems and eliminating valuable and effective natural storm protection and flood abatement, and fish and wildlife habitat; and

Whereas, this growth increases the amount of impervious surfaces on our State’s coast, which in turn creates new runoff and carries pollutants into our waterways. For example, a 2019 study conducted by the University of South Carolina‑Beaufort found that development in the Town of Bluffton has dramatically increased levels of fecal coliform in the May River, with one Department of Health and Environmental Control monitoring station indicating that bacteria levels in the river had increased 3,150% since 1999; and

Whereas, the southeast United States coast has experienced some of the highest rates of sea‑level rise and coastal flooding in the world, with some areas losing as much as three feet of bank each year, and additional sea‑level rises and coastal flooding will adversely impact existing residential and commercial uses on our State’s coast and has been cited by the United States Department of Defense as a threat to the viability of the Marine Corps Recruit Depot Parris Island, which employs 6,100 people and has an annual economic impact of $739.8 million; and

Whereas, the low‑lying topography of our State’s coastal areas, combined with its humid subtropical climate, makes it highly vulnerable to inland or riverine flooding if the flow of rainwater runoff is greater than the carrying capacities of the natural drainage systems, and over the past six years, major flooding and storm events have caused over one billion dollars in total damages to residential and commercial properties and have imposed substantial burdens on South Carolina taxpayers through General Fund disbursements; and

Whereas, an effective way to avoid incurring such liabilities is to limit development within the floodplain and in areas that are at significant risk of succumbing to sea level rise, and there is a need to empower local governments to undertake land preservation efforts that are supportive of, respectful to, and consistent with the principle of private property rights, as opposed to limiting them to the use of traditional land use regulations, which, in order to attain the necessary level of relief, could give rise to inverse condemnation claims; and

Whereas, coastal counties in South Carolina have implemented local land conservation programs, including, but not limited to, Beaufort County’s Rural and Critical Lands Program and Charleston County’s Greenbelt Program, with supermajority approvals in the referendums that authorized them, indicating that such programs enjoy overwhelming public support. Now, therefore,

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

SECTION 1. This act must be known and may be cited as the “County Green Space Sales Tax Act”.

SECTION 2. Chapter 10, Title 4 of the 1976 Code is amended by adding:

“ARTICLE 10

County Green Space Sales Tax

Section 4-10-1010. (A) For the purposes of this article:

(1) ‘Coastal zone county’ means all coastal waters and submerged lands, seaward to the state’s jurisdictional limits, and all lands and waters in the counties of the State that contain any one or more critical areas. These counties are Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper, and Georgetown.

(2) ‘Preservation procurements’ means procuring open lands or green space for preservation, by and through the acquisition of interests in real property, including:

(a) the acquisition of fee simple titles;

(b) conservation easements;

(c) development rights;

(d) rights of first refusal;

(e) options;

(f) leases with options to purchase; and

(g) any other interests in real property.

(B)(1) Subject to the requirements of this article, a coastal zone county’s governing body may impose a sales and use tax by ordinance, subject to a referendum, within the county area for preservation procurements.

(2) Revenues collected pursuant to this article may be used to defray debt service on bonds issued to pay for preservation procurements authorized in this article. This authorization is in addition to any other locally imposed sales and use taxes.

Section 4-10-1020. (A) The sales and use tax authorized by this article may be imposed by an enacting ordinance of a coastal zone county’s governing body, subject to referendum approval in the county. An enacting ordinance must specify:

(1) the purpose for which the proceeds of the tax are to be used, which may include preservation procurements located within or without, or both within and without, the boundaries of the local governmental entities, including the county, municipalities, and special purpose districts located in the coastal zone county area;

(2) if the coastal zone county proposes to issue bonds to provide for the payment of any costs of the preservation procurements, the maximum amount of bonds to be issued, whether the sales tax proceeds are to be pledged to the payment of the bonds and, if other sources of funds are to be used for the preservation procurements, a list of the other sources;

(3) the maximum cost of the preservation procurements, to be funded from the proceeds of the tax or bonds issued as provided in this article and the maximum amount of net proceeds expected to be used to pay the cost or debt service on the bonds, as the case may be; and

(4) the fact that preservation procurements may pertain to real property situated outside of the boundaries of the taxing jurisdiction.

(B)(1) Upon receipt of an ordinance, a coastal zone county’s election commission must conduct a referendum on the question of imposing the sales and use tax in the area of the county that is to be subject to the tax. A referendum for imposition or reimposition of the tax must be held at the time of the next general election. Subject to item (2), two weeks before a referendum, a coastal zone county’s election commission must publish in a newspaper of general circulation the question that is to appear on the ballot, with a description of the methods by which the county’s governing body intends to procure open lands and green space for preservation. If the proposed question includes the use of sales taxes to defray debt service on bonds issued to pay the costs of any preservation procurements, then the notice must include a statement indicating the principal amount of the bonds proposed to be issued for the purpose and, if the issuance of the bonds is to be approved as part of the referendum, stating that the referendum includes the authorization of the issuance of bonds in that amount. This notice is in lieu of any other notice otherwise required by law.

(2) If a referendum on the question of imposing the sales and use tax is conducted in an odd‑numbered year, and it is the only matter being considered at the general election, then six weeks before the referendum, the coastal zone county’s election commission must publish in a newspaper of general circulation the question that is to appear on the ballot, with a description of the methods by which the county’s governing body intends to procure open lands and green space for preservation.

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

‘Must a special one percent sales and use tax be imposed in [county] for not more than [time] to raise the amounts specified for preservation procurements for the purpose of procuring open lands and green space by and through the acquisition of interests in real property, such interests to include:

(a) the acquisition of fee simple titles;

(b) conservation easements;

(c) development rights;

(d) rights of first refusal;

(e) options;

(f) leases with options to purchase; or

(g) any other interests in real property?

Yes []

No []’

If the referendum includes the issuance of bonds, then the question must be revised to include the principal amount of bonds proposed to be authorized by the referendum and the sources of payment of the bonds if the sales tax approved in the referendum is inadequate for the payment of the bonds.

(D) 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 as provided in this article and the enacting ordinance. Any subsequent referendum on this question must be held on the date prescribed in subsection (B). The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the result no later than November thirtieth to the county governing body and to the Department of Revenue. Expenses of the referendum must be paid by the governmental entities that would receive the proceeds of the tax in the same proportion as those entities would receive the net proceeds of the tax.

(E) Upon receipt of the returns of a referendum, a coastal zone county’s governing body must, by resolution, declare the results thereof. In such event, the results of the referendum, as declared by resolution of the coastal zone county’s governing body, are not open to question except by a suit or proceeding instituted within thirty days from the date such resolution is adopted.

Section 4-10-1030. (A) If the sales and use tax is approved in a referendum, then the tax shall be imposed on the first of May following the date of the referendum. If the reimposition of an existing sales and use tax imposed pursuant to this article is approved in a referendum, then the new tax is imposed immediately following the termination of the earlier imposed tax, and the reimposed tax terminates on the applicable thirtieth of April, not to exceed seven years from the date of reimposition. If the certification is not timely made to the Department of Revenue, then the imposition is postponed for twelve months.

(B) The tax terminates the final day of the maximum time period specified for the imposition.

(C)(1) Amounts collected in excess of the required net proceeds must first be applied, if applicable, to complete the preservation procurements for which the tax was imposed.

(2) If funds still remain after first using the funds as described in item (1) and the tax is not reimposed, then the remaining funds must be used for the purposes set forth in Section 4‑10‑330(A)(1). These remaining funds may only be expended for the purposes set forth in Section 4‑10‑330(A)(1) following an ordinance specifying the authorized purpose or purposes for which the funds will be used.

Section 4-10-1040. (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 of Revenue may prescribe amounts that may be added to sales prices because of the tax.

(B) The tax 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 are exempt from the tax imposed by this article. Unprepared food items eligible for purchase with United States Department of Agriculture food coupons are exempt from the tax imposed pursuant to this article. The tax imposed by 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 of Title 12 must identify the county 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 county 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 county, must separately report in his sales tax return the total gross proceeds from business done in each county.

(F) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under this article in a county, 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 chapter, 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 4-10-1050. The Department of Revenue shall furnish data to the State Treasurer and to the coastal zone county 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 4-10-1060. Annually, and only in the month of June, funds collected by the Department of Revenue from the county green space sales tax, which are not identified as to the governmental unit due the tax, must be transferred, after reasonable effort by the Department of Revenue to determine the appropriate governmental unit, to the State Treasurer’s Office. The State Treasurer shall distribute these funds to the county treasurer in the coastal zone county area in which the tax is imposed, and the revenues must be only used for the purposes stated in the enacting ordinance. The State Treasurer shall calculate this supplemental distribution on a proportional basis, based on the current fiscal year’s county area revenue collections.”

SECTION 3. This act takes effect upon approval by the Governor.

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