

## 6. NEGOTIATED FEES IN LIEU OF PROPERTY TAXES AND COMPARISON CHART

### 1. INTRODUCTION

**General Information.** Under Article X of the South Carolina Constitution, manufacturers' real or personal property is assessed at 10.5% of its fair market value. Commercial personal property is assessed at 10.5%, while commercial real property is assessed at 6%. To promote the growth of manufacturing within this state, the Legislature enacted three Fee in Lieu of Property Tax statutes (referred to as "Fee in Lieu" or "Fee").

The first Fee in Lieu statute was enacted in South Carolina Code §4-29-67 and is commonly referred to as the "Big Fee." The second statute is contained in Chapter 12 of Title 4 and is commonly referred to as the "Little Fee." The third statute is contained in Chapter 44 of Title 12 and is referred to as the "Simplified Fee." Special Fee in Lieu provisions exist for very large investments. These provisions are known as the "Super Fee" with respect to the Little and Big Fee and as the "Enhanced Investment Fee" with respect to the Simplified Fee.

Property subject to the Fee usually consists of land, improvements to land, and/or machinery and equipment (excluding some mobile property) located at a project. See South Carolina Revenue Rulings #93-7 and #97-21. The Fee statutes permit a company to negotiate to pay a fee instead of paying property taxes. The 10.5% assessment ratio can be, and often is, negotiated to 6% (4% for very large investments under the Super Fee or Enhanced Investment Fee). In addition, the company and the county can agree to freeze the millage rate applicable to the property at a set millage rate, or adjust the millage rate every five years, for the period the Fee is in effect. During the period of the Fee, the value of personal property is deemed to decrease each year by the depreciation allowable for property tax purposes subject to a floor on the value. Unless otherwise agreed to by the county and the company, the value of real property remains constant, and is not subject to appraisal. The Fee can be applicable to a single piece of property for up to 50 years (including the Super and Enhanced Investment Fee), with an overall limit for the project of 60 years (or 63 years for the Super and Enhanced Investment Fee), with exceptions.

Calculations of the Fee must be made by incorporating any property tax exemptions for which the property may be eligible, except for the 5-year exemptions from county property taxes allowed for manufacturing property, corporate headquarters or corporate office or distribution facilities property, and research and development facilities property (These exemptions may be found in Section 3(g) of Article X of the South Carolina Constitution and South Carolina Code §12-37-220(A)(7); South Carolina Code §12-37-220(B)(32); and South Carolina Code §12-37-220(B)(34), respectively.) South Carolina Code §§4-12-30(E), 4-29-67(E), and 12-44-50(A)(2).

**Example:** The following example shows the savings from reducing the assessment ratio from 10.5% to 6%. Savings are also available from freezing the millage rate and the value of real property.

	<b>NORMAL CALCULATION</b>	<b>FEE IN LIEU CALCULATION</b>
Total Investment in Equipment	\$100,000,000	\$100,000,000
Total Investment less Depreciation	\$ 89,000,000	\$ 89,000,000
Assessment Ratio	x 10.5%	x 6%
Assessment Value	\$ 9,345,000	\$ 5,340,000
Millage	x .250	x .250
Tax Due	\$ 2,336,250	\$ 1,335,000
<b>Savings</b>		<b>\$ 1,001,250</b>

This synopsis begins with a general summary of the Little Fee, and is followed by a summary of the Big Fee, the Simplified Fee, the Super and Enhanced Investment Fees, and special source revenue bonds. Since this summary is necessarily a simplification, interested taxpayers and their representatives should review the statutes. For example, many transitional rules applicable to some projects that are already paying the Fee in Lieu of property taxes under a prior statute are not included.

Please note, due to statutory changes and transitional rules, pre-existing Fee agreements may not be subject to some, or all, of the provisions discussed below and may be affected by other provisions.

## 2. LITTLE FEE

**Steps in the Little Fee Process.** In connection with the Little Fee, certain requirements must be satisfied.

1. Project identification – The county must identify the project or proposed project. This may be accomplished by the adoption of an inducement resolution or similar resolution by county council.
2. Inducement agreement – The company and the county must enter into an inducement agreement. This agreement establishes that a company will receive the Fee as an inducement for locating in the county. The company entering into the Fee is known as the “sponsor.”
3. Millage rate agreement – The sponsor and the county may enter into a millage rate agreement which fixes the millage rate for the entire Fee period or fixes it for the first 5 years and provides that it will be revised every 5 years. If the sponsor and the county do not execute a millage rate agreement, the millage rate is usually agreed to in the inducement agreement or the lease agreement.
4. Transfer of the property to the county – Title to the property must be transferred to the county.
5. Lease or lease purchase agreement – The sponsor and the county may enter into one or more lease agreements. This agreement leases the property from the county back to the sponsor and usually provides for the sale of the property to the sponsor at the end of the Fee period for a nominal sum. If there is a series of these agreements, the first is called the initial lease agreement. A definition of “lease agreement” is provided in South Carolina Code §4-12-10(5).
6. Financing agreement – There may be one or more financing agreements, which may include special source revenue bonds issued pursuant to South Carolina Code §4-29-68 or special source credits. (See the discussion of special source revenue bonds in Section 6 below.)

Some of these steps are often combined and there may be a number of transfers and lease agreements for one project.

**Definition and Location of Project.** A “project” consists of land, buildings and other improvements on the land, including water, sewage treatment and disposal facilities, air pollution control facilities, and any other machinery, apparatus, equipment, office facilities and furnishings that are considered necessary, suitable or useful to the project. A project may also consist of, or include, an aircraft hangered or used at an airport in South Carolina. South Carolina Code §4-12-10(2).

The project must be located in a single county, in a multicounty park, or if certain agreements are made with the counties, the property may straddle contiguous counties. South Carolina Code §4-12-30(B).

**County Must Make Findings of Public Purpose.** Before a project may qualify for the Little Fee, the county council must make all of the following findings:

1. The project is anticipated to benefit the general public welfare of the locality by providing services, employment, recreation, or other public benefits not otherwise provided locally.
2. The project gives rise to no pecuniary liability of the county or any municipality or a charge against its general credit or taxing power.
3. The purposes to be accomplished by the project are proper governmental and public purposes.
4. The benefits of the project are greater than the cost.

The county may seek the assistance and advice of the Revenue and Fiscal Affairs Office or the Department in making its findings. South Carolina Code §4-12-30(B)(5).

Every lease agreement must contain a provision obligating a sponsor to maintain the project and carry insurance on the project. South Carolina Code §4-12-30(B)(6).

**Required Investment and Timing of Investment.** Generally, the required investment must be made by a sponsor. In many instances, a sponsor affiliate may also qualify for the Fee.

A “sponsor” is defined as “one or more entities which sign the inducement agreement with the county and also includes a sponsor affiliate unless the context clearly indicates otherwise.” South Carolina Code §4-12-10(3).

A “sponsor affiliate” is defined as “an entity that joins with or is an affiliate of a sponsor and that participates in the investment in, or financing of, a project.” South Carolina Code §4-12-10(4).

There is a minimum investment amount required to qualify for a Fee in Lieu. For the Little Fee, the minimum investment amount is \$2.5 million. This amount is reduced to \$1 million for a sponsor investing in a county with an average annual unemployment rate of at least twice the state average during the last 24 months based on data available on November first. The minimum investment amount is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56 of Title 44, the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least \$1 million and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. South Carolina Code §4-12-30(B)(3).

Each sponsor and sponsor affiliate seeking to qualify for the Fee must invest the minimum investment amount. South Carolina Code §4-12-30(B)(4)(a). However, in the case of a manufacturing, research and development, corporate office, or distribution facility, as defined in South Carolina Code §12-6-3360(M), each sponsor or sponsor affiliate does not have to invest the \$2.5 million if the total investment at the project exceeds \$5 million. South Carolina Code §4-12-30(B)(4)(b).

A sponsor must complete its required minimum investment in the project within 5 years of the end of the property tax year in which the sponsor and the county execute the initial lease agreement. If the sponsor does not expect to complete the project within this 5-year period, it may apply to the county before the end of the 5-year period for an extension of up to 5 years to complete the project. If the period is extended less than the full 5 years allowed, a second extension may be approved, provided that the second extension is requested before the end of the first extension period and the aggregate extension period does not exceed 5 years. Unless approved as part of the original lease documentation, any extension may be approved by resolution of the county council with a copy of the resolution provided to the Department within 30 days. South Carolina Code §4-12-30(C).

Even if an extension to complete the project is granted, the required minimum investment must be made before the end of the initial 5-year period. If the sponsor does not make the required investment within the required time period, all property covered by the Fee will be retroactively subject to a Fee equal to the general property tax. Any applicable time limitations for assessment are suspended during the 5-year period a sponsor has to make the required minimum investment. South Carolina Code §4-12-30(C).

A sponsor affiliate that does not originally join in the Fee may later qualify for the Fee if (1) the county approves the addition of the sponsor affiliate for the Fee, and (2) the sponsor affiliate invests the minimum investment and agrees to be bound by those portions of the agreement that affect the county. South Carolina Code §4-12-30(B)(4). An agreement may provide for a process of approval of sponsor affiliates. However, all qualifying investments must be made at the same project.

If the property is otherwise eligible for the Little Fee, investment expenditures incurred during the investment period by an entity whose investments are not being counted towards the minimum investment can qualify for the Fee if:

1. The expenditures are part of the original cost of the property;
2. The property is transferred to one or more entities which are sponsors or sponsor affiliates whose investments are being considered for minimum investment purposes; and
3. The property would have qualified for the Fee if it had been acquired by the sponsor or sponsor affiliate receiving the property.

The income tax basis of the property immediately after the transfer must equal the income tax basis immediately before the transfer, except that if after the transfer, the income tax basis of the property unintentionally exceeds the income tax basis before the transfer, the excess will be subject to a Fee equal to the property tax which would be due without the Fee. South Carolina Code §4-12-30(J).

**Period in Which Property May be Subject to Fee.** Generally, each piece of Fee property may be subject to the Fee for up to 30 years. Before the end of that period, an extension of up to 10 years may be approved by resolution of the county council upon a finding of substantial public benefit, with a copy of the resolution provided to the Department within 30 days. For projects that are completed and placed in service over more than 1 year, each year's investment may be subject to the Fee for up to 30 years, or if extended up to 40 years, for an aggregate fee period of up to 50 years for the project as a whole. South Carolina Code §4-12-30(C)(4).

**Property Eligible for Fee.** Property that has been previously subject to property taxes in South Carolina does not qualify for the Fee except for:

1. Land, excluding improvements on the land, on which the new project is to be located;
2. Property which has never been placed in service in South Carolina;

3. Aircraft; or,
4. Property which has been placed in service pursuant to an inducement agreement or other preliminary county approval, if the property is placed in service before the execution of a lease agreement.

South Carolina Code §§4-12-30(J)(1) and 4-12-10(2).

Repairs, alterations, or modifications to real or personal property which are not subject to the Fee are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements which constitute an expansion of the improvements. South Carolina Code §4-12-30(J)(2).

**Disposal of Property and Replacement Property.** The inducement agreement may provide that when property is scrapped, sold or removed from the project, the Fee will be reduced by the amount of the Fee applicable to that property. If property is removed from the project, but remains within South Carolina, the property becomes subject to property taxes.

The inducement agreement may also provide that any property which is placed in service as a replacement for property that is subject to the Fee will become part of the Fee payment. The following rules apply to replacement property:

1. Title to the property must be held by the county.
2. The replacement property does not have to serve the same function as the property it is replacing.
3. The replacement property qualifies for the Fee only up to the original income tax basis of the Fee property which is being disposed of in the same property tax year. To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the property which it is replacing, the excess is subject to Fee payments equal to regular property taxes.
4. More than one piece of replacement property can replace a single piece of original Fee property.
5. Replacement property is deemed to replace the oldest property subject to the Fee, whether real or personal, which is disposed of in the same property tax year that the replacement property is placed in service.

6. Replacement property is entitled to the Fee payment for the period of time remaining on the Fee for the property which it is replacing.

If there is no provision in the inducement agreement dealing with replacement property, any property placed in service after the period allowed for investment is subject to Fee payments equal to property taxes under South Carolina Code §4-12-20 or to property taxes if title to the property is held by the sponsor. South Carolina Code §4-12-30(F).

**Rollback Taxes.** Any property subject to the Fee is not subject to agricultural rollback taxes. South Carolina Code §12-43-220(d)(6).

**Timing of Investment Expenditures and Purchases.** Investment expenditures incurred by a sponsor qualify as expenditures subject to the Fee if the inducement agreement is executed within the time period described below and the property is qualifying property. Unless the sponsor's agreement covers replacement property, to qualify for the Fee all expenditures must be incurred either: (a) prior to the end of the applicable investment period; or, (b) if an extension is granted, before the expiration of the additional time allowed to complete the project (usually 5 additional years after the investment period has ended). South Carolina Code §4-12-30(I).

**Note:** the minimum investment must be completed within 5 years.

**Inducement Agreement – Timing.** Once the project has been identified, the county and sponsor should enter into an inducement agreement. The sponsor and the county have 2 years after the date the county adopts an inducement or similar resolution identifying the project to enter into an inducement agreement. If an agreement is not reached within this 2-year period, any of the property purchased before the inducement agreement is entered into will not be subject to the Fee. South Carolina Code §4-12-30(I).

**Inducement Agreement – Substance.** The inducement agreement is the major document of the transaction. It details the responsibility of each party and contains the negotiated assessment ratio and the millage rate, unless a separate millage rate agreement is executed. The sponsor and county may negotiate to use different yearly assessment ratios or different assessment ratios for different levels of investment. Thus, a sponsor may be subject to a 7% assessment ratio in its first year, but may be subject to a 6% assessment ratio in later years. However, the parties may not reduce the assessment ratio below the lowest assessment ratio for which the sponsor qualifies under South Carolina Code §4-12-30(D)(5).



**Millage Rate Agreement.** The millage rate agreement may either fix the millage rate for the entire term of the Fee or increase or decrease the millage rate every 5 years in step with the average actual millage rate applicable in the district where the project is located based on the preceding 5-year period. The initial millage rate used must be no lower than the cumulative property tax millage legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either on: (a) June 30<sup>th</sup> of the year preceding the calendar year in which the millage rate agreement is executed or if a millage rate agreement is not executed, when the lease agreement is executed; or, (b) June 30<sup>th</sup> of the calendar year in which the millage rate agreement is executed or, if a millage rate agreement is not executed, when the lease agreement is executed. The millage rate agreement may be executed at any time up to the date the initial lease agreement is executed. South Carolina Code §4-12-30(D)(2)(b).

**Timing of the Initial Lease Agreement.** Title to the property must be transferred to the county and made subject to a lease agreement before the end of the property tax year in which the property is placed in service. The sponsor and county have 5 years from the end of the property tax year in which the inducement agreement is entered into to enter into an initial lease agreement. South Carolina Code §4-12-30(C).

**Valuation for Fee Purposes.** Generally, for real property, value is the original income tax basis for South Carolina income tax purposes without regard to depreciation; however, in certain instances, the fair market value of such real property will be determined by appraisal.

Additionally, a county and a sponsor and sponsor affiliate may agree (either initially or by amendment to an existing agreement) that the value of real property subject to a Fee will be determined by appraisal, in which case the property will be subject to reappraisal by the Department no more than once every 5 years. South Carolina Code §4-12-30(D)(2)(a)(i).

For personal property, the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes is used for valuation without regard to any extraordinary obsolescence of that property. South Carolina Code §4-12-30(D)(2)(a)(ii).

Utility property subject to a Fee is valued similarly to the method that the Public Service Commission uses to value utility property. See South Carolina Revenue Procedure #04-5.

**Financing Agreements.** A sponsor, sponsor affiliate, or a county may enter into any lending, leasing, or financing arrangement with any financing entity concerning all or part of the project (including any lease) regardless of the identity of the income tax owner of the property which is subject to the Fee. South Carolina Code §4-12-30(M). See also, South Carolina Code §4-12-45 (content of agreements).

**Amendment of Agreements.** The inducement agreement, the millage rate agreement, or both may be amended or terminated and replaced with regard to all matters, including, but not limited to, the addition or removal of sponsors or sponsor affiliates. However, the millage rate and assessment ratio cannot be changed once a millage rate agreement, an inducement agreement that sets the millage rate, or a lease agreement has been executed. Nor can the length of an agreement be increased except as provided in South Carolina Code §4-12-30(C). South Carolina Code §4-12-30(H).

**Transfers of Fee Agreements or Property Subject to the Fee.** A sponsor may transfer an inducement agreement, millage rate agreement, lease agreement, or the assets subject to the lease agreement, if it obtains the approval of the county before the transfer or the subsequent ratification of the transfer by the county. Prior approval or subsequent ratification can occur by a letter or other writing executed by an authorized county representative as provided in an appropriate agreement, a resolution passed by the county council, or by county council following three readings and a public hearing. The county has the sole discretion as to which method to use. However, county approval is not required in connection with a transfer to a sponsor affiliate since the sponsor affiliate would have already received county approval to join in the Fee transaction. County approval is also not required for financing transactions. To the extent an agreement is transferred, the transferee assumes the current basis that the transferor sponsor had in the real and personal property subject to the Fee for purposes of calculating the Fee. South Carolina Code §4-12-30(M)(1) and (4).

**Payment Procedures and Recordkeeping Requirements.** Any sponsor that engages in a Fee transaction must file all returns, contracts, or other information the Department may require. Also, a copy of the inducement agreement and the lease agreement must be filed with the Department and appropriate county auditors and assessors within 30 days of execution. A bill for each installment of the Fee is prepared by the county auditor. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property was subject to property tax. The Department may, for good cause, allow up to a 60-day extension of time for filing Fee returns. The written request for an extension must be filed on or before the due date of the return. Penalties and interest may apply if a sponsor is late in making a Fee payment or in filing a required return. A county official, upon approval of the county's governing body, may request books and records of the company that support the calculation of the fee and any special source revenue credits granted. South Carolina Code §4-12-30(O). To the extent that any Fee form or return is filed with the Department, a copy must also be filed with the county auditor, assessor, and treasurer for the county where the project is located. All agreements entered into under the Fee in lieu provisions must include a written recapitulation of the terms of the Fee to assist in administration of the Fee. However, the parties can agree to waive any or all of the items that must be set forth in the recapitulation. South Carolina Code §§4-12-30(O) and 4-12-45.

**Termination of Fee and Lease Agreement.** If a sponsor fails to make its fee or its lease payments, then upon 90 days' notice the county may terminate the Fee and lease agreement and sell the property to which the county has title free from any claims of the sponsor. South Carolina Code §4-12-30(O)(6).

**Expiration of Fee Period and Maintaining the Minimum Investment.** After the Fee period has expired, the real property that was originally subject to the Fee will be subject to property tax based on the fair market value of the property as of the latest reassessment date for similar taxable property. Personal property will be subject to property taxes based on the then depreciated value applicable to the property under the Fee, and thereafter continuing with the appropriate property tax depreciation schedule. South Carolina Code §4-12-30(D)(3). If the sponsor's investment in the property ever falls below the minimum investment (based on income tax basis without regard to depreciation) the Fee is no longer available and the sponsor must pay a Fee equivalent to property tax on the property. South Carolina Code §4-12-30(B)(4)(f).

**Credit Against the Fee.** A county, municipality, or special purpose district that receives proceeds from a Fee may allow a sponsor a credit against the Fee or a payment derived from the Fee. However, any credit or payment must be used for eligible infrastructure that qualifies under South Carolina Code §4-29-68, (*i.e.*, infrastructure and improved and unimproved real estate, and in some instances, personal property.) South Carolina Code §4-12-30(K)(3).

### **3. BIG FEE**

**Steps in the Big Fee Process.** In connection with the Big Fee, these are the steps and agreements which must be completed:

1. Project identification – The county must identify the project or proposed project. This may be accomplished by the adoption of an inducement resolution or similar resolution by county council.
2. Inducement agreement – The company and the county must enter into an inducement agreement. In the Big Fee, the company or companies that enter into the inducement agreement are referred to as the “sponsor.” This agreement establishes that a sponsor will receive the Fee as an inducement for locating in the county.

3. Millage rate agreement – The sponsor and the county may enter into a millage rate agreement which fixes the millage rate for the entire Fee period or fixes it for the first 5 years and provides that it will be revised every 5 years. If the sponsor and the county do not execute a millage rate agreement, the millage rate is usually agreed to in the inducement agreement or the lease agreement.
4. Transfer of the property to the county – Title to the property must be transferred to the county.
5. Lease or lease purchase agreement – The sponsor and the county may enter into one or more lease agreements. This agreement leases the property from the county back to the sponsor and usually provides for the sale of the property to the sponsor at the end of the Fee period for a nominal sum. A definition of “lease agreement” is in South Carolina Code §4-29-67(A)(1)(b).
6. Financing agreement – There may be one or more financing agreements, which may include the issuance of industrial revenue bonds pursuant to South Carolina Code §4-29-68 (which are often purchased by the sponsor leasing the project) or the allowance of a credit against the Fee. (See the discussion of special source revenue bonds in Section 6 below.)

Some of these steps are often combined and there may be a number of transfers and lease agreements for 1 project.

**Definition and Location of Project.** A “project” is any land, building, and other improvements on the land, including water, sewage, and pollution control improvements and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, and useful by a sponsor. A project may also consist of, or include, an aircraft hangared or used at an airport in South Carolina. South Carolina Code §4-29-67(A)(1)(c). The project must be located in a single county, in a multicounty park, or if certain agreements are made with the counties, the project may straddle contiguous counties. South Carolina Code §4-29-67(B).

**Required Investment and Timing of Investment.** Generally, the required investment must be made by a “sponsor.” A “sponsor affiliate” may also qualify for the Fee. A “sponsor” is defined as “one or more entities which sign the inducement agreement with the county and also includes a sponsor affiliate unless the context clearly indicates otherwise.” South Carolina Code §4-29-67(A)(1)(e). A “sponsor affiliate” means “an entity that joins with, or is an affiliate of, a sponsor and that participates in the investment in, or financing of, a project.” South Carolina Code §4-29-67(A)(1)(f).

A minimum investment amount of \$45 million is required for each sponsor or sponsor affiliate to qualify for the Big Fee. South Carolina Code §4-29-67(B)(3). However, the following exceptions are provided:

1. The minimum investment amount is reduced to \$1 million for a sponsor investing in a county with an average unemployment rate of at least twice the state average during the last 24 months based on data available on November 1<sup>st</sup>. (See §8, of this chapter, “Fee in Lieu-Reduced Investment Counties” for a list of qualifying counties.)
2. The minimum investment amount is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56 of Title 44, the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least \$1 million and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. South Carolina Code §4-29-67(B)(3). In the case of a manufacturing, research and development, corporate office, or distribution facility as defined in South Carolina Code §12-6-3360(M), or a qualified nuclear plant facility, as defined in §4-29-67(A)(1)(d), the \$45 million minimum investment is not required of each sponsor and sponsor affiliate if the total investment at the project exceeds \$45 million. South Carolina Code §4-29-67(B)(4).

From the end of the property tax year in which the initial lease agreement is executed, a sponsor has 5 years to complete its investment and the project. Any applicable statute of limitations is suspended during the 5-year period to make the minimum investment. If the sponsor does not expect to complete the project within this 5-year period, it may apply to the county before the end of the 5-year period for an extension of up to 5 years to complete the project. A second extension may be approved, provided the second extension is requested before the end of the first extension period and the aggregate extension period does not exceed 5 years. Unless approved as part of the original lease documentation, any extension must be approved by resolution of the county council with a copy provided to the Department within 30 days. If the minimum investment is not made within the required 5 years, all property covered by the Fee will be retroactively subject to a Fee equal to the property tax. The sponsor must provide to the county the total amount invested in the project for each year during the 5-year investment period. South Carolina Code §4-29-67(C).

A sponsor affiliate that does not originally join in the Fee may later qualify for the Fee if: (1) the county approves the sponsor affiliate; and (2) the sponsor affiliate agrees to be bound by the agreements, or the relevant portions of the agreements, that affect the county. The county may agree that the sponsor affiliates will not be bound by any agreement, or portion thereof, even if the county is affected by the agreement. South Carolina Code §4-29-67(B)(4). An agreement may provide for a process of approval of sponsor affiliates; however, all investments must be at

the sponsor's project. The Department must be notified in writing of all sponsors and sponsor affiliates that have investments subject to the Fee within 30 days of execution of a lease agreement. The time period may be extended upon written request. Failure to comply with this requirement will not adversely affect the Fee, but may result in a penalty being imposed. South Carolina Code §4-29-67(B)(4).

**Period Property May be Subject to Fee.** Generally, each piece of Fee property may be subject to the Fee for up to 30 years. Upon application by a sponsor, the county council by resolution can extend the fee period for up to an additional 10 years if they find a substantial public benefit. This allows for a total fee period of up to 40 years for a single piece of property. The maximum time period that all property at the project may be subject to the Fee is 50 years for a project that has been granted an extension. South Carolina Code §4-29-67(C)(3).

**Property Eligible for Fee.** Property that has been previously subject to property taxes in South Carolina does not qualify for the Fee except for:

1. Land, excluding improvements on the land, on which the new project is to be located;
2. Property which has never been placed in service in South Carolina;
3. Aircraft; or,
4. Property which has been placed in service pursuant to an inducement agreement or other preliminary county approval, if the property is placed in service before the execution of a lease agreement.
5. Property that is purchased in a transaction other than a transaction between related taxpayers as determined under Internal Revenue Code §267 if the sponsor invests at least an additional \$45 million in the project. South Carolina Code §4-29-67(K).

In the case of property that is not subject to the Fee, repairs, alterations, or modifications to real or personal property are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements that constitute an expansion of the improvements. South Carolina Code §4-29-67(K).

**Disposal of Property and Replacement Property.** Under the Big Fee, replacement property can replace original property subject to the Fee, provided the inducement agreement includes a provision allowing for replacement property. The inducement agreement may provide that when property is scrapped, sold, or removed from the project, the Fee will be reduced by the amount of the Fee applicable to the property. If there is no provision in the inducement

agreement dealing with the disposal of property, the Fee remains fixed. If property is removed from the project but remains in South Carolina it becomes subject to property taxes. South Carolina Code §4-29-67(F)(1).

The following rules apply to replacement property:

1. Title to the property must be held by the county.
2. The replacement property does not have to serve the same function as the property it is replacing.
3. The replacement property qualifies for the Fee only up to the original income tax basis of the Fee property that is being disposed of in the same property tax year. To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the property which it is replacing, the excess is subject to Fee payments equal to regular property taxes.
4. More than one piece of replacement property can replace a single piece of original Fee property.
5. Replacement property is deemed to replace the oldest property subject to the Fee, whether real or personal, that is disposed of in the same property tax year that the replacement property is placed in service.
6. Replacement property is subject to the Fee payment for the period of time remaining on the Fee for the property which it is replacing.

If there is no provision in the inducement agreement dealing with replacement property, any property placed in service after the period allowed for investment is subject to Fee payments equal to property taxes or to property taxes if title to the property is held by the sponsor. South Carolina Code §4-29-67(F)(2).

If a sponsor using the net present value method for determining its Fee disposes of property, the Fee on the property being disposed of must be recomputed using the standard Fee method contained in South Carolina Code §4-29-67(D)(2)(a). To the extent that the amount that would have been paid by the sponsor with respect to the disposed property exceeds the amount it paid under the net present value method, the sponsor must pay the county the difference with the next Fee payment. If the sponsor used the 5-year adjustable millage provision as part of its Fee, that millage rate must be used in determining the amount that the sponsor would have paid under the standard Fee method. South Carolina Code §4-29-67(F)(1).

**Rollback Taxes.** Any property subject to the Fee is not subject to agricultural rollback taxes. South Carolina Code §12-43-220(d)(6).

**Timing of Investment Expenditures and Purchases.** Investment expenditures incurred by a sponsor qualify as expenditures subject to the Fee if the inducement agreement is executed within 2 years of the date the county adopts an inducement resolution; otherwise, only expenditures made after the inducement agreement is executed qualify. Unless the sponsor's agreement covers replacement property, all expenditures must be incurred either: (a) prior to the end of the applicable investment period; or, (b) if an extension is granted, before the expiration of the additional time allowed to complete the project (usually 5 additional years after the investment period has ended).

**Note:** The minimum investment must be completed within 5 years. South Carolina Code §4-29-67(l).

Also, if the property is otherwise eligible for the Big Fee, investment expenditures incurred during the investment period by an entity whose investments are not being counted towards the minimum investment can qualify for the Fee if:

1. The expenditures are part of the original cost of the property;
2. The property is transferred to one or more sponsors or sponsor affiliates whose investments are being counted towards the minimum investment; and,
3. The property would have qualified for the Fee if it had been acquired by the transferee entity (a sponsor or sponsor affiliate) receiving the property.
4. The county approves of the transfer.

The income tax basis of the property immediately after the transfer must equal the income tax basis immediately before the transfer, except that if after the transfer, the income tax basis of the property unintentionally exceeds the income tax basis before the transfer, the excess will be subject to a Fee equal to the property tax that would be due without the Fee. South Carolina Code §4-29-67(j).

**Inducement Agreement.** The inducement agreement is the major document of the transaction. It details the responsibility of each party and contains the negotiated assessment ratio and the millage rate, unless a separate millage rate agreement is executed. The sponsor and county may negotiate to use different yearly assessment ratios or different assessment ratios for



different levels of investment. Thus, a sponsor may be subject to a 7% assessment ratio in its first year, but may be subject to a 6% assessment ratio in later years. However, the lowest assessment ratio allowed is the lowest assessment ratio for which the investor may qualify under the statute. South Carolina Code §4-29-67(D)(5).

**Millage Rate Agreement.** The millage rate agreement may either fix the millage rate for the entire term of the Fee or increase or decrease the millage rate every 5 years in step with the average actual millage rate applicable in the district where the project is located based on the preceding 5-year period. The initial millage rate used must be no lower than the cumulative property tax millage legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either on: (a) June 30<sup>th</sup> of the year preceding the year in which the millage rate agreement is executed or if a millage rate agreement is not executed, when the lease agreement is executed; or, (b) June 30<sup>th</sup> of the year in which the millage rate agreement is executed or if a millage rate agreement is not executed, when the lease agreement is executed. The millage rate agreement may be executed at any time up to the date the initial lease agreement is executed. South Carolina Code §4-29-67(D)(2) and (G).

**Timing of the Initial Lease Agreement.** Title to the property must be transferred to the county and made subject to a lease agreement before the end of the property tax year in which the property is placed in service. The sponsor and the county have 5 years from the end of the property tax year in which they enter into an inducement agreement to enter into an initial lease agreement. South Carolina Code §4-29-67(C). There are special provisions in the case of a qualified nuclear facility.

**Valuation for Fee Purposes.** Generally, for real property, value is the original income tax basis for South Carolina income tax purposes without regard to depreciation; however, in certain instances, the fair market value of such real property will be determined by appraisal. South Carolina Code §4-29-67(D)(2).

Additionally, a county and a sponsor and sponsor affiliate may agree (either initially or by amendment to an existing agreement) that the value of real property subject to a Fee will be determined by appraisal. If the county and sponsor and if applicable, the sponsor affiliate, agree to appraisal, the property will be subject to reappraisal by the Department no more than once every 5 years. South Carolina Code §4-29-67(D)(2).

For personal property, the original tax basis for South Carolina income tax purposes, less depreciation allowable for property tax purposes, is used for valuation without regard to any extraordinary obsolescence of that property. South Carolina Code §4-29-67(D)(2).

Utility property subject to a Fee is valued similarly to the method that the Public Service Commission uses to value utility property. See South Carolina Revenue Procedure #04-5.

**Additional Method of Calculating Fee.** Unlike the Little Fee, the Big Fee allows the use of a net present value method of calculating the Fee. The county and the sponsor may provide for an annual payment based on an alternative arrangement yielding a net present value of the sum of the Fees for the life of the Fee agreement that is not less than the present value of the Fee schedule calculated using the equivalent of a 6% (or 4% if applicable) assessment ratio and a fixed millage rate. Net present value calculations must use a discount rate equivalent to the yield in effect for new or existing Treasury bonds of similar maturity as published during the month in which the inducement agreement is executed. Special rules are provided if no yield is available for that month or bonds of appropriate maturity are not available. South Carolina Code §4-29-67(D)(2)(b).

**Financing Agreements.** A sponsor, sponsor affiliate, or a county may enter into any lending, leasing, or financing arrangement with any financing entity concerning all or part of the project, including a sale-leaseback transaction, an assignment, a sublease, or similar arrangement, regardless of the identity of the income tax owner of the property that is subject to the Fee. South Carolina Code §4-29-67(O).

**Amendment of Agreements.** The inducement agreement, the millage rate agreement, or both may be amended or terminated and replaced with regard to all matters, including, but not limited to, the addition or removal of sponsors or sponsor affiliates. However, the millage rate, assessment ratio, or discount rate cannot be changed once a millage rate agreement, an inducement agreement that sets the millage rate, or a lease agreement has been executed. Nor can the length of an agreement be increased except as provided in South Carolina Code §4-29-67(C). South Carolina Code §4-29-67(H).

**Transfers of Fee Agreements or Property Subject to the Fee.** A sponsor may transfer an inducement agreement, millage rate agreement, lease agreement, or the assets subject to the lease agreement if it obtains the approval of the county before the transfer or the subsequent ratification of the transfer by the county. Prior approval or subsequent ratification can occur by a letter or other writing executed by an authorized county representative as provided in an appropriate agreement, a resolution passed by the county council, or by county council following three readings and a public hearing. The county has the sole discretion as to which method to use. County approval is not required in connection with financing related transactions or for transfers to sponsor affiliates. If a Fee agreement is transferred, the transferee assumes the basis that the transferor sponsor had in the real and personal property subject to the Fee for purposes of calculating the Fee. South Carolina Code §4-29-67(O).

**Payment and Recordkeeping Requirements.** Any sponsor or sponsor affiliate in a Fee transaction must file all returns, contracts, or other information the Department may require. Also, a copy of the inducement agreement and the lease agreement must be filed with the Department and appropriate county auditors and assessors within 30 days of execution. A bill for each installment of the Fee is prepared by the county auditor. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property were subject to property tax. The Department may, for good cause, allow up to a 60-day extension of time for filing Fee returns. The written request for an extension must be filed on or before the due date of the return. Penalties and interest may apply if a sponsor or sponsor affiliate is late in making a Fee payment or in filing a required return. To the extent that any Fee form or return is filed with the Department, a copy must also be filed with the auditor, assessor, and treasurer for the county where the project is located. A county official, upon approval of the county's governing body, may request books and records of the company that support the calculation of the Fee and any special source revenue credits granted. South Carolina Code §4-29-67(S). All agreements entered into under the Fee in lieu provisions must include a written recapitulation of the terms of the Fee to assist in administration of the Fee. However, the parties can agree to waive any or all of the items that must be set forth in the recapitulation. South Carolina Code §4-29-67(S).

**Termination of the Fee and Lease Agreement.** If a sponsor fails to make the minimum investment or any other investment or job requirements set forth in the agreements, within the applicable time period, the fee will terminate. Once terminated, all property that was subject to the fee will be retroactively subject to the Fee and will be retroactively subject to property taxes. The sponsor and the county may agree in the agreement that if the sponsor fails to make the required minimum investment, the sponsor may elect to use the provisions of the Little Fee, including the reduced investment requirement. South Carolina Code §4-29-67(Q).

Except for a failure to meet the minimum investment requirement, any loss of Big Fee benefits is prospective only from the date of noncompliance and only with respect to that portion of the project to which the Fee relates. Certain rules are provided relating to the Fees that can be collected. South Carolina Code §4-29-67(T).

**Expiration of Fee Period and Maintaining the Minimum Investment Requirement.** After the Fee period has expired, the real property that was originally subject to the Fee will be subject to property taxes based on the fair market value of such property as of the latest reassessment date for similar taxable property. Personal property will be subject to property taxes based on the then depreciated value applicable to such property under the Fee, and thereafter continuing with the appropriate South Carolina property tax depreciation schedule. South Carolina Code §4-29-67(D)(3).

If a sponsor’s investment at the project ever falls below the required minimum investment, or such greater amount as specified in the inducement agreement or lease agreement, the Fee is no longer available and the sponsor must pay a fee equivalent to the property taxes on the property. If the agreement is terminated by agreement or law and the sponsor is using the net present value, the sponsor must pay the county at the time of termination the difference between the fee that would have been paid on the property if the fee had been calculated using the standard fee method and the amount that was actually paid to the county under the net present value method. South Carolina Code §4-29-67(B)(4)(b)(iii).

**Infrastructure Improvement Credit.** A county, municipality, or special purpose district that receives proceeds from a Fee may allow a sponsor a credit against the Fee or payment derived from the Fee. However, any credit or payment must be used for the purposes outlined in South Carolina Code §4-29-68, including the purchase of eligible infrastructure or real estate, and in some instances, personal property. Special rules apply in the event affected personal property is removed from the project during the Fee period. South Carolina Code §4-29-67(L)(3).

**Special Rules for Qualified Recycling Facilities.** “Qualified recycling facilities,” as defined in South Carolina Code §12-6-3460(A)(3) (previously South Carolina Code §12-7-1275(A)), may qualify for a Fee equivalent to a 3% assessment ratio. The Fee is available for each item of property for 30 years (for projects placed in service in more than one year, the Fee is available for a maximum of 40 years). If the qualified recycling facility elects to use the net present value calculation, it must use the discount rate equivalent to the yield in effect for new or existing Treasury bonds of similar maturity as published on any day selected by the qualified recycling facility during the year in which the assets are placed in service or in which the inducement agreement is executed. South Carolina Code §4-29-67(V).

#### 4. SIMPLIFIED FEE

**Steps in the Simplified Fee Process.** In connection with the Simplified Fee, there are fewer steps and agreements that must be completed than those described above for the Little and Big Fee. They are:

1. Project identification – The county must identify the project or proposed project. This may be accomplished by the adoption of an inducement or similar resolution by county council.
2. Inducement resolution – The county council passes an inducement resolution if it was not done when the project was identified. This resolution sets forth the commitment of the county to enter into a Fee agreement concerning the project.

3. Fee agreement – The County and the company must enter into a Fee agreement setting forth the terms of the Fee. The company that enters into the Simplified Fee agreement is the “sponsor.”
4. Financing agreement – There may be one or more financing agreements executed in connection with the transaction or a credit against the Fee may be allowed.

**Definition and Location of the Project.** A “project” consists of land, buildings, and other improvements on the land, including water, sewage treatment and disposal services, air pollution control facilities, and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by a sponsor. A project may also consist of, or include, an aircraft hangared or used at an airport in South Carolina. South Carolina Code §12-44-30(16).

The project must be located in a single county, in a multicounty park, or if certain agreements are made with the counties, the property may straddle contiguous counties. South Carolina Code §12-44-40(H).

**County Must Make Findings of Public Purpose and Evaluate Project.** Before a project may qualify for the Simplified Fee, the county council must make all of the following findings:

1. The project is anticipated to benefit the general public welfare of the locality by providing services, employment, recreation, or other public benefits not otherwise provided locally.
2. The project gives rise to no pecuniary liability of the county or any municipality or a charge against their general credit or taxing power.
3. The purposes to be accomplished by the project are proper governmental and public purposes, and the benefits of the project are greater than the costs.

These findings may be determined with the assistance and advice from the Revenue and Fiscal Affairs Office or the Department, and the findings must be set forth in an ordinance. South Carolina Code §12-44-40(I).

**Required Investment and Timing of the Investment.** Generally, the required investment must be made by a sponsor. A sponsor affiliate may also qualify for the fee. A “sponsor” means one or more entities which sign the Fee agreement with the county and makes the minimum investment. The term includes a sponsor affiliate unless the context clearly indicates otherwise. A “sponsor affiliate” is defined as an entity that joins with, or is an affiliate of, a sponsor, and that participates in the investment in, or financing of, a project. South Carolina Code §12-44-30(19) and (20).

A minimum investment amount of \$2.5 million is required for each sponsor or sponsor affiliate to qualify for the Fee. South Carolina Code §12-44-130(A); see also South Carolina Code §12-44-30(19). However, the following exceptions are provided:

1. The minimum investment amount is reduced to \$1 million for a sponsor investing in a county with an average annual unemployment rate of at least twice the state average during the last 24 months based on the data available on November 1<sup>st</sup>. South Carolina Code §12-44-30(14). (See Section 8, of this Chapter, “Fee in Lieu-Reduced Investment Counties” for a list of qualifying counties.)
2. The minimum investment amount is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56 of Title 44, and the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least \$1 million and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. South Carolina Code §12-44-30(14).

In the case of a manufacturing, research and development, corporate office, or distribution facility, as defined in South Carolina Code §12-6-3360(M), or a qualified nuclear facility, as defined in South Carolina Code §12-44-30(17), the \$2.5 minimum investment amount does not apply if the total investment at the project exceeds \$5 million. South Carolina Code §12-44-30(19).

For the Simplified Fee, the required minimum investment must be made by the end of the investment period. The investment period begins with the first day that economic development property is purchased or acquired and ends 5 years after the last day of the property tax year in which the first property covered by the Fee is placed in service. There are special provisions in the case of a qualified nuclear facility. South Carolina Code §12-44-30(2) and (13).

The minimum investment must be completed within the investment period. Any relevant statute of limitations is suspended during the time period for making the minimum investment. If the sponsor does not expect to complete the project within this period, it may apply to the county before the end of the period for an extension of up to 5 years to complete the project. If a project received an extension of less than 5 years originally, the sponsor can apply to the county before the end of the existing extension period for additional time to complete the project provided that the aggregate extension cannot exceed 5 years. The county council can approve the extension by resolution and a copy of the resolution must be delivered to the Department within 30 days of the resolution being adopted. Even if an extension to complete the project is granted, the required minimum investment must be made before the end of the initial 5-year period. The first piece of Fee property must be placed in service no later than the

last day of the property tax year that is 3 years from the year in which the county and the sponsor enter into the Fee agreement. Any relevant statute of limitations is suspended during the time period for making the required minimum investment. South Carolina Code §§12-44-30, 12-44-40, and 12-44-140.

For the Simplified Fee, the required minimum investment must be made before the end of the investment period. The investment period begins with the first day that economic development property is purchased or acquired and ends five years after the last day of the property tax year in which the first property covered by the fee is placed in service. There are special provisions in the case of a qualified nuclear facility. South Carolina Code §12-44-30(2) and (13).

Even if an extension to complete the project is granted, the required minimum investment must be made before the end of the investment period, the first piece of fee property must be placed in service no later than the last day of the property tax year that is 3 years from the year in which the county and the sponsor enter into the fee agreement. Any time limitation period for assessment under South Carolina Code §12-54-85 is suspended during the time period for making the required minimum investment. South Carolina Code §§12-44-30, 12-44-40, and 12-44-140.

A sponsor affiliate that does not originally join in the Fee may later qualify for the Fee if: (1) the county approves the addition of the sponsor affiliate for the Fee, (2) the sponsor affiliate invests the minimum investment amount, and (3) the sponsor affiliate agrees to be bound by those parts of the Fee agreement that affect the county. An agreement may provide for a process for approval of sponsor affiliates. South Carolina Code §12-44-130.

All investments by the sponsor affiliate must be made at the sponsor's project. The Department must be notified in writing of all sponsors and sponsor affiliates that have investments subject to the Fee within 90 days after the end of the calendar year during which the project, or pertinent phase of the project, was placed in service. The time period may be extended upon written request. Failure to comply with this requirement will not adversely affect the Fee, but may result in a penalty being imposed. South Carolina Code §12-44-130.

**Period Property May be Subject to Fee.** To be subject to the Fee, all property must be placed in service during the 10-year period in which a sponsor must complete the project. Any single piece of property may be subject to the Fee for up to 30 years. Before the end of that period, the county council by resolution can extend the Fee period for up to an additional 10 years if they find a substantial public benefit. This allows for a total Fee period for a single piece of property of up to 40 years and a total Fee period for the project of up to 50 years. A copy of the resolution extending the Fee period must be provided to the Department within 30 days of adoption. South Carolina Code §12-44-30(2), (8), (13), and (21).



**Property Eligible For the Fee.** Property that has been previously subject to property taxes in South Carolina does not qualify for the Fee except for:

1. Land, excluding improvements on the land, on which the new project is to be located;
2. Property which has never been placed in service in South Carolina;
3. Aircraft;
4. Property which has been placed in service pursuant to an inducement agreement or other preliminary county approval, if the property is placed in service before the execution of a Fee agreement; or
5. Property that is purchased in a transaction other than a transaction between related taxpayers as determined under Section 267(b) of the Internal Revenue Code if the sponsor invests at least an additional \$45 million in the project. See South Carolina Code §§12-44-110 and 12-44-30(16).

In the case of property that is not subject to the Fee, repairs, alterations, or modifications to real or personal property are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements that constitute an expansion of the improvements. South Carolina Code §12-44-110.

**Disposal of Property and Replacement Property.** The Fee must be reduced by the amount of the Fee applicable to property scrapped, sold, or removed from the project. If property is removed from the project but remains within South Carolina, the property becomes subject to property taxes. South Carolina Code §12-44-50.

The Fee agreement may provide that any property which is placed in service as a replacement for property that is subject to the Fee will become part of the Fee payment. The following rules apply to replacement property:

1. The replacement property does not have to serve the same function as the property it is replacing.
2. The replacement property qualifies for the Fee only up to the original income tax basis of the Fee property being disposed of in the same property tax year. To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the property that it is replacing, the excess is subject to payments as if the Fee was not allowed.



3. More than one piece of replacement property can replace a single piece of original Fee property.
4. Replacement property is deemed to replace the oldest property subject to the Fee, whether real or personal, which is disposed of in the same tax year that the replacement property is placed in service.
5. Replacement property is entitled to the Fee payment for the period of time remaining on the Fee for the property that it is replacing.

If there is no provision in the Fee agreement dealing with replacement property, any property placed in service after the period allowed for investment is subject to property taxes. South Carolina Code §12-44-60.

If the sponsor disposes of property and the sponsor is using the net present value method as described in South Carolina Code §12-44-50(3) for determining its Fee, the Fee on the property that is disposed of must be recomputed using the standard Fee method contained in South Carolina Code §12-44-50(A)(1). To the extent that the amount that would have been paid by the sponsor with respect to the disposed property exceeds the amount it paid under the net present value method, the sponsor must pay the county the difference with its next Fee payment. South Carolina Code §§12-44-50(B) and 12-44-60.

**Rollback Taxes.** Any property subject to the Fee is not subject to agricultural rollback taxes. South Carolina Code §12-43-220(d)(6).

**Timing of Investment Expenditures and Purchases.** If a county adopts an inducement resolution within 2 years of the date the county takes action reflecting or identifying the project, then all expenses for property for the Fee may be subject to the Fee. If the inducement resolution is adopted after the 2-year period, then only those expenses incurred after the date of adoption of the inducement resolution qualify for the Fee. South Carolina Code §12-44-40.

**The Inducement, Millage Rate, and Lease Agreements.** These documents, which are used for the Little and Big Fee, are replaced by the Fee agreement in the Simplified Fee.

**The Inducement Resolution.** The inducement resolution sets forth the commitment of the county to enter into a Fee agreement.

**The Fee Agreement.** The Fee agreement is the major document of the Simplified Fee transaction. It details the responsibilities of each party and contains the negotiated assessment ratio and the millage rate. It must be approved by the county through an ordinance.

The Fee agreement must be executed within 5 years of an inducement resolution or other action by the county identifying or reflecting the project; otherwise, any property previously purchased for the project will not qualify for the Fee. Special rules apply in the case of a qualified nuclear facility. Once the Fee agreement is executed, the exemption period for each piece of property covered by the Fee begins on the first day of the next property tax year after the property tax year the property is placed in service. South Carolina Code §§12-44-30(8) and (10) and 12-44-40.

The Fee agreement may either fix the millage rate for the entire term of the Fee or increase or decrease the millage rate every 5 years in step with the average actual millage rate applicable in the taxing district where the project is located based on the previous 5-year period. The initial millage rate must be no lower than the cumulative property tax millage legally levied by, or on behalf of, all millage levying entities within which the project is to be located that is applicable either on: (a) June 30<sup>th</sup> of the year preceding the year in which the Fee agreement is executed; or, (b) June 30<sup>th</sup> of the year in which the Fee agreement is executed. South Carolina Code §12-44-50.

**Valuation for Fee Purposes.** Generally, for real property, value is the original income tax basis for South Carolina income tax purposes without regard to depreciation; however, the parties may agree that the value will be determined by appraisal by the Department, in which case the real property will be subject to reappraisal no more than once every 5 years.

For personal property, the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes is used for valuation without regard to any extraordinary obsolescence of that property. South Carolina Code §12-44-50(A)(1). Utility property subject to a Fee is valued similarly to the method that the Public Service Commission uses to value utility property. See South Carolina Revenue Procedure #04-5.

**Additional Method of Calculating Fee.** The Simplified Fee may allow the use of a net present value calculation in determining the Fee if the proper investment level is met. A sponsor investing more than \$45 million at the project and the county may agree that the Fee will be based on an “alternative payment method,” that is the equivalent of the net present value method in the Big Fee. This method yields a net present value of the Fee schedule as calculated using the methods described in the Big Fee; however, the sponsor must agree to use a fixed millage rate. South Carolina Code §12-44-50.

**Financing Agreements.** A sponsor may enter into any lending, leasing, or financing arrangement with any financing entity concerning all or part of the project, including any lease concerning all or part of the project, regardless of the income tax owner of the property that is the subject of the Fee. South Carolina Code §12-44-120.

**Amendment of Agreements.** A Fee agreement may be amended or terminated and replaced with regard to all matters, including, but not limited to, the addition or removal of sponsors and sponsor affiliates. However, the millage rate, discount rate, and assessment ratio cannot be changed once the Fee agreement is executed. South Carolina Code §12-44-40.

**Transfers of Fee Agreements or Property Subject to the Fee.** A sponsor may transfer a Fee agreement or the assets subject to the Fee agreement if it obtains the approval of the county before the transfer or the subsequent ratification of the transfer by the county. Prior approval or subsequent ratification can occur by a letter or other writing executed by an authorized county representative as provided in the Fee agreement, a resolution passed by the county council, or by county council following three readings and a public hearing. The county has the sole discretion as to which method to use. County approval is not required in connection with financing related transactions or transfers to sponsor affiliates. If a Fee agreement is transferred, the transferee assumes the basis that the sponsor transferor had in the real and personal property subject to the Fee for purposes of calculating the Fee. South Carolina Code §12-44-120.

**Payment Procedure and Recordkeeping Requirements.** Any sponsor or sponsor affiliate that engages in a Fee transaction must file all returns, contracts, and other information the Department may require. Also, a copy of the Fee agreement must be filed with the Department and all appropriate county auditors and assessors within 30 days of execution. A bill for each installment of the fee is prepared by the county auditor. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property was subject to property tax. Penalties and interest may apply if a sponsor is late in making a fee payment or in filing a required return. The Department may, for good cause, allow up to a 60-day extension for filing Fee returns. The written request must be filed on or before the due date of the return. To the extent that any form or return is filed with the Department, a copy must be filed with the county auditor, assessor, and treasurer for the county in which the project is located. A county official, upon approval of the county's governing body, may request books and records of the sponsor that support the calculation of the Fee and any special source revenue credits granted. For collection purposes, the Fee is considered a property tax. South Carolina Code § 12-44-90.

**Termination of the Fee and Fee Agreement.** The county and the sponsor may agree to terminate the Fee agreement at any time. If a sponsor fails to make the minimum investment or any other investment or job requirements set forth in the Fee agreement within the applicable time period, the Fee agreement will terminate. Once terminated, all property that was subject to the Fee will be retroactively subject to property tax, as of the commencement date. The sponsor must pay the county a fee equal to the difference between the fees actually paid and the taxed that would have been paid if the property had been subject to property tax.

The statute allows a “safety net” to a sponsor that commits to an investment above the minimum investment. Even if the sponsor fails to make or maintain the level of investment agreed to in the Fee agreement, the Fee agreement may allow property at the project to continue under the Fee provided that the minimum investment requirement is met. However, the assessment ratio and exemption period for property must be consistent with those available to a sponsor making the minimum investment. The Fee agreement may also allow for different yearly assessment ratios or different ratios for different levels of investment with limitations on the lowest assessment ratio allowable. South Carolina Code § 12-44-90.

If the Fee agreement is terminated by mutual consent or by law and the sponsor was using the net present value method to compute the Fee, the sponsor must pay to the county the difference between the Fee that would have been paid on the property if the Fee had been calculated using the standard Fee method and the amount of Fees that were actually paid to the county under the net present value method. South Carolina Code §12-44-10.

**Expiration of Exemption Period and Maintaining the Minimum Investment.** After the exemption period has expired, the real property that was originally subject to the Fee will be subject to property tax based on the fair market value of the property as of the latest reassessment date for similar taxable property. Personal property will be subject to property taxes based on the then depreciated value applicable to such property under the Fee, and thereafter continuing with the appropriate property tax depreciation schedule.

If the sponsor’s investment ever falls below the minimum investment required by the Fee agreement (based on income tax basis without regard to depreciation), the Fee is no longer available and the sponsor must pay a fee equivalent to property taxes on the property. South Carolina Code §12-44-140(C).

**Infrastructure Fee Credit.** A county, municipality, or special purpose district that receives proceeds from a Fee may provide to a sponsor a payment derived from the Fee or a credit against the Fee. However, any credit or payment must be used for the purposes outlined in South Carolina Code §4-29-68, including eligible infrastructure, improved and unimproved real estate, and in certain instances personal property. South Carolina Code §§12-44-30(12) and 12-44-70. Special rules apply in the event affected personal property is removed from the project.

**Transitional Rules for Projects Under Existing Fee.** Transitional rules are provided for projects that may be covered by pre-existing Little Fee or Big Fee arrangements. If the county approves, an entity may transfer property from the existing Fee arrangement and have the property covered by the Simplified Fee, provided that there is a continuation of the same Fee payments for any time remaining for the Fee and the appropriate documents are executed. Any new Fee arrangement must continue the provisions and limitations of the prior arrangement. South Carolina Code §12-44-170.

If all or part of the Simplified Fee were declared illegal or unconstitutional, a sponsor has 180 days to transfer title to all Fee property to the county and have it qualify for the Little Fee. South Carolina Code §12-44-160.

## **5. SUPER AND ENHANCED INVESTMENT FEES**

The Little and Big Fee schemes both contain a provision that allows certain entities to apply for a Super Fee. The Simplified Fee contains an equivalent provision, but calls it an Enhanced Investment Fee. The Super or Enhanced Investment Fee may be equal to what the property tax would have been if the property was assessed at 4%. In addition, if a company qualifies for the Super Fee, the company has 8 years from the end of the property tax year in which the lease agreement is executed to make the required investment and may obtain up to an additional 5 years to complete the project. For the Big Fee Super Fee, if the project qualifies as a “qualified nuclear plant facility” as that term is defined in South Carolina Code §4-29-67(A)(1)(d), the sponsor and any sponsor affiliate are given additional time to make the required investment and complete the project.

Under the Enhanced Investment Fee, a sponsor must make the required level of investment within a period beginning on the date it purchases economic development property for the project and ending 8 years from the last day of the property tax year in which the first piece of Fee property is placed in service. The first piece of property must be placed in service no later than 3 years from the end of the property tax year in which the sponsor and the county enter into a Fee agreement. The sponsor may obtain an extension of up to 5 additional years to complete the project. For the Enhanced Fee, if the project qualifies as a “qualified nuclear plant facility” the sponsor and any sponsor affiliate are given additional time to make the required investment and complete the project.

If a project subject to either the Super Fee or the Enhanced Investment Fee received an extension of less than 5 years originally, the sponsor can apply to the county before the end of the existing extension period for additional time to complete the project provided that the aggregate extension cannot exceed 5 years. The county council may approve the extension by resolution, and copy of the resolution must be delivered to the Department within 30 days of the resolution being adopted.

Sponsors that qualify for the Super Fee or the Enhanced Fee with more than \$500 million in capital investment that employs more than 1,000 people in South Carolina have 10 years to meet the minimum investment requirements of the Super Fee or the Enhanced Fee and 15 years to complete their project.

If the property is subject to the Super or Enhanced Investment Fee, qualifying property may be subject to the Fee for up to 50 years. For those projects placed in service in more than one year, the Fee is generally available for the project for a maximum of 63 years. South Carolina Code §§4-12-30(C)(4); 4-29-67(C)(2), (3), and (D)(4); and 12-44-30(8), (13), and (21).

If a business qualifying under the Super Fee has more than \$500 million invested in capital in South Carolina and employs more than 1,000 employees in this state, that business will be eligible to have its property at a project subject to the Fee for a total of 65 years.

The following may qualify for the Little Fee Super Fee:

1. A single sponsor investing at least \$150 million and creating at least 125 new full-time jobs in South Carolina. South Carolina Code §4-12-30(D)(4)(a)(i).
2. A single sponsor investing at least \$400 million at a project. South Carolina Code §4-12-30(D)(4)(a)(ii).
3. A project that satisfies the requirements of South Carolina Code §11-41-30(2)(a) and for which the Secretary of Commerce has delivered a certification pursuant to South Carolina Code §11-41-70(2)(a). South Carolina Code §4-12-30(D)(4)(a)(iii).

The new full-time job requirements described above do not apply to any sponsor that, for more than 25 years ending on the date of the agreement, paid more than 50% of all property taxes actually collected in the county where it is seeking the Fee. South Carolina Code §4-12-30(D)(4)(b).

The following may qualify for the Big Fee Super Fee:

1. A single sponsor investing at least \$150 million and creating at least 125 new full-time jobs at the project. South Carolina Code §4-29-67(D)(4)(a)(i).
2. A single sponsor investing at least \$400 million in this State. South Carolina Code §4-29-67(D)(4)(a)(ii).
3. A project that satisfies the requirements of South Carolina Code §11-41-30(2)(a) and for which the Secretary of Commerce has delivered a certification pursuant to South Carolina Code §11-41-70(2)(a). South Carolina Code §4-29-67(D)(4)(a)(iii).

The new full-time job requirements described above do not apply to any business that, for more than 25 years ending on the date of the lease agreement, paid more than 50% of all property taxes actually collected in the county. South Carolina Code §4-29-67(D)(4)(b).

The following may qualify for the Enhanced Investment Fee:

1. A single sponsor investing at least \$150 million and creating at least 125 new full-time jobs at the project. South Carolina Code §12-44-30(7)(a). The new full-time job requirement does not apply to any taxpayer that, for more than 25 years ending on the date of the Fee agreement, paid more than 50% of all property taxes actually collected in the county where it is seeking the Fee. South Carolina Code §12-44-30(7).
2. A single sponsor investing at least \$400 million. South Carolina Code §12-44-30(7)(b).
3. A project that satisfies the requirements of SC Code §11-41-30(2)(a) and for which the Secretary of Commerce has delivered a certification pursuant to South Carolina Code §11-41-70(2)(a). South Carolina Code §12-44-30(7)(c).

For both the Super Fee and the Enhanced Investment Fee, if a single sponsor enters into a financing arrangement, the investment or financing by a developer, lessor, financing entity, or another third person in accordance with this arrangement is considered an investment by the sponsor for purposes of meeting the investment requirements.

Also, investments by a related person are considered to be investments by the sponsor. A “related person” includes any entity or person that bears a relationship to a significant business (those businesses that meet the requirements of the Enhanced Investment Fee) as provided in Internal Revenue Code §267, and includes, but is not limited to, a limited liability company where more than 50% of the capital interest or profits is owned directly by the significant business or by a person or entity, or group of persons or entities, which owns, more than 50% of the capital or profits in the significant business. South Carolina Code §§12-44-30(7), 4-29-67(D)(4)(a), 4-12-30(D)(4)(a), and 12-10-80(D)(2).

## **6. SPECIAL SOURCE REVENUE BONDS**

In connection with a Little or Big Fee, a county (or municipality or special purpose district) where the project will be located may issue special source revenue bonds. These special source revenue bonds allow the political subdivision to finance infrastructure projects usually at or surrounding the project that enhance its economic development. The political subdivision repays the bonds with money received from the Fee payments from the project. The rules regarding special source revenue bonds are contained in South Carolina Code §4-29-68. Special source revenue bonds cannot be used with the Simplified Fee, but the Simplified Fee does provide for an infrastructure credit. Infrastructure credit amounts must be used for the same purposes as special source revenue bonds. See South Carolina Code §12-44-70.



To issue special source revenue bonds, the governing body of the issuer must adopt an ordinance calling for the issuance of the special source revenue bonds, hold a public hearing, and then pass a resolution authorizing the issuance of the bonds. The bonds must be issued solely for the purpose of providing infrastructure that benefits the issuer's or the project's economic development. Bonds may be issued for improved and unimproved real property on which the project will be located, or to pay for the cost of personal property, including machinery and equipment used in the operation of a project.

The face of the bonds must provide that they are payable solely from the proceeds of the Fee, are not secured by the full faith and credit of the issuer, are not payable from any tax or license, and are not a pecuniary liability of the issuer or a charge against the issuer's general credit or taxing power. The bonds can be issued as a single issue or several issues. The bonds can be payable in installments. The bonds may be sold at public or private sale, and the expenses of the issuance of the bonds may be paid out of the bond proceeds.

If the special source revenue bonds are issued to a third party and the project should fail to generate the necessary Fee payments to pay off the bonds, the company subject to the Fee must make up any shortfall.

A county, municipality, or special purpose district that receives and retains revenues from a Fee can also use a portion of the revenue received from the Fee for the purposes of providing infrastructure, unimproved or improved real estate, or to pay for eligible personal property associated with the project, without the requirement of issuing special source revenue bonds by allowing a credit against the Fee.

If bond money or money from a credit against the Fee is used to pay for personal property associated with a project, and the personal property is removed from the project during the time the Fee is in effect and the removed property is not replaced with qualifying replacement property, the amount of the Fee due on such property must be paid for the year it is removed and for 2 years following the year of removal. If bond or credit money is used to pay for both real and personal property, or infrastructure and personal property, all of the funds will be presumed to have first been used to pay for personal property.



## 7. COMPARISON CHART OF FEES

The following chart compares the basic provisions of the following negotiated Fees:

- ◆ Little Fee
- ◆ Big Fee
- ◆ Simplified Fee
- ◆ Super and Enhanced Investment Fee

**COMPARISON OF NEGOTIATED FEES IN LIEU OF PROPERTY TAXES**

	<b>LITTLE FEE</b>	<b>BIG FEE</b>	<b>SIMPLIFIED FEE</b>	<b>SUPER AND ENHANCED INVESTMENT FEE</b>
<b>Minimum Required Investment</b>	\$2.5 million or \$1 million in certain qualifying counties and sites.	\$45 million or \$1 million in certain qualifying counties and sites.	\$2.5 million or \$1 million in certain qualifying counties and sites.	Generally \$150 million with 125 jobs or \$400 million with certain other requirements
<b>Assessment Ratio</b>	No lower than 6%	No lower than 6%	No lower than 6%	No lower than 4%
<b>Millage Rate</b>	The millage rate used must be no lower than the cumulative property tax millage rate legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either on: (a) June 30 <sup>th</sup> of the calendar year preceding the year the millage rate agreement is executed or (b) June 30 <sup>th</sup> of the calendar year in which the millage rate agreement is executed	The millage rate used must be no lower than the cumulative property tax millage rate legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either on: (a) June 30 <sup>th</sup> of the calendar year preceding the year the millage rate agreement is executed or (b) June 30 <sup>th</sup> of the calendar year in which the millage rate agreement is executed	The millage rate used must be no lower than the cumulative property tax millage rate legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either on: (a) June 30 <sup>th</sup> of the calendar year preceding the year the fee agreement is executed or (b) June 30 <sup>th</sup> of the calendar year in which the fee agreement is executed	Follows rules of whichever statute is applicable
<b>Project and Investment Completion</b>	5 years to complete required investment 10 years to complete project if approved	5 years to complete required investment 10 years to complete project if approved Special rules for a "qualified nuclear plant facility"	5 years to complete required investment 10 years to complete project if approved Special rules for a "qualified nuclear plant facility"	8 years to complete required investment 13 years to complete project if approved For certain special projects, 10 years to complete the required investment and 15 years to complete the project
<b>Length of Agreement</b>	Up to 30 years for a single piece of property or no more than 40 years total for the project. Up to 10 year additional extension allowed for total of 40 years for a single piece of property or 50 years total for the project.	Up to 30 years for a single piece of property or no more than 40 years total for the project. Up to 10 year additional extension allowed for total of 40 years for a single piece of property or 50 years total for the project.	Available until the last day of the property tax year which is up to 29 years following the property tax year in which the economic development property is placed in service for a single piece of property Up to 10 year additional extension allowed for a total of 40 years for a single piece of property to be subject to the fee or 50 years total for project.	Up to 40 years for a single piece of property or no more than 53 years total for the project or for certain special projects, 55 years. Up to 10 year additional extension allowed for total of 50 years for a single piece of property or 63 years total for the project, or for certain projects, 65 years.
<b>Property Title</b>	Must be held by county	Must be held by county	Title usually held by the sponsor.	Follows rules of whatever statute is applicable
<b>Structure of Payment</b>	Net present value method not available	May use net present value to structure payments	May use net present value if investment of \$45 million or more	Net present value method may or may not be available depending on which Fee statute is used
<b>Replacement Property</b>	If agreement provides, allowed up to the amount of property disposed of in the same tax year as replacement property is placed in service	If agreement provides, allowed up to the amount of property disposed of in the same tax year as replacement property is placed in service	If agreement provides, allowed up to the amount of property disposed of in the same tax year as replacement property is placed in service	Follows rules of whichever statute is applicable
<b>Valuation of Real Property</b>	Generally original SC income tax basis without regard to depreciation. By agreement of county, real property may be appraised every 5 years.	Generally original SC income tax basis without regard to depreciation. By agreement of county, real property may be appraised every 5 years.	Generally original SC income tax basis without regard to depreciation. By agreement of county, real property may be appraised every 5 years.	Generally original SC income tax basis without regard to depreciation. By agreement of county, real property may be appraised every 5 years.
<b>Valuation of Personal Property</b>	Original SC income tax basis less depreciation allowable for property tax purposes.	Original SC income tax basis less depreciation allowable for property tax purposes.	Original SC income tax basis less depreciation allowable for property tax purposes.	Original SC income tax basis less depreciation allowable for property tax purposes.
<b>Inducement Agreement</b>	Must be executed within 2 years of inducement resolution or other action identifying project	Must be executed within 2 years of inducement resolution or other action identifying the project	No inducement agreement required.	Follows rules of whichever statute is applicable
<b>Lease Agreement</b>	Must be executed within 5 years of execution of inducement agreement	Must be executed within 5 years of execution of inducement agreement	No lease agreement. Fee agreement must be executed within five years of when county identifies the project	Follows rules of whichever statute is applicable

## **8. FEE IN LIEU – REDUCED INVESTMENT COUNTIES**

The minimum required investment necessary to qualify for the fee in lieu of property taxes is \$2.5 million for the “Little Fee” and “Simplified Fee,” and \$45 million for the “Big Fee.” See South Carolina Code §§4-12-30(B)(3), 12-44-30(14), and 4-29-67, respectively. This investment amount; however, is reduced to \$1 million for a company investing in a county with an average annual unemployment rate of at least twice the State average during each of the last 24 months, based on data available on November 1.

For 2020, there are no counties that qualify for the reduced investment fee in lieu.