COMMITTEE REPORT

April 23, 2015

**H. 3562**

Introduced by Reps. Herbkersman, Newton, Erickson and Bradley

S. Printed 4/23/15--H.

Read the first time February 11, 2015.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 3562) to amend the Code of Laws of South Carolina, 1976, by adding Article 11 to Chapter 10, Title 4 enacting the “Local Option School Operating Millage Property Tax Credit Act”, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

W. BRIAN WHITE for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

The Department of Revenue indicates that the bill is not expected to impact general fund, federal fund, or other fund expenditures.

A determination of which counties will qualify to impose the one percent sales tax is pending, contingent upon a response from the Department of Revenue. Any increase in local revenue as a result of the imposition of the sales tax would be offset by a reduction in local property tax revenue.

**Explanation of Fiscal Impact**

**State Expenditure**

The Department of Revenue indicates that the bill is not expected to impact expenditures of the general fund, federal fund, or other funds.

**Local Revenue**

This bill would enact the Local Option School Operating Millage Property Tax Credit Act to allow a qualifying county to impose a one percent sales tax to provide a credit against school operating property taxes subject to a referendum. In order to qualify, at least sixty percent of the real property parcels in a county must be assessed subject to Section 12-43-220(e), the six percent assessment ratio. The revenue generated by the sales tax must be distributed to the school districts within a county based upon the district’s portion of the total prior year’s one hundred thirty-five day average daily membership within the county. The revenues generated must be used to provide a credit against the property tax liability for school operations on property taxable in the district. Additionally, the county auditor must reduce the maximum allowable millage rate for school operations calculated under Section 6-1-320 by an amount corresponding to the projected increase in revenue for the sales tax in the upcoming fiscal year.

A determination of which counties will qualify to impose the one percent sales tax is pending, contingent upon a response from the Department of Revenue. Any increase in local revenue as a result of the imposition of the sales tax would be offset by a reduction in local property tax revenue. If all counties were to qualify and impose the local sales tax, the maximum increase in sales tax revenue statewide would be $648,000,000 in FY 2015-16.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 11 TO CHAPTER 10, TITLE 4 ENACTING THE “LOCAL OPTION SCHOOL OPERATING MILLAGE PROPERTY TAX CREDIT ACT” SO AS TO ALLOW A COUNTY GOVERNING BODY WITH REFERENDUM APPROVAL TO IMPOSE A ONE PERCENT SALES TAX THE REVENUE OF WHICH IS USED TO PROVIDE A CREDIT AGAINST PROPERTY TAX LEVIED IN THE COUNTY FOR SCHOOL OPERATIONS, TO PROVIDE FOR THE REFERENDUM, THE DISTRIBUTION OF THE REVENUE, THE CALCULATION AND APPLICATION OF THE CREDIT AND THE ADJUSTMENT OF THE MILLAGE INCREASE CAP TO REFLECT ANNUAL GROWTH IN THIS REVENUE, AND TO PROVIDE THAT THE TAX MAY BE RESCINDED BY REFERENDUM INITIATED BY A PETITION OF FIFTEEN PERCENT OF THE QUALIFIED ELECTORS OF THE COUNTY OR BY ORDINANCE IF THE GOVERNING BODY OF THE COUNTY DETERMINES THAT CHANGES IN STATE LAW PROVIDING FOR THE FINANCING OF SCHOOL OPERATIONS MAKE THE ORIGINAL PURPOSE OF THE TAX IMPOSSIBLE TO ACCOMPLISH UNDER THE EXISTING LAW.

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

SECTION 1. Chapter 10, Title 4 of the 1976 Code is amended by adding:

“Article 11

Local Option School Operating Millage

Property Tax Credit Act

Section 4‑10‑1110. This article may be cited as the ‘Local Option School Operating Millage Property Tax Credit Act’.

Section 4‑10‑1120. For purposes of this article, a county means a county in this State in which at least sixty percent of the parcels of real property subject to property tax in the county are assessed for property tax purposes pursuant to Section 12‑43‑220(e).

Section 4‑10‑1130. (A)(1) Subject to the requirements of this article, the governing body of a county by ordinance may impose a sales and use tax of one percent subject to referendum approval to provide a credit against the property tax liability attributable to school operations levied by or on behalf of school districts in the county.

(2) The ordinance described in item (1), may not be enacted unless the county assessor has certified to the governing body of the county that the county meets the requirements of Section 4‑10‑1120 for the most recently ended property tax year for which verifying data is available. Subsequent changes in the percentage required pursuant to Section 4‑10‑1120 do not affect the tax imposed pursuant to this article. The tax imposed by this article is not included within any limit provided by law on cumulative local sales and use taxes imposed in a county.

(B) Upon receipt of the ordinance, the county election commission shall conduct a referendum on the question of imposing the sales and use tax. A referendum for this purpose must be held on the first Tuesday after the first Monday in November in any year. Two weeks before the referendum, the election commission shall publish in a newspaper of general circulation the question that is to appear on the ballot. This notice is in lieu of any other notice otherwise required by law.

The question to be voted upon in the referendum must read substantially as follows:

‘Must a sales and use tax of one percent be imposed in \_\_\_\_\_\_ County to raise revenue which must be used to provide a credit against the property taxes levied on taxable property in the county for school operations?

Yes 

No ’

(C) All qualified electors desiring to vote in favor of imposing the tax shall vote ‘Yes’ and all qualified electors opposed to imposing the tax shall vote ‘No’. If a majority of the votes cast is in favor of imposing the tax, the tax is imposed and the school operating millage property tax credit allowed as provided in this article. The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the results no later than December thirty‑first to the county governing body and, if the majority of votes cast are in favor of imposing the tax, to the South Carolina Department of Revenue. If a majority of the votes cast are opposed to imposing the tax, no further imposition referendum may be held unless at least two years have elapsed since the previous referendum.

(D) The results of the referendum may not be questioned except by a suit or proceeding instituted within thirty days from the date the resolution is adopted.

(E) If the tax is approved and the results certified as provided pursuant to subsection (C), the tax is imposed beginning on the first day of July following the referendum. If the certification and notices required pursuant to subsection (C) are not timely made, the date of imposition of the tax is postponed until the first day of July of the following year.

(F) The credit allowed by this article must be calculated and applies as provided in Section 4‑10‑1160.

Section 4‑10‑1140. (A)(1) Upon petition of fifteen percent of the qualified electors of a county at the time of the last general election presented to the governing body of that county which has imposed the one percent sales and use tax authorized by this article requesting that this tax be rescinded, the county election commission, after verifying a sufficient number of signatures, shall conduct a referendum on the Tuesday following the first Monday in November next following on the question of rescinding the local option sales and use tax in the county. The state election laws apply to the referendum mutatis mutandis. The county election commission shall publish the results of the referendum and certify them to the county council and, if a majority of votes cast is in favor of rescinding the tax, to the South Carolina Department of Revenue. The sales and use tax is rescinded in the county effective on July first following the referendum upon the certification of the results if a majority of the qualified electors voting in the referendum vote in favor of rescinding the tax.

(2) The ballot must read substantially as follows:

‘Must the one percent sales and use tax imposed in \_\_\_\_\_\_\_\_\_\_ County to raise revenue to provide a credit against property tax imposed in the county for school operations be rescinded?

Yes 

No ’

(3) A referendum for rescission of this tax may not be held earlier than two years after the tax has been imposed in the county. If a majority of the qualified electors voting in the rescission referendum vote against rescinding the tax, no further rescission referendums may be held for a period of two years. If a majority of the votes cast is in favor of rescinding the tax, the tax may not be reimposed in the county for a period of two years. The petition requesting rescission must be presented to the county governing body at least one hundred eighty days before the Tuesday following the first Monday of November of that year or the referendum must be held on the Tuesday following the first Monday of November of the following year.

(4) If a result in favor of rescinding the tax is certified, then the tax is rescinded effective on the first day of July following the referendum and the credit must continue in the manner provided in this article until the accrued tax revenue is exhausted.

(B) In addition to the method of rescission provided pursuant to subsection (A) of this section, the governing body of the county by ordinance must rescind the tax if it determines that changes in state law financing school operations have been altered to the extent that the purpose for which the tax was originally imposed is no longer possible as this article currently exists. If such an ordinance is enacted, the tax is rescinded effective on the first day of the month beginning more than sixty days after the month in which a certified copy of the rescission ordinance is provided to the Department of Revenue. The revenue accrued before rescission must be used to the extent possible as provided pursuant to subsection (A)(4) of this section. If the governing body of the county determines that such use of all or some portion of that accrued revenue is impossible, then it may by ordinance redirect distributions to the school districts of the county proportionately to the average daily membership (ADM) of the county’s school districts and used by the districts for a one‑time reduction in millage imposed for bonded indebtedness. If school district boundaries extend outside the boundaries of the county, only the ADM of students of that district residing in the county may be counted for purposes of the distribution.

Section 4‑10‑1150. (A) The tax imposed 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 may prescribe the amounts which may be added to the sales price 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 the sales in the applicable jurisdiction which are subject to the taxes 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. 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) Taxpayers required to remit taxes under Article 13, Chapter 36, Title 12 shall identify the county in which the tangible personal property purchased at retail is stored, used, or consumed in this State.

(D) Utilities are required to report sales in the county in which 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 school district shall 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 imposed pursuant to this article in the school district, 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 special local 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 of the sales and use tax.

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

Section 4‑10‑1160. (A) The revenues of the tax collected in the county pursuant to this article 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 quarterly to the county treasurer. Upon receipt of these funds, the county treasurer shall deposit these funds in a separate account for each school district credited to each school district on the basis of the school district’s prior year’s one hundred thirty‑five‑day average daily membership (ADM) as compared to the total prior year’s ADM of all school districts in the county excluding from the calculations the ADM attributable to any portion of a school district not within the county.

(B) The State Treasurer and the county treasurer may correct misallocation of costs, refunds, distributions, or credits by adjusting subsequent costs, refunds, distributions, or credits.

(C)(1)(a) The revenues allotted to a district must be used to provide a credit against the property tax liability for school operations on property taxable in the district in an amount determined by multiplying the property tax value of the taxable property as defined pursuant to Section 12‑37‑3135(A)(5) by a fraction in which the numerator is the total estimated revenue allotted to the district during the applicable fiscal year of the district and the denominator is the total of the taxable value of taxable property in the district as of January first of the applicable property tax year. For purposes of this credit, ‘taxable property’ does not include property classified for property tax purposes pursuant to Section 12‑43‑220(c). For motor vehicles subject to the payment of property taxes pursuant to Article 21, Chapter 37, Title 12, the credit provided pursuant to this subsection applies against the tax liability for motor vehicle tax years beginning after December of the year in which the credit is calculated. The credit applies only against the liability arising from millage imposed for operating purposes for schools.

(b) The projected increase in the revenues allotted to a district for its upcoming fiscal year pursuant to this article over the amount of such revenue it receives for the current fiscal year must be calculated by the county auditor in terms of the projected value of a property tax mill for the upcoming fiscal year and that millage amount is deducted from the otherwise applicable maximum millage increase that may be imposed by a district for the upcoming fiscal year pursuant to Section 6‑1‑320.

(2) For purposes of this credit, school property tax liability does not include any liability to pay a fee in lieu of property taxes and taxable property does not include exempt property for which the owner must pay a fee in lieu of property tax.

(3) All interest accruing to the credit funds allotted to a district must be used to provide an additional credit as provided in this section.

Section 4‑10‑1170. The Department of Revenue shall furnish data to the State Treasurer and to the school districts receiving tax revenues pursuant to this article for the purpose of calculating distributions and estimating revenues. The information which must be supplied to each school district 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 2. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑