

Municipal Association of South Carolina Legislative Report 115th General Assembly

The General Assembly adjourned on June 3, 2004, ending the second year of the two-year session. The following is a summary of legislation adopted during the 115th General Assembly of South Carolina.

(S=Senate, H=House, R=Ratified, Act No.= Signed by Governor)

Building Codes – Adoption (Act No. 83, R 141, S 449)

This Act updates the references to the nationally recognized building code organizations and amends the procedures the State uses to adopt the codes.

Business License – Beer & Wine Wholesalers (Act No. __, R 401, H 3065)

Section 27 of this legislation adds section 12-21-1085 to the State Code. It preempts county and municipal taxes on beer and wine with the exception of sales and use tax and the local hospitality tax. It also specifically preempts county and municipal licenses on wholesalers delivering beer and wine. The new Code section reinstates a similar statutory preemption (old section 12-21-1080) which was repealed in 2001.

Capital Project Sales Tax (Act No. __, R 339, S 277)

The Act amends the capital project sales tax statute (Section 4-10-330 (A)(1)) to add public parking garages, related facilities, beach access and beach renourishment as allowable uses of funds generated by a capital project sales tax.

Community Development (Act No. 227, R 300, S 1075)

This legislation enacts the Textiles Communities Revitalization Act. The bill provides the developer of an abandoned textile facility either a local property tax or state income tax credit equal to 25 percent of the rehabilitation expenses. The real property tax credit is limited to an eight year period. The owner may receive no more than 75 percent of the property tax credit per year. The local government must approve the tax credits by ordinance after a public hearing. Local governments (counties and schools) have the right to opt out of participating in the tax credit. The state income tax credit is limited to ten years, with an additional ten years for any unused tax credits. The property owner is required to elect the mode of credit by providing written notification to the SC Department of Commerce, prior to the date the eligible site is placed in service. If the property owner fails to provide written notice of the desire to receive the tax credit, the property will be eligible to receive an amount equal to 25 percent credit against any taxes to which the state historic credit may apply.

Correctional Facilities (Act No.186, R 217, H 4037)

This legislation allows a law enforcement officer of a county which participates in funding a regional correctional facility to serve a warrant on an inmate confined in the facility without needing the warrant countersigned by officials of the county where the regional correctional facility is located.

Electric Utilities – Purchased Power Contracts (Act No. 210, R 260, H 4615)

This legislation allows a municipality and its joint power and energy agency to extend purchased power contracts beyond the original 50 year limit.

Electric Utilities – Service Territory Rights (Act No. 179, R 188, S 844)

It amends the law dealing with service territory rights when a municipality annexes an area served by an electric cooperative or investor-owned utility. It allows the electric cooperative to continue serving the newly annexed area if the area is in assigned territory.

Emergency Vehicles (Act No. __, R 393, S 848)

This legislation revises the definition “authorized emergency vehicles” so only certain vehicles may use or display blue or red lights, or display the word “police.”

Employment Law (Act No. 185, R 214, H 3448)

This legislation amends Section 41-1-110 of the State Code to clarify when a contract may exist between an employee and employer and when it does not. It specifically states a handbook, personnel manual, policy, procedure, or other document issued by an employer shall not create an express or implied contract of employment if it is conspicuously disclaimed. The law further provides how the disclaimer is to be conspicuously disclaimed.

Firefighter – Pension Investments (Act No. 93, R 115, S 305)

This Act ratifies a state constitutional amendment to allow a separate pension plan operated for firefighters by a municipality, county, special purpose district or public service district to invest its funds in equity securities traded on a national securities exchange.

Fireworks (Act No. __, R 356, H 3409)

The Act provides a process of establishing fireworks prohibited zones within municipalities and counties. Also, it exempts local governments from liability of loss from granting or denying an application for extending the fireworks prohibited zone.

Freedom of Information Act – Family Privacy Protection Act (Act No. 20, R 46, H 3198)

This Act substitutes "state agency" for "public body" in the section of the Freedom of Information Act, which prohibits a person from using personal information obtained from a public body for commercial solicitation. The prohibition does not apply to a local governmental entity.

Historic Properties (Act No. __, R 339, S 277)

The bill makes administrative and procedural changes to how local governments grant special property tax assessments to rehabilitated historic properties as well as low- and moderate-income rental properties. Previously, the Department of Archives and History had the authority to approve rehabilitation work for the special tax assessment on historic properties. Now, local governments have the authority to approve projects less than \$250,000. The Department of Archives and History retains the authority for projects greater than \$250,000.

Jails – Unlawful Acts (Act No. 18, R 44, H 3078)

This Act revises the provision regarding the unlawful throwing of body fluids on an employee of a state or local correctional facility by an inmate, detainee, person taken into custody or a person under arrest. It expands the definitions of "local correctional facility" to include, but not limited to, a local detention facility.

Joint Agency Act (Act No. 8, R 25, S 9)

Special purpose districts created for the principal purpose of furnishing natural gas can create joint agencies to provide for the joint exercise of powers, joint administration of functions and cost sharing. This law is to ensure residents, businesses and industries located in the gas authorities' service areas are provided with natural gas services as efficiently and inexpensively as possible. The legislation establishes provisions regarding the formation and operation of joint agencies.

Land Use Planning – Dispute Resolution (Act No. 39, R 91, S 204)

This Act revises the procedures for appeals from decisions of zoning boards of appeals, boards of architectural review and planning commissions. It establishes procedures for pre-litigation mediation for land use disputes between such bodies and property owners. The law revises provisions relating to zoning boards of appeals and boards of architectural review so as to provide that a matter may be remanded to an administrative official if the board determines the record is insufficient for review. Also, it provides educational requirements for local government zoning and planning officials and employees as well as creates an advisory committee to approve orientation and continuing education courses.

Law Enforcement - Reserve Officers (Act No. __, R 420, H 4527)

This legislation extends the deduction from South Carolina individual taxable income allowed to an eligible volunteer fireman to a reserve police officer. The maximum allowable deduction is the amount certified by the Board of Economic Advisors or \$3,000 per year, whichever is less.

Law Enforcement – Towed Vehicles (Act No. 71, R 143, S 495)

This Act establishes procedures for law enforcement officers to tow and dispose of vehicles. It requires the law enforcement agency provide the towing company storing the vehicle with the vehicle's current owner, address and all lien holders of record.

Law Enforcement – Traffic Collisions

(Act No. __, R 409, H 3778) / (Act No. __, R 423, H 4649)

This legislation amends Section 56-5-1210 to authorize law enforcement officers to move disabled vehicles involved in a collision from the highway. It provides protection from liability for damages to vehicles resulting from the removal unless the removal was carried out in a negligent manner. Local authorities may erect signs along highways to instruct the public that the driver of a disabled vehicle involved in an accident should make every reasonable effort to move the vehicle off the street or highway. The legislation also deals with investigating traffic collisions involving law enforcement agency employees and/or vehicles. The new language amends Section 56-5-765 to require a field investigation to identify possible witnesses not involved in the traffic collision. Additionally the new language clarifies the term "involved in a

traffic collision” to include a law enforcement motor vehicle or motorcycle engaged in a pursuit when a traffic collision occurs.

**Law Enforcement – Traffic Collisions/Towed Vehicles
(Act No. __, R 423, H 4649) / (Act No. __, R 409, H 3778)**

The legislation deals with investigating traffic collisions of law enforcement agency vehicles. The new language amends Section 56-5-765 requiring an investigation of a traffic collision involving a motor vehicle or employee of a law enforcement agency include a field investigation to identify possible witnesses not involved in the traffic collision. Additionally, the new language clarifies the term “involved in a traffic collision” to include a law enforcement motor vehicle or motorcycle engaged in a pursuit when a traffic collision occurs. This legislation also amends Section 56-5-2525, which deals with vehicle towing and storage. The law enforcement agency must furnish the towing company a towing report document number, unless the towing is performed at a law enforcement officer’s direction. The law enforcement agency must notify the vehicle owner within two days of the vehicle being towed, its location and explain the storage and reclamation charges. The legislation further amends the procedures used for selling the unclaimed vehicles.

Litter Enforcement (Act No. __, R 424, H 4675)

This legislation amends Section 6-11-700 dealing with litter enforcement and penalties. When sentencing a violator, the court can direct the person to pay an additional monetary penalty of \$5 per hour of litter-gathering labor instead of the sentence. Funds collected must be remitted to the municipality or county where the littering violation occurred and may be used for litter gathering supervision.

Local Option Sales Tax – Adjustments (Act No. 97, R 96, S 550)

The Joint Resolution allows the State Treasurer's Office to adjust the local option sales tax distributions to correct errors that occurred in FY2001 in coding the point of sale. The corrections have already been made for Sumter County.

**Military Facilities – Military Preparedness and Enhancement Act
(Act No. __, R 362, H 4481) / (Act No. __, R 386, S 131)**

The South Carolina Military Preparedness and Enhancement Act creates the SC Military Preparedness and Enhancement Commission to advise the governor and General Assembly on military issues as well as economic and industrial issues related to military bases. The law defines a defense community as a political subdivision located near a military base and allows a defense community to receive financial assistance from the Commission to prepare a strategic impact plan to protect the base from being closed.

Military Facilities – Protection (Act No. __, R 419, H 4482)

The Federal Defense Facilities Utilization Integrity Protection Act provides procedures for local planning officials to consider when developing in areas contiguous to federal military installations.

Military Facilities – Redevelopment Authorities (Act No. __, R 350, S 1043)

Makes changes to the law regarding military redevelopment authorities and related municipal tax increment financing (TIF) districts. It allows finance obligations adopted pursuant to a redevelopment plan for a military facility remain in place upon the dissolution of the Military Facilities Redevelopment Authority until adoption of a municipal ordinance finally dissolving the TIF Fund and terminating the redevelopment project area.

Motion Picture Production (Act No. __, R 432, H 4968)

The South Carolina Motion Picture Incentive Act provides tax incentives for motion picture production companies. A state agency or political subdivision may not charge a location fee for properties it owns if the properties are used for seven or fewer days as a location for producing of a motion picture. Political subdivisions may recoup all costs expended on behalf of the motion picture production company including a facility fee not to exceed \$2,500 per day. Whenever possible, the public entity must direct the public property contribution to a 501c (3) charitable entity. A political subdivision may recoup the costs to repair damage to real or personal property of the political subdivision caused by the motion picture production company. The company is required to make the reimbursement within 21 calendar days completing production activities. Motion picture production companies are entitled to state accommodations tax rebate for employees who have stayed in accommodations for an aggregate of 30 days over a 12 month period. This rebate does not apply to the local accommodations tax.

Municipal Court (Act No. 214, R 265, H 4686)

This legislation increases the amount of the monetary penalty for criminal cases from \$5,000 to \$5,500 when the case may be transferred from the general sessions court to a magistrate or municipal court.

Municipal Court – Judges terms of office (Act No. 238, R 319, S 658)

A municipal judge’s term may not be less than two and no more than four years. Signed by the governor on May 24, 2004, the law applies to municipal judges appointed on or after this date.

Municipal Court – Jury Pools (Act No. __, R 412, H 3867)

This legislation amends Section 14-25-165 of the state code to increase the number of names to be drawn from the jury pool for municipal court from 30 to a minimum of 30 but no more than 100.

Municipal Finance (Act No. __, R 341, S 668)

Amends the code of laws by adding letters of credits as a method by which a bank or savings and loan association may secure the deposits from a local government.

Municipal Records – Electronic Records (Act No. __, R 426, H 4720)

The Uniform Electronic Transactions Act defines electronic transactions, the legal effect and enforceability of electronic records and signatures. The law does not require a governmental agency to use electronic records or electronic signatures; however, it requires each governmental agency of the state to determine the extent it will create and retain electronic records and convert written records to electronic records. To the extent the governmental agency uses electronic records or signatures, it may, in consultation with the State Budget and Control Board, specify

the manner and format of the electronic records, the type of electronic signature required, control processes and procedures to ensure adequate preservation and security of the electronic records and other attributes as required as necessary.

Planning (Act No. __, R 428, H 4740)

The Safe Routes to Schools Act requires municipal and county governing bodies to work with school districts to identify barriers and hazards to children walking or bicycling to and from school. Municipalities and counties may develop a plan for funding improvements to reduce the barriers and hazards identified. The law specifically states that governments are not obligated to fund the identified improvements.

Planning – Educational Requirements (Act No. __, R 411, H 3858)

This legislation amends Section 6-29-1320(B) of the state code. It changes the date for complying with educational requirements for planning and zoning officials and employees in municipalities and counties with a population of 35,000 and greater to January 1, 2006.

Predatory Lending (Act No. 42, R 95, S 438)

This legislation imposes regulations on certain practices commonly referred to as predatory lending. A political subdivision of the state cannot enact an ordinance, resolution or rule regulating the financial or lending activities of a person or a subsidiary or affiliate of that person. The law prohibits disqualifying a person from doing business with the political subdivision based upon lending interest rates, reporting requirements or other obligations.

Property Rights – Vested Rights (Act No. __, R 411, H 3858)

This legislation allows a local governing body to establish a point of “vesting” a property owner with a right to develop his property. The local government may establish by ordinance the vested right at a time before the building permit is issued but no earlier than the first approval of the project granted by the local governing body.

Property Taxes – Appraised Values (Act No. 206, R 256, H 4220)

This legislation allows the governing body of a county that generates more than \$10 million in accommodations tax in any one year to enact an ordinance to require changes in the appraised value of real property attributable to improvements on the real property to be listed with the auditor within 30 days after the improvements are completed. Any additional taxes resulting from improvements to the property on or before June 30 are due for the succeeding period July 1 to December 31 period. Any additional property taxes attributable to improvements listed with the county auditor after June 30 the property tax year is due and payable when taxes are due on the property for the succeeding property tax year. The provisions of this section do not apply to real property assessed as manufacturing or utility property.

Property Taxes – Assessments (Act No. __, R 360, H 4320)

The Joint Resolution calls for a constitutional amendment to delete the limit of ten shareholders for a corporation to be eligible for a four percent assessment ratio on agricultural real property.

Property Taxes – Assessments Aircraft, Aircraft (Act No. 30, R 72, S 497)

The governing body of a county by ordinance can reduce the assessment ratio applicable in determining the assessed value of general aircraft subject to property tax in the county to a ratio at least 4 percent of the aircraft's fair market. The ordinance must apply uniformly to all general aircraft subject to property tax in the county.

Property Taxes – Millage Increases (Act No. __, R 401, H 3065)

This legislation amends Section 12-37-251(E) relating to a governing body authority to increase the millage rate above the preceding year's millage rate. The legislation defines the consumer price index to be used in calculating this increase as the average of the twelve monthly consumer prices indexes for the most recent twelve-month period from January through December of the preceding calendar year.

Property Taxes – Reassessment Limits (Act No. __, R 401, H 3065)

The increase in market value of real property as a result of the countywide appraisal and equalization program (reassessment) is limited to 20 percent. There are exemptions to this limitation: value attributed to improvements made to the property, property transferred after the year of the countywide reassessment, property valued by the unit evaluation method, property transferred to spouse and distributions of real property out of corporations or partnerships.

Records – Retention Schedules (Act No. 47, R 123, H 3410)

The Budget and Control Board is no longer a part of the record retention schedule approval process. This law eliminates the requirement that the General Records Retention Schedule be developed by a State regulation.

Records – Retention Schedules (Act No. 108, R 52, H 3655)

The Joint Resolution approves changes in the regulations relating to the retention schedules of municipal records.

Retirement System – Law Enforcement (Act No. __, R 347, S 852)

This legislation amends the definition of public service to include service rendered as an employee of a technical college, junior college or four-year institution of higher education. It also clarifies the contribution requirements for unused annual leave for calculating the average final compensation.

Special Purpose Districts - Territory (Act No. 81, R 150, S 593)

Special purpose districts can continue to provide water and sewer service in areas removed from their service areas, if the governing body approves.

State Budget 2004-2005 (Act No. 248, R 333, H 4925)

* Proviso 33.7 levies a \$100 surcharge on all fines, forfeitures or escheatment imposed in general sessions, magistrates or municipal courts for misdemeanor or felony court offenses. This is in addition to all other assessments and surcharges imposed by law. The surcharge may not be waived, reduced or suspended. The funds generated by this surcharge will be apportioned among the 16 judicial circuits for drug treatment programs.

- * Proviso 59.11 authorizes the Comptroller General to suspend 10 percent of State Aid To Subdivision funds appropriated to municipalities and counties for failure to submit required financial data in the Annual County and Municipal Financial Reports.
- * Proviso 60.5 directs the State Treasurer to identify any jurisdiction not transmitting assessments and filing fees in a timely manner and follow up with the County Treasurer to determine why the appropriate amounts have not been remitted.
- * Proviso 62.14 prohibits any election equipment vendor from being eligible to supply election equipment or services to the State, county, municipality or other entity within the State, if the vendor has been the subject of decertification, ethical, or technical violations in any state, county, municipality, U.S. or Federal territory within the last three years.
- * Proviso 72.92 authorizes the State Treasurer to transfer \$2,000 received from general sessions court, \$5,000 received from magistrates court and \$3,000 received from municipal court to fund annual training on collecting and distributing assessments, surcharges, fees, fines, forfeitures, escheatment or other monetary penalties imposed or mandated by law. The State Treasurer's Office and the S. C. Court Administration are responsible for training.
- * Proviso 72.104 directs the Attorney General to review the interpretation of current policies of the Department of Public Safety and SC Department of Corrections regarding juvenile confinement. It prohibits the departments from implementing changes to the current secure juvenile confinement policies until the Attorney General considers the Department's interpretation of the federal Juvenile Justice and Delinquency Prevention Act regarding the secure holding of juveniles for more than 6 hours in adult detention facilities. As a part of the review, the Attorney General will consider how the Department of Juvenile Justice and local governments will be impacted.
- * Proviso 72.110 allows a governing body that postponed implementation of the countywide reassessment and equalization program until 2004 to postpone the implementation for one additional property tax year.
- * Proviso 73.3 continues the \$25 surcharge on all fines, forfeitures, escheatment or other monetary penalties imposed in general sessions, magistrates or municipal court for misdemeanor traffic offenses or for non-traffic violations.

State Budget 2003-2004 (Act No. 91, R 127, H 3749)

- * The Local Government Fund was fully funded. Due to the decrease in state revenues, the Local Government Fund amount is \$37,101,869. The Budget and Control Board is authorized to make mid-year funding reductions to the previous year's level. Because this year's funding is lower than last year's funding level, it is uncertain if the B&C Board will make the mid-year reductions.
- * Proviso 33.7 adds a \$100 surcharge to all misdemeanor and felony drug offenses. Funds collected will be allocated among the 16 judicial circuits for drug treatment programs.
- * Proviso 73.3 adds a \$25 surcharge to all traffic offenses written with a Uniform Traffic Citation. The surcharge would generate \$24.5 million for solicitors, SLED, DJJ and the Court Administration.
- * Proviso 72.83 states the definition of tourist as used in Section 6-4-10 does not apply to museums, festivals, arts and cultural events, or the sponsoring organization of these events.

State Health Insurance (R 207, H 4687)

This Joint Resolution allows an entity participating in the State Health Insurance plan to discontinue participation in the plan by providing written notice of its intention to discontinue participation no later than June 1, 2004.

Tattooing Businesses (Act No. 250, R 338, S 104)

This legislation establishes the standards, requirements and procedures for tattooing. DHEC is required to promulgate regulations for tattoo facilities. The law prohibits tattoo facilities from being located within one thousand feet of a church, school or playground.

Telecommunications – Broadband Service (Act No. 6, R 11, H 3344)

The legislation exempts from PSC regulation broadband service which is defined as any service that is used to provide access to the Internet and consists of the offering of: (a) a capability to transmit information at a rate that is generally not less than one hundred ninety kilobits per second in at least one direction; or (b) any service that combines computer processing, information storage, and protocol conversion to enable users to access Internet content and services.

Telecommunications – Business License Tax (Act No. __, R 406, H 3530)

This legislation increases the telecommunications business license tax from .75% to 1.00%. It also eliminates the requirement for the Board of Economic Advisors (BEA) to conduct a study to establish the final rate.

Tourism Expenditure Review Committee (Act No. 38, R 90, S 107)

This Act increases the membership of the Tourism Expenditure Review Committee from nine to eleven, by adding two additional positions appointed by the Governor: one member on the recommendation of the South Carolina Arts Commission and one member at large.

Utilities – Landlords and Tenants (Act No. 63, R 167, H 3429)

This Act allows a municipality to hold the landlord responsible for gas, electric, water, sewerage, or garbage charges billed to tenant if the property served is a multi-unit building consisting of four or more units served by a master meter or single connection. Last year, legislation passed preventing the utility from holding the landlord responsible in any situation. This Act allows large multi-unit owners to be held responsible for tenant bills.

Utilities - Water and Wastewater (Act No. __, R 378, H 5020)

This legislation amends Section 48-52-670 of the state code dealing with guaranteed savings contracts. The amendment expands the types of guaranteed savings contracts to include water and wastewater.

Utilities – Wastewater (Act No. 258, R 415, H 4070)

This legislation enacts the Aquatic Life Protection Act. It requires the DHEC to impose NPDES Permit limitations for toxicity in wastewater discharges and further directs DHEC to develop appropriate methodologies to implement the toxicity requirements.

Water Pollution Control – Stormwater (R 2783)

R 2783 is a regulation dealing with stormwater management. It set forth the required regulations to comply with the new federal NPDES Phase II (stormwater) standards.

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