

ARTICLE 10
County Green Space Sales Tax

Editor's Note

2022 Act No. 166, preamble and Section 1, provide as follows:

"Whereas, South Carolina is blessed with a broad array of natural resources, from the Blue Ridge Escarpment in the Upstate, to the sandhills of the Midlands, to the farmland and woodlands of the Pee Dee, and to the iconic shoreline and marshes of the coastal plain; and

"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, South Carolina's Upstate consists of the 10,000 acre Mountain Bridge Wilderness Area that encompasses the Blue Ridge Escarpment and its vast array of waterfalls, hardwood forests, headwaters, and mountain streams, as well as a diversity of plant and animal life, including the exceptionally rare and endangered bunched arrowhead; and

"Whereas, South Carolina's Midlands region is home to the sandhills and longleaf pine habitat, which supports over 30 threatened or endangered plant and animal species, including the redcockaded woodpecker; and

"Whereas, South Carolina's Pee Dee is a region with rich geographic variations, including deep woodlands, a patchwork of timber forests and agricultural fields, blackwater swamps and creeks that intermingle with red rivers and high bluffs, historic sites, and one of the most productive agricultural areas in the State; and

"Whereas, the quality of life of all South Carolinians is tied to conservation, with homes, businesses, and recreation being drawn to areas with abundant and accessible green space and natural areas; and

"Whereas, according to the Census Bureau, South Carolina is the tenthfastestgrowing State in the nation, and in particular, the State contains a number of the fastestgrowing metropolitan areas in the nation, including Myrtle Beach, York County, 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, studies conducted by City Explained suggest that the amount of developed land in some regions of South Carolina will increase by 250% by 2040 if current development trends continue; 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 lands and waters, in that the development and the accompanying infrastructure will result in the destruction of natural wetlands, marshes, headwaters, and other 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 throughout our State, which in turn creates new runoff and carries pollutants into our waterways. For example, a 2019 study found that development in the Town of Bluffton has increased levels of fecal coliform in the May River 3,150% since 1999 and Upstate studies found that sediment from land development is a leading cause of water quality degradation, resulting in flooding, increased costs for drinking water treatment, and harm to aquatic life; and

"Whereas, there are significant economic benefits that result from protecting land, including tourism and recreation; and

"Whereas, farmland protection helps promote agritourism and boosts the local food economy, as demonstrated by a 2013 SC Department of Agriculture study that found that if every South Carolina resident purchased \$5 worth of food each week directly from a farmer in the State the potential impact would be about \$1.2 billion; 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, flooding has significantly affected South Carolina's inland communities, with over 80 dam failures from 2015 to 2018 resulting from extreme weather and flooding that our riverine systems and floodplains were unable to attenuate, leading to significant impacts on transportation and drinking water infrastructure and the loss of homes, livelihoods, and lives; and

"Whereas, the topography of our State, whether the lowlying topography of our coastal areas or the small incised streams of the Upstate prone to flash flooding and erosion, our state's development patterns makes our communities highly vulnerable to inland and 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 from sea level rise and flooding, 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, counties in South Carolina have implemented local land conservation programs including, but not limited to, Beaufort County's Rural and Critical Lands Program, Charleston County's Greenbelt Program, Greenville County's Historic and Natural Resources Trust Initiative, the Oconee County Conservation Bank, and extensive parks and greenspace funding efforts in York County, indicating that such programs enjoy overwhelming public support in all corners of the State. Now, therefore, [text of Act]"

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

SECTION 4-10-1010. Preservation procurements defined; sales and use tax.

(A) For the purposes of this article, "preservation procurements" means procuring open lands or green space for preservation, by and through the acquisition of interests in real property, including:

- (1) the acquisition of fee simple titles;
- (2) conservation easements;
- (3) development rights;
- (4) rights of first refusal;
- (5) options;
- (6) leases with options to purchase; and
- (7) any other interests in real property.

(B)(1) Subject to the requirements of this article, a 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.

HISTORY: 2022 Act No. 166 (S.152), Section 2, eff May 16, 2022.

SECTION 4-10-1020. Imposition of sales and use tax; enacting ordinance requirements; referendum; results.

(A) A county governing body may impose a sales and use tax up to one percent authorized by this article, by ordinance, subject to a referendum. 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 county area;

(2) if the 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) Upon receipt of an ordinance, a 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 in an evennumbered year. Two weeks before a referendum, a 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.

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

"Must a special [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 <input type="checkbox"/>
	No <input type="checkbox"/>

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 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 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.

(F) The provisions of this section are not available to a county with more than two existing sales and use taxes currently in effect.

HISTORY: 2022 Act No. 166 (S.152), Section 2, eff May 16, 2022.

SECTION 4-10-1030. Imposition and termination of the tax.

(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) 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.

(D) If the sales and use tax is approved in a referendum, then the Department of Revenue must make available to the public, upon request, all information regarding the amount of the tax that is collected, expenditures, and any remaining funds at the time of the information request to ensure transparency and accountability.

HISTORY: 2022 Act No. 166 (S.152), Section 2, eff May 16, 2022.

SECTION 4-10-1040. Administration and collection of the tax.

(A)(1) 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.

(2) The county in which a referendum is passed shall assemble an advisory committee to assist the Department of Revenue with directing the distribution of the taxes collected to ensure a transparent and equal distribution within the county. The advisory committee shall include seven members:

(a) one member who is a member of the county council;

(b) one member who is a member of the legislative delegation;

(c) one member who is knowledgeable about the geography and condition of the county's land;

and

(d) four citizen members, each representing the northern, southern, eastern, and western portions of the county.

(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, 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 1236920, 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.

HISTORY: 2022 Act No. 166 (S.152), Section 2, eff May 16, 2022.

SECTION 4-10-1050. Distributions to counties; confidentiality.

The Department of Revenue shall furnish data to the State Treasurer and to the 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 1254240. A person violating this section is subject to the penalties provided in Section 1254240.

HISTORY: 2022 Act No. 166 (S.152), Section 2, eff May 16, 2022.

SECTION 4-10-1060. Unidentified funds, transfers, and supplemental distributions.

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 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.

HISTORY: 2022 Act No. 166 (S.152), Section 2, eff May 16, 2022.