

## **H.4597 and HOSPITALITY FEE FACT SHEET**

- In May 1996, at the direction of Governor Beasley, SCDOT created the Road Improvement and Development Effort Committee (RIDE) to determine short- and long-term transportation infrastructure needs and improvements for Horry County.
- The impetus for the creation of the RIDE Committee was an unsuccessful referendum by the Horry County voters on March 5, 1996, to adopt the “Comprehensive Road Program” which would have been funded, in part, by a local option sales tax under § 4-10-10.
- The result of the RIDE Committee’s review was published in September 1996 (“RIDE Report”). The RIDE Report to the Governor recommended a plan that included the institution of a uniform service charge for funding the specified road improvements in Horry County.
- As a result of the RIDE Report recommendations, Horry County Council, and the municipalities within Horry County, collectively agreed (and the municipalities provided their required consent) to impose a uniform service charge on the sale of accommodations, admissions and food and beverages within Horry County, including inside the corporate limits of the municipalities (“the Hospitality Fee”).
- Under Home Rule, a county may only collect a uniform service charge within the corporate limits of a municipality with the municipality’s consent. S.C. Const. art. XIII, § 13(A); § 4-9-40.
- The City of Myrtle Beach adopted a resolution on October 8, 1996, supporting the Ride Committee’s road plan and authorizing Horry County to impose the 1.5% Hospitality Fee within its corporate limits “for a period of up to 20 years.”
- The other municipalities within Horry County likewise authorized Horry County’s imposition of the 1.5% Hospitality Fee within their respective corporate limits for 20 years.
- Based on the municipalities’ consent, Horry County Ordinance No. 105-96 was prepared for the purpose of imposing the Hospitality Fee. By its express terms, the Hospitality Fee authorized the imposition a 1.5% uniform service charge within the corporate limits of the respective municipalities in Horry County for:
  - (1) the specific limited purpose recommended by the Governor’s RIDE Committee. Specifically, the stated purpose of the Hospitality Fee to be imposed within the corporate limits of municipalities in Horry County was “to provide needed infrastructure” to improve roads in Horry County and thus required that “the funds derived from the one and one-half percent fee shall be deposited into a Road Fund

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which will be used to implement a comprehensive road plan adopted by the County in concert with the municipalities of the County.” No other use was contemplated.

(2) an express limited duration of 20 years from the effective date of the ordinance (“Sunset”). Specifically, the ordinance provided that, “(H) Sunset. The imposition of the one and one-half (1.5%) percent hospitality fee for infrastructure will terminate” either on August 1, 1997, if the State of South Carolina did not act to provide funding for “the short term funding outlined by RIDE” or “twenty years from the effective date of [the] ordinance.”

- By the express terms of the Sunset and the municipalities’ consent, the Hospitality Fee authorized by Ordinance 105-96 expired on January 1, 2017.
- The Hospitality Fee was a grandfathered uniform service charge that may not be revived or re-imposed under the law as it exists today.
- No municipality has consented to the collection of the fee after January 1, 2017, and Horry County never sought the municipalities’ consent to either extend the finite duration of the Hospitality Fee or change the purpose the of the uniform service charge.
- Horry County has been collecting the Hospitality Fee within the limits of the municipalities without their consent since January 1, 2017, and without the legal authority to do so.
- The City of Myrtle Beach has adopted ordinances pursuant to which it will begin collecting a 3% Accommodations Tax and 2% Hospitality Tax on July 1, 2019. The City of North Myrtle Beach and Town of Surfside Beach have followed suit. Upon information and belief, the City of Conway also is embarking on a similar path. Horry County cannot now impose an Accommodations or Hospitality Tax within the limits of these municipalities.
- The stated purpose of Horry County Council’s unilateral extension of the duration and purpose of the Hospitality Fee was to fund the County’s portion of I-73, as well as fund the County’s general revenue obligation for basic police and public safety services. Neither purpose was authorized.
- The City of Myrtle Beach has stated unequivocally that it supports the construction of I-73 and is willing to commit to directing funds generated by the Accommodations and Hospitality Taxes recently adopted by the City of Myrtle Beach and collected within its corporate limits towards the construction of I-73.
- The lawsuit brought by the City of Myrtle Beach does not seek to claim all of the Hospitality Fee funds collected by Horry County since January 1, 2017.

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- The City of Myrtle Beach brought the lawsuit in a representative capacity and as an entity that has paid the Hospitality Fee to Horry County since January 1, 2017. The City, like thousands of other persons and entities, paid the fee when it purchased hotel rooms, prepared food and beverages, and amusements within the corporate limits of a Horry County municipality.
- The case primarily seeks declaratory and injunctive relief to prevent the continued collection of the illegal fee within the municipalities in perpetuity.
- If the Court agrees that Horry County has collected the Hospitality Fee illegally since January 1, 2017, then it may order as further relief a proportional refund to any person or entity — including the City of Myrtle Beach — that has paid the fee since January 1, 2017.
- As proposed, H.4597 is an acknowledgment by Horry County that its action of unilaterally modifying the Hospitality Fee without the municipalities' consent is unlawful.
- H.4597 is likely unconstitutional, for the same reasons that Horry County Council's actions that are the subject of the lawsuit are also unconstitutional, in that they violate Home Rule and the sovereignty of municipalities recognized by the Constitution and state law that delineates authority between Counties and municipalities within their jurisdictions.
- H.4597 may also violate S.C. Const. art. XIII, § 7's proscription against the enactment of legislation that affects a specific county as, on information and belief, no other county has a grandfathered uniform service charge of this type and for this purpose on the books, and as clearly demonstrated by the fact that the legislation is proposed by members of the Horry County delegation for the stated purpose of excusing Horry County Council's unlawful actions.