

## CHAPTER 37.

### OPTIONAL METHODS FOR FINANCING TRANSPORTATION FACILITIES

#### **SECTION 4-37-10.** Transportation authority; establishment; membership.

(A) Subject to requirements of this chapter and the referendum described in Section 4-37-30, the governing body of a county may by ordinance establish a transportation authority with all of the rights and powers described in Section 4-37-20. If, pursuant to this section, a county chooses to finance all of the cost of highways, roads, streets, bridges, and other transportation-related projects and elects to create an authority for that purpose, the members of the authority board must be appointed by the county governing body in the manner it determines.

(B) If a county chooses to enter into a partnership, consortium, or other contractual arrangement with one or more other governmental entities and if the parties choose to form an authority for such purpose, those other governmental entities must have one or more designated appointees on the authority board as provided in an intergovernmental agreement to be entered into by the parties. In order for a county to enter into the formation of an authority, partnership, consortium, or other intergovernmental agreement pursuant to the provisions of this chapter with other counties, a referendum on the action must be held by each county and the referendum must be approved by each and every separate county and together.

(C) For purposes of this chapter "governmental entity" is a county in South Carolina, or the State of South Carolina and its departments and agencies.

(D) The existence of any authority created pursuant to this chapter must terminate not later than twelve months after a sales and use tax or toll authorized by this chapter terminates.

HISTORY: 1995 Act No. 52, Section 2, eff upon approval (became law without the Governor's signature May 18, 1995).

#### **SECTION 4-37-20.** Rights and power of transportation authority.

The board of the authority has all the rights and powers of a public body, politic and corporate of this State, including, without limitation, all the rights and powers necessary or convenient to manage the business and affairs of the authority and to take action as it may consider advisable, necessary, or convenient in carrying out its powers including, but not limited to, the following rights and powers:

- (1) to have perpetual succession;
- (2) to sue and be sued;
- (3) to adopt, use, and alter a seal;
- (4) to make and amend bylaws for regulation of its affairs consistent with the provisions of this chapter;
- (5) to acquire by gift, deed or easement, purchase, hold, use, improve, lease, mortgage, pledge, sell, transfer, and dispose of any property, real, personal, or mixed, or any interest in any property, or revenues of the authority as security for notes, bonds, evidences of indebtedness, or other obligations of the authority;
- (6) to borrow money, make and issue notes, bonds, and other evidences of indebtedness; to secure the payment of the obligations or any part by mortgage, lien, pledge, or deed of trust, on any of its property, contracts, franchises, or revenues;
- (7) to make contracts, including service contracts with a person, corporation, or partnership including, without limitation, the South Carolina Department of Transportation, to provide the facilities and services provided herein; and
- (8) execute all instruments necessary or convenient for the carrying out of business.

The board of the authority is not authorized to exercise the powers of eminent domain; however, it may recommend to the county governing body that property be acquired through eminent domain. The

county governing body must determine if the property is to be acquired through eminent domain and, if so, to commence the eminent domain proceedings.

HISTORY: 1995 Act No. 52, Section 2, eff upon approval (became law without the Governor's signature May 18, 1995); 1997 Act No. 122, Section 2, eff June 13, 1997.

**SECTION 4-37-25.** Transportation authority; procurement methods and requirements.

An authority created pursuant to this chapter must comply with Section 11-35-50. When procuring the construction, maintenance, and repair of bridges, highways, and roads, an authority must use the same procurement methods and apply the same procurement requirements used by and applied to the South Carolina Department of Transportation in the construction, maintenance, and repair of bridges, highways, and roads including the provisions of Section 12-27-1320 except that when applying Section 12-27-1320, the contracting entity may meet the expenditures standards of Section 12-27-1320 by either direct or indirect contracts. For purposes of this provision, "contracting entity" includes a governmental body and a private entity with which a governmental body contracts for the construction, maintenance, and repair of bridges, highways, and roads.

HISTORY: 1995 Act No. 52, Section 2, eff upon approval (became law without the Governor's signature May 18, 1995).

**SECTION 4-37-30.** Sales and use taxes or tolls as revenue for transportation facilities.

To accomplish the purposes of this chapter, counties are empowered to impose one but not both of the following sources of revenue: a sales and use tax as provided in item (A) or to authorize an authority established by the county governing body as provided in Section 4-37-10 to use and impose tolls in accordance with the provisions of item (B):

(A) Subject to the requirements of this section, the governing body of a county may impose by ordinance a sales and use tax in an amount not to exceed one percent within its jurisdiction for a single project or for multiple projects and for a specific period of time to collect a limited amount of money.

(1) The governing body of a county may vote to impose the tax authorized by this section, subject to a referendum, by enacting an ordinance. The ordinance must specify:

(a) the project or projects and a description of the project or 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 county imposing the tax and which may include:

(i) highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects;

(ii) jointly-operated projects, of the type specified in sub-subitem (i), of the county and South Carolina Department of Transportation; or

(iii) projects, of the type specified in sub-subitem (i), operated by the county or jointly-operated projects of the county and other governmental entities;

(b) the maximum time, stated in calendar years or calendar quarters, or a combination of them, not to exceed twenty-five years or the length of payment for each project whichever is shorter in length, for which the tax may be imposed;

(c) the estimated capital cost of the project or projects to be funded in whole or in part from proceeds of the tax and the principal amount of bonds to be supported by the tax; and

(d) the anticipated year the tax will end.

(2) Upon receipt of the ordinance, the county election commission shall conduct a referendum on the question of imposing the optional special sales and use tax in the jurisdiction. A referendum for this purpose must be held at the time of the general election. The commission shall publish the date and

purpose of the referendum once a week for four consecutive weeks immediately preceding the date of the referendum in a newspaper of general circulation in the jurisdiction. A public hearing must be conducted at least fourteen days before the referendum after publication of a notice setting forth the date, time, and location of the public hearing. The notice must be published in a newspaper of general circulation in the county at least fourteen days before the date fixed for the public hearing.

(3) A separate question must be included on the referendum ballot for each purpose which purpose may, as determined by the governing body of a county, be set forth as a single question relating to several of the projects, and the question must read substantially as follows:

"I approve a special sales and use tax in the amount of (fractional amount of one percent) (one percent) to be imposed in (county) for not more than (time) to fund the following project or projects:

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

Yes \_\_\_

No \_\_\_

Project (2), etc."

In addition, the referendum, as determined by the governing body of a county, may contain a question on the authorization of general obligation bonds under the exemption provided in Section 14(6), Article X of the Constitution of South Carolina, 1895, so that revenues derived from the imposition of the optional sales and use tax may be pledged to the repayment of the bonds. The additional question must read substantially as follows:

"I approve the issuance of not exceeding \$\_\_\_\_\_ of general obligation bonds of \_\_\_\_\_ County, maturing over a period not to exceed \_\_\_ years to fund the \_\_\_\_\_ project or projects.

Yes \_\_\_

No \_\_\_"

If the referendum on the question relating to the issuance of general obligation bonds is approved, the county may issue bonds in an amount sufficient to fund the expenses of the project or projects.

(4) All qualified electors desiring to vote in favor of imposing the tax for a particular purpose shall vote "yes" and all qualified electors opposed to levying the tax for a particular purpose shall vote "no". If a majority of the votes cast are in favor of imposing the tax for one or more of the specified purposes, then the tax is imposed as provided in this section; otherwise, the tax is not imposed. The election commission shall conduct the referendum pursuant to the election laws of this State, mutatis mutandis, and shall certify the result no later than November thirtieth after the date of the referendum to the appropriate governing body and to the Department of Revenue. Included in the certification must be the maximum cost of the project or projects or facilities to be funded in whole or in part from proceeds of the tax, the maximum time specified for the imposition of the tax, and the principal amount of bonds to be supported by the tax receiving a favorable vote. Expenses of the referendum must be paid by the jurisdiction conducting the referendum. If the tax is approved in the referendum, the tax is imposed effective the first day of May following the date of the referendum. If the certification is not made timely to the Department of Revenue, the imposition is postponed for twelve months.

(5) The tax terminates on the earlier of:

(a) the final day of the maximum time specified for the imposition; or

(b) the end of the calendar month during which the Department of Revenue determines that the tax has raised revenues sufficient to provide the greater of either the cost of the project or projects as approved in the referendum or the cost to amortize all debts related to the approved projects.

(6) When the optional sales and use tax is imposed, the governing body of the jurisdiction authorizing the referendum for the tax shall include by definition more than one item as defined in (a)(i) and (a)(ii) to describe the single project or multiple projects for which the proceeds of the tax are to be used.

(7) Amounts collected in excess of the required proceeds first must be applied, if necessary, to complete each project for which the tax was imposed. Any additional revenue collected above the specified amount must be applied to the reduction of debt principal of the imposing political subdivision on transportation infrastructure debts only.

(8) The tax levied pursuant to this section 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 the amounts which may be added to the sales price because of the tax.

(9) The tax authorized by this section is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable jurisdiction which are 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 are exempt from the tax imposed by this section. The gross proceeds of the sale of food lawfully purchased with United States Department of Agriculture food stamps are exempt from the tax imposed by this section. The tax imposed by this section also applies to tangible personal property subject to the use tax in Article 13, Chapter 36 of Title 12.

(10) Taxpayers required to remit taxes pursuant to Article 13, Chapter 36 of Title 12 must identify the county in which the tangible personal property purchase at retail is stored, used, or consumed in this State.

(11) Utilities are required to report sales in the county in which consumption of the tangible personal property occurs.

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

(13) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied pursuant to this section in a county, either pursuant to 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 special local sales and use tax provided in this section if a verified copy of the contract is filed with the Department of Revenue within six months after the imposition of the special local sales and use tax.

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

(15) The revenues of the tax collected in each county pursuant to this section must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of 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 all interest earned on the revenues while on deposit with him quarterly to the county in which the tax is imposed, and these revenues and interest earnings must be used only for the purpose stated in the imposition ordinance. The State Treasurer may correct misallocations by adjusting later 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.

(16) The Department of Revenue shall furnish data to the State Treasurer and to the counties receiving revenues for the purpose of calculating distributions and estimating revenues. The information which must be supplied to counties 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.

(17) The Department of Revenue may promulgate regulations necessary to implement this section.

(B)(1)(a) This item (B) is intended to provide an additional and alternative method, subject to a referendum, for the provision of and financing for highways, roads, streets, and bridges, and other transportation-related projects, either alone or in partnership with other governmental entities to the end that these transportation-related projects may be undertaken in such manner as may best be calculated to expedite relief of hazardous and congested traffic conditions on the highways in the State, including the authorization for turnpike projects undertaken by the Department of Transportation in Article 9 of

Chapter 5 of Title 57. The Department of Transportation is prohibited from removing funds previously dedicated to the project or designated county area under its allocation formula based upon the fact that a county has passed a referendum to impose the tax provided in this chapter.

(b) Subject to the requirements of this item (B), the governing body of a county may by ordinance authorize, subject to a referendum, an authority to use tolls to finance projects authorized by this section.

(c) The ordinance enacted by the governing body of the county to authorize an authority to use tolls must specify:

(i) the purpose for which the toll revenues are to be used which may include jointly-operated projects between the authority and the South Carolina Department of Transportation;

(ii) the maximum time, stated in calendar years or calendar quarters, or a combination of them, not to exceed twenty-five years, for which the tolls may be imposed; and

(iii) the maximum cost of the project or facilities to be funded in whole or in part from toll revenues and the principal amount of bonds to be supported by the tolls.

(d) Upon receipt of the ordinance, the county election commission shall conduct a referendum on the question of authorizing an authority to use tolls in the jurisdiction. The referendum must be held on the first Tuesday occurring sixty days after the election commission receives the ordinance. If that Tuesday is a legal holiday then the referendum must be held on the next succeeding Tuesday that is not a holiday. The commission shall publish the date and purpose of the referendum once a week for four consecutive weeks immediately preceding the date of the referendum, in a newspaper of general circulation in the jurisdiction. A public hearing must be conducted at least fourteen days before the referendum, after publication of a notice setting forth the date, time, and location of the public hearing. The notice must be published in a newspaper of general circulation in the county at least fourteen days before the date fixed for the public hearing.

(e) A separate question must be included on the referendum ballot for each purpose and the question must read substantially as follows:

"I approve the imposition of tolls on the following project or projects in (county) for not more than (time) to fund the following project or projects:

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

Yes \_\_\_

No \_\_\_

Project (2) etc."

(f) All qualified electors desiring to vote in favor of imposing tolls for a particular purpose shall vote "yes" and all qualified electors opposed to imposing tolls for a particular purpose shall vote "no". If a majority of the votes cast are in favor of imposing tolls for one or more of the specified purposes, then tolls are imposed as provided in this section; otherwise, an authority is not authorized to impose tolls. A subsequent referendum on this question, after the question is disapproved, must not be held more than once in twenty-four months. The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the result no later than sixty days after the date of the referendum to the appropriate county governing body and authority and to the South Carolina Department of Transportation. Included in the certification must be the maximum cost of the project or facilities to be funded in whole or in part from proceeds of the tolls and the maximum time specified for the imposition of the tolls receiving a favorable vote. Expenses of the referendum must be paid by the jurisdiction conducting the referendum.

(g) Toll terminate on the earlier of:

(i) the final day of the maximum time specified for the imposition; or

(ii) the end of the calendar month during which the authority determines that the tolls have raised revenues sufficient to provide the greater of either the cost of the project or projects as approved in the referendum or the cost to amortize all debts related to the approved projects.

(h) When tolls are imposed for more than one purpose, the governing body of the jurisdiction authorizing the referendum for the tolls shall determine the priority for the expenditure of the net proceeds of the tolls for the purposes stated in the referendum.

(i) Amounts collected in excess of the required proceeds must first be applied, if necessary, to complete each project for which the toll was imposed; otherwise, the excess amounts must be credited to the general fund of the jurisdiction imposing the tax for infrastructure use only.

(2) If the voters have approved the imposition of tolls by referendum and if the authority enters into a partnership, consortium, or other contractual arrangement with the Department of Transportation relating to turnpike facilities, the authority may designate, establish, plan, improve, construct, maintain, operate, and regulate designated highways, roads, streets, and bridges as "turnpike facilities" as a part of the state highway system or any federal aid system whenever the authority determines the traffic conditions, present or future, justify these facilities. Under such partnership arrangement, the authority may utilize funds available for the maintenance of the state highway system for the maintenance of any turnpike facility financed pursuant to this chapter. If the authority determines it is feasible to make all or part of a construction project a turnpike facility, it may engage in the preliminary estimates and studies incident to the determination of the feasibility or practicability of constructing any toll road as it from time to time considers necessary and the cost of the preliminary estimates and studies may be paid from the general highway fund and must be reimbursed from funds provided under this chapter only if the studies and estimates lead to the construction of a toll road.

(3) Under the partnership arrangement, the authority may acquire such lands and property, including rights of access as may be needed for turnpike facilities, by gift, devise, purchase, or condemnation by easement or in fee simple as authorized by law on or after the effective date of this chapter for acquiring property or property rights in connection with other state highways.

(4) In designating, establishing, planning, abandoning, improving, constructing, maintaining, and regulating turnpike facilities, the authority may exercise such authorizations as are granted generally to the Department of Transportation by the statutory law applicable to the state highway system, except as they may be inconsistent with the provisions included in this chapter.

(5) Whenever it becomes necessary that monies be raised for the transportation facilities described in this chapter, the authority may issue toll revenue bonds in a principal amount not to exceed the amount authorized in the referendum to authorize the authority to impose tolls to provide all or a portion of the cost of these facilities and maintenance of the toll road after adopting its resolution setting forth the following:

- (a) the toll facility proposed to be constructed;
- (b) the amount required for feasibility studies, planning, design, right-of-way acquisition, and construction of the toll facility;
- (c) a tentative time schedule setting forth the period of time for which the toll shall be imposed and set forth a schedule for elimination of all or part of all tolls;
- (d) a debt service table showing the estimated annual principal and interest requirements for the proposed toll revenue bonds;
- (e) any feasibility study obtained by the authority relating to the proposed toll facility;
- (f) any covenants to be made in the bond resolution respecting competition between the proposed toll facility and possible future highways whose construction would have an adverse effect upon the toll revenues which would otherwise be derived by the proposed toll facility;
- (g) any additional revenue collected above the specified amount to satisfy the principal and interest of toll revenue bonds or maintenance must be applied to the reduction of debt principal of the imposing political subdivision.

- (6) In addition to the powers listed above, the authority may in connection with such toll facilities:
- (a) fix and revise from time to time and charge and collect tolls for transit over each turnpike facility constructed by it;
  - (b) combine for the purpose of financing the facilities any two or more turnpike facilities;
  - (c) control access to turnpike facilities;
  - (d) to the extent permitted by a bond resolution, expend turnpike facility revenues in advertising the facilities and services of the turnpike facility or facilities to the traveling public;

(e) receive and accept from any federal agency grants for or in the aid of the construction of any turnpike facility;

(f) do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter;

(g) enter into contracts with the Department of Transportation for sharing the cost of building and the revenues derived from the facilities authorized in this chapter and for the operation and maintenance of the facilities for transportation infrastructure debts only.

(C) It is intended that this chapter is an additional and alternative method of financing highway and bridge projects to those already provided under the provisions of the State Highway Bond Act (Section 57-11-210), the State Turnpike Bond Act (Section 57-5-1310 et seq.), the Revenue Bond Act for Utilities (Section 6-21-10 et seq.), and Section 4-9-30(5).

(D) The Department of Transportation must not diminish or decrease funds available to a municipality, county, or multi-county area because a project has been funded in the municipality, county, or multi-county area pursuant to a referendum provided in this chapter.

HISTORY: 1995 Act No. 52, Section 2, eff upon approval (became law without the Governor's signature May 18, 1995); 1997 Act No. 122, Section 1, eff June 13, 1997; 1999 Act No. 93, Section 6, eff June 11, 1999; 2000 Act No. 368, Section 1, eff June 14, 2000; 2001 Act No. 89, Section 41, eff July 20, 2001.

**SECTION 4-37-40.** Limitation on sales tax rate.

At no time may any portion of the county area be subject to more than one percent sales tax levied pursuant to this chapter, Article 3, Chapter 10 of this title, or pursuant to any local legislation enacted by the General Assembly.

HISTORY: 1995 Act No. 52, Section 2, eff upon approval (became law without the Governor's signature May 18, 1995); 2000 Act No. 368, Section 2, eff June 14, 2000.

**SECTION 4-37-50.** Unidentified funds; transfer and supplemental distributions.

Annually, and only in the month of June, funds collected by the department from the local option transportation facility 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 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 used only for the purposes stated in the imposition 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: 1999 Act No. 93, Section 7, eff June 11, 1999.