

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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HOUSE BILL 749

Short Title: Local Option Tax Menu. (Public)

Sponsors: Representatives Owens, Justice (Primary Sponsors); Dickson, Insko, and L. Allen.

Referred to: Finance.

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ADDITIONAL REVENUE OPTIONS FOR LOCAL GOVERNMENTS.

The General Assembly of North Carolina enacts:

PART 1. LOCAL OPTION SALES TAX

SECTION 1.1. Section 1(a) of S.L. 1997-417 is repealed.

SECTION 1.2. Article 43 of Chapter 105 of the General Statutes, as enacted by S.L. 1997-417, reads as rewritten:

"ARTICLE 43.

"Local Government Sales and Use Taxes for Public Transportation.

"§ 105-505. Short title; purpose.

This Article is the Local Government Public Transportation Sales and Use Tax Act and may be cited by that name. This Article gives the counties of this State an opportunity to obtain an additional source of revenue with which to meet their needs for financing local public transportation systems. It provides counties with authority to levy one-half percent (1/2%) sales and use taxes.

"§ 105-506. Definitions.

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

- (1) Net proceeds. – Gross proceeds less the cost of administering and collecting the tax.
- (2) Public transportation system. – Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, car-pool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways.

1 The term does not include, however, streets, roads, or highways except
2 to the extent they are dedicated to public transportation vehicles or to
3 the extent they are necessary for access to vehicle parking or passenger
4 transfer facilities.

5 **"§ 105-507. Limitations.**

6 A county may not levy a tax under this Article unless the county or at least one unit
7 of local government in the county operates a public transportation system. In addition, a
8 county may not levy a tax under this Article unless it has developed a financial plan and
9 distributed it to each unit of local government in the county that operates a local public
10 transportation system. The financial plan must provide for equitable allocation of the net
11 proceeds distributed to the county in consideration of the identified needs of local public
12 transportation systems in the county, countywide human service transportation systems,
13 and expansion of public transportation service to unserved areas in the county. This
14 Article applies only to counties that levy the first one-cent (1¢) sales and use tax under
15 Article 39 of this Chapter, the first one-half cent (1/2¢) local sales and use tax under
16 Article 40 of this Chapter, the second one-half cent (1/2¢) local sales and use tax under
17 Article 42 of this Chapter, and the third one-half cent (1/2¢) local sales and use tax
18 under Article 44 of this Chapter.

19 **"§ 105-508. Local election on adoption of sales and use tax.**

20 (a) Resolution. – The board of commissioners of a county may direct the county
21 board of elections to conduct ~~an advisory referendum~~ a special election within the
22 county on the question of whether to levy a local sales and use tax at the rate of one-half
23 percent (1/2%) ~~may be levied in accordance with~~ in the county as provided in this
24 Article. The election ~~shall~~ must be held on a date jointly agreed upon by the boards and
25 ~~shall~~ must be held in accordance with the procedures of G.S. 163-287. The board of
26 commissioners ~~shall~~ must hold a public hearing on the question at least 30 days before
27 the date the election is to be held.

28 (b) Ballot Question. – The ~~form of the~~ question to be presented on a ballot for a
29 special election concerning the levy of a tax authorized by this Article ~~shall be~~ must be
30 in the following form:

31 [] FOR [] AGAINST

32 One-half percent (1/2%) local sales and use taxes, in addition to the current ~~two~~
33 ~~percent (2%)~~ local sales and use taxes, to be used only for public transportation
34 systems.'

35 **"§ 105-509. Levy and ~~collection~~ administration of sales and use tax.**

36 If ~~the a~~ majority of those voting in a ~~referendum~~ special election held pursuant to
37 this Article vote for the levy of the ~~tax, taxes in a county,~~ the board of commissioners of
38 the county may, by resolution, levy one-half percent (1/2%) local sales and use taxes in
39 addition to any other State and local sales and use taxes levied pursuant to law. Except
40 as provided in this Article, the adoption, levy, collection, administration, and repeal of
41 these additional taxes ~~shall~~ must be in accordance with Article 39 of this Chapter. ~~In~~
42 ~~applying the provisions of Article 39 of this Chapter to this Article, references to 'this~~
43 ~~Article' mean 'Article 43 of Chapter 105 of the General Statutes'.~~

1 A tax levied under this Article does not apply to the sales price of food that is ~~not~~
2 otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the
3 State sales and use tax pursuant to G.S. 105-164.13 if it were purchased with coupons
4 issued under the Food Stamp Program, 7 U.S.C. § 51, exempt from tax pursuant to G.S.
5 105-164.13B.

6 "**§ 105-510. Distribution and use of taxes.**

7 (a) Distribution. – The Secretary ~~shall, on a quarterly~~ must, on a monthly basis,
8 allocate to each taxing county the net proceeds of the tax levied under this Article by
9 that county. If the Secretary collects taxes under this Article in a month and the taxes
10 cannot be identified as being attributable to a particular taxing county, the Secretary
11 must ~~shall~~ allocate these taxes among the taxing counties, in proportion to the amount of
12 taxes collected in each county under this Article in that month ~~and shall include them in~~
13 ~~the quarterly distribution month.~~

14 The Secretary ~~shall~~ must distribute the net proceeds of the tax levied by a county on
15 a per capita basis among the county and the units of local government in the county that
16 operate public transportation systems. No proceeds shall be distributed to a county that
17 does not operate a public transportation system or to a unit of local government that
18 does not operate a public transportation system. No municipality may receive any funds
19 under this subsection for a month if it is not entitled to a distribution under G.S. 105-501
20 for the same month.

21 (b) Use. – A county must allocate the net proceeds distributed to it in accordance
22 with its financial plan adopted pursuant to G.S. 105-507 and use the net proceeds only
23 for financing, constructing, operating, and maintaining local public transportation
24 systems. Any other unit of local government may use the net proceeds distributed to it
25 under this Article only for financing, constructing, operating, and maintaining local
26 public transportation systems. Every unit of local government must ~~shall~~ use the net
27 proceeds to supplement and not to supplant or replace existing funds or other resources
28 for public transportation systems."

29 **SECTION 1.3.** A tax levied under Article 43 of Chapter 105 of the General
30 Statutes, as amended by this act, does not apply to construction materials purchased to
31 fulfill a lump-sum or unit-price contract entered into or awarded before the effective
32 date of the levy or entered into or awarded pursuant to a bid made before the effective
33 date of the levy when the construction materials would otherwise be subject to the tax
34 levied under Article 43 of Chapter 105 of the General Statutes.

35
36 **PART 2. OTHER LOCAL OPTION TAXES**

37 **SECTION 2.1.** Chapter 105 of the General Statutes is amended by adding a
38 new Subchapter to read:

39 **"SUBCHAPTER X. LOCAL OPTION TAXES.**

40 "Article 60.

41 "Local Government Meals Tax.

42 "**§ 105-600. Short title.**

43 This Article is the Local Government Meals Tax Act.

44 "**§ 105-601. Definitions.**

1 The definitions in G.S. 105-164.3 apply to this Article. In addition, the following
2 definitions apply in this Article:

3 (1) City. – Defined in G.S. 153A-1.

4 (2) Person. – Defined in G.S. 105-228.90.

5 (3) Taxing unit. – A city or a county.

6 **"§ 105-602. Effect of local acts.**

7 This Article supplements but does not supplant the authority of a county or a city to
8 levy a meals tax pursuant to a local act. If a local act authorizes a county to levy a meals
9 tax, the maximum rate the county could otherwise levy under this Article is reduced by
10 the maximum rate the county is authorized to levy under all local acts. If a local act
11 authorizes a city to levy a meals tax, the local act that authorizes that tax and any tax
12 levied under that act is repealed when the county in which that city is located levies a
13 tax under this Article. The repeal of a local act under this section and the repeal of any
14 tax levied under that act are effective on the date that the tax levied under this Article by
15 the county becomes effective.

16 **"§ 105-603. Levy.**

17 (a) Vote. – The board of commissioners of a county may direct the county board
18 of elections to conduct a special election on the question of whether to levy a local
19 meals tax in the county as provided in this Article. The election shall be held on a date
20 jointly agreed upon by the two boards and shall be held in accordance with the
21 procedures of G.S. 163-287.

22 (b) Ballot Question. – The question may either restrict the use of the tax proceeds
23 to specific purposes designated by the board of commissioners or may contain no use
24 restrictions. If the county wishes to restrict the use of the tax proceeds, the question to
25 be presented on a ballot for a special election in a county concerning the levy of a tax
26 authorized by this Article must be in the following form:

27 FOR AGAINST

28 percent (X%) county meals tax, in addition to the current local sales and use
29 taxes, to be used only for [specify purposes].'

30 If the county does not wish to restrict the use of the tax proceeds, the question to be
31 presented on a ballot for a special election in a county concerning the levy of a tax
32 authorized by this Article must be in the following form:

33 FOR AGAINST

34 percent (X%) county meals tax, in addition to the current local sales and use
35 taxes.'

36 (c) Levy. – If the majority of those voting in an election held pursuant to this
37 Article vote for the levy of the tax in a county, the board of commissioners of the county
38 may, by resolution, levy a local meals tax of up to one percent (1%).

39 (d) Scope. – The tax applies to the sales price of prepared food and drink sold
40 within the county at retail, for consumption on or off the premises, by a retailer within
41 the county that is subject to sales tax under G.S. 105-164.4(a)(1). A tax levied under this
42 Article is in addition to any State and local sales and use taxes levied pursuant to law.

43 (e) Effective Date. – A meals tax becomes effective on the date specified in the
44 resolution levying the tax. That date must be the first day of a calendar month, however,

1 and may not be earlier than the first day of the second month after the date the
2 resolution is adopted. When a county in which a city that is authorized to levy a meals
3 tax under a local act levies a meals tax under this Article, the tax may not become
4 effective earlier than the first day of the next fiscal year or earlier than the first day of
5 the second month after the date the resolution is adopted.

6 **"§ 105-604. Exemptions.**

7 A meals tax levied under this Article does not apply to the following sales of
8 prepared food and drink:

- 9 (1) Prepared food and drink served to residents in boarding houses and
10 sold together on a periodic basis with rental of a sleeping room or
11 lodging.
- 12 (2) Retail sales exempt from taxation under G.S. 105-164.13.
- 13 (3) Retail sales through or by means of vending machines.
- 14 (4) Prepared food and drink served by a retailer subject to the local
15 occupancy tax if the charge for the prepared food and drink is included
16 in a single, nonitemized sales price together with the charge for rental
17 of a room, lodging, or accommodation furnished by the retailer.
- 18 (5) Prepared food and drink furnished without charge by an employer to
19 an employee.
- 20 (6) Retail sales by grocers or by grocery sections of supermarkets or other
21 diversified retail establishments, other than sales of prepared food and
22 drink in the delicatessen or similar department of the grocer or grocery
23 section.

24 **"§ 105-605. Collection.**

25 Every retailer subject to a tax levied under this Article must, on and after the
26 effective date of the levy of the tax, collect the tax. This tax must be collected as part of
27 the charge for furnishing prepared food and drink. The tax must be stated and charged
28 separately from the sales records and must be paid by the purchaser to the retailer as
29 trustee for and on account of the county. The tax must be added to the sales price and
30 passed on to the purchaser instead of being borne by the retailer. The county must
31 design, print, and furnish to all appropriate businesses and persons in the county the
32 necessary forms for filing returns and instructions to ensure the full collection of the tax.

33 **"§ 105-606. Administration.**

34 The county must administer a tax levied under this Article. A tax levied under this
35 Article is due and payable to the county finance officer in monthly installments on or
36 before the 15th day of the month following the month in which the tax accrues. Every
37 retailer liable for the tax must, on or before the 15th day of each month, prepare and file
38 a return on a form prescribed by the county. The return must show the total gross
39 receipts derived in the preceding month from sales to which the tax applies.

40 A return filed with the county finance officer under this Article is not a public record
41 and may not be disclosed except as provided in G.S. 153A-148.1.

42 **"§ 105-607. Distribution and use.**

43 (a) Distribution. – The taxing county must distribute the net proceeds of the tax
44 levied under this Article quarterly between the county and its cities on a per capita basis.

1 To make the per capita distributions required by this section, the county must first
2 compute a per capita distributable amount by dividing the amount to be distributed by
3 the total population of the county plus the population of all cities located in the county.
4 The county must then distribute to each taxing unit in the county, including the county
5 itself, the product of the population of the taxing unit and the per capita distributable
6 amount. In making the per capita calculations under this section, the county must use
7 the most recent annual population estimates certified by the State Planning Officer.

8 (b) Use. – Cities and counties may use the proceeds of a tax levied under this
9 Article for any lawful purpose. If the special election approved by the voters restricted
10 the use of the tax proceeds to specified purposes, the proceeds may be used only in
11 accordance with those restrictions.

12 **"§ 105-608. Refunds.**

13 The county must refund to a nonprofit or governmental entity the meals tax paid by
14 the entity on eligible purchases of prepared food and drink. A nonprofit or governmental
15 entity's purchase of prepared food and drink is eligible for a refund under this section if
16 the entity is entitled to a refund under G.S. 105-164.14(b) or (c) of local sales and use
17 tax paid on the purchase. The time limitations, application requirements, penalties, and
18 restrictions provided in G.S. 105-164.14(b) and (d) apply to refunds to nonprofit
19 entities; the time, limitations, application requirements, penalties, and restrictions
20 provided in G.S. 105-164.14(c), (d), and (e) apply to refunds to governmental entities.
21 When an entity applies for a refund of the meals tax paid by it on purchases, it must
22 attach to its application a copy of the application submitted to the Department of
23 Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same
24 purchases. An applicant for a refund under this subsection must provide any information
25 required by the county to substantiate the claim.

26 **"§ 105-609. Penalties.**

27 The penalties provided in G.S. 153A-154.1 apply to a tax levied under this Article.

28 **"§ 105-610. Repeal or reduction.**

29 A meals tax levied under this Article may be repealed or reduced by a resolution
30 adopted by the board of commissioners of the taxing county. Repeal or reduction of a
31 meals tax must become effective on the first day of a month and may not become
32 effective until the end of the fiscal year in which the resolution was adopted. Repeal or
33 reduction of a meals tax does not affect a liability for a tax that was attached before the
34 effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that
35 accrued before the effective date of the repeal or reduction.

36 "Article 61.

37 "Local Government Occupancy Tax.

38 **"§ 105-620. Short title.**

39 This Article is the Local Government Occupancy Tax Act.

40 **"§ 105-621. Definitions.**

41 The following definitions apply in this Article:

42 (1) City. – Defined in G.S. 153A-1.

43 (2) Taxing unit. – A city or a county.

44 **"§ 105-622. Effect of local acts.**

1 (a) Limitations. – This Article supplements but does not supplant the authority of
2 a county or a city to levy an occupancy tax pursuant to a local act. If a local act
3 authorizes a county to levy an occupancy tax, the maximum rate the county could
4 otherwise levy under this Article is reduced by the maximum rate the county is
5 authorized to levy under all local acts, and the maximum rate any city in the county
6 could otherwise levy under this Article may not exceed a total of six percent (6%) when
7 added to the maximum rate the county is authorized to levy under all local acts. If a
8 local act authorizes a city to levy an occupancy tax, the maximum rate the city could
9 otherwise levy under this Article is reduced by the maximum rate the city is authorized
10 to levy under all local acts, and the maximum rate the county in which the city is located
11 could otherwise levy under this Article may not exceed a total of six percent (6%) when
12 added to the maximum rate the city is authorized to levy under all local acts.

13 (b) Examples of Limitations. – The following examples illustrate the limitations
14 provided in subsection (a) of this section:

15 (1) If a local act authorizes a city to levy an occupancy tax of up to one
16 percent (1%), the maximum rate the city can levy under this Article is
17 two percent (2%) and the maximum rate the county can levy under this
18 Article is five percent (5%), whether or not the city levies the tax
19 authorized by local act.

20 (2) If a local act authorizes a county to levy an occupancy tax of up to six
21 percent (6%), neither the county nor any city in the county may levy
22 an occupancy tax under this Article, whether or not the county levies
23 the tax authorized by local act.

24 **"§ 105-623. Levy.**

25 (a) Vote. – The governing body of a taxing unit may direct the county board of
26 elections to conduct a special election on the question of whether to levy a local
27 occupancy tax in the taxing unit as provided in this Article. The election shall be held
28 on a date jointly agreed upon by the governing body and the board of elections and shall
29 be held in accordance with the procedures of G.S. 163-287.

30 (b) Ballot Question. – The question may either restrict the use of the tax proceeds
31 to specific purposes designated by the governing body or may contain no use
32 restrictions. If the taxing unit wishes to restrict the use of the tax proceeds, the question
33 to be presented on a ballot for a special election in a taxing unit concerning the levy of a
34 tax authorized by this Article must be in the following form:

35 FOR AGAINST

36 percent (X%) local occupancy tax, in addition to the current local sales and use
37 taxes, to be used only for [specify purposes].'

38 If the taxing unit does not wish to restrict the use of the tax proceeds, the question to
39 be presented on a ballot for a special election in a taxing unit concerning the levy of a
40 tax authorized by this Article must be in the following form:

41 FOR AGAINST

42 percent (X%) local occupancy tax, in addition to the current local sales and use
43 taxes.'

1 (c) Levy. – If the majority of those voting in an election held pursuant to this
2 Article vote for the levy of the tax within a taxing district, the governing body of the
3 taxing district may, by resolution, levy a local occupancy tax of up to the maximum rate
4 provided in this Article.

5 (d) Maximum Rate. – Subject to the limitations provided in G.S. 105-622, the
6 maximum rate of tax that a county may levy under this Article is a total of six percent
7 (6%) when added to the rate of any occupancy tax levied by a city within the county.
8 Subject to the limitations provided in G.S. 105-622, the maximum rate of tax that a city
9 may levy under this Article is three percent (3%).

10 (e) Scope. – The tax applies to the gross receipts derived from the rental of any
11 room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or
12 similar place within the taxing unit that is subject to sales tax imposed by the State
13 under G.S. 105-164.4(a)(3). The tax is in addition to any State or local sales tax.

14 **"§ 105-624. Administration.**

15 A tax levied under this Article shall be levied, administered, collected, and repealed
16 as provided in G.S. 153A-155 in the case of a county tax and in G.S. 160A-215 in the
17 case of a city tax. The penalties provided in G.S. 153A-155 and G.S. 160A-215 apply to
18 a tax levied under this Article.

19 **"§ 105-625. Use.**

20 A taxing unit may use the proceeds of a tax levied under this Article for any lawful
21 purpose. If the special election approved by the voters restricted the use of the tax
22 proceeds to specified purposes, the proceeds may be used only in accordance with those
23 restrictions.

24 "Article 62.

25 "Local Government Excise Tax on Conveyances.

26 **"§ 105-630. Short title.**

27 This Article is the Local Government Excise Tax on Conveyances Act.

28 **"§ 105-631. Effect of local acts.**

29 This Article supplements but does not supplant the authority of a county to levy an
30 excise tax on conveyances pursuant to a local act. If a local act authorizes a county to
31 levy an excise tax on conveyances, the maximum rate the county could otherwise levy
32 under this Article is reduced by the maximum rate the county is authorized to levy
33 under all local acts.

34 **"§ 105-632. Levy.**

35 (a) Vote. – The board of commissioners of a county may direct the county board
36 of elections to conduct a special election on the question of whether to levy a local
37 excise tax on conveyances in the county as provided in this Article. The election shall
38 be held on a date jointly agreed upon by the two boards and shall be held in accordance
39 with the procedures of G.S. 163-287.

40 (b) Ballot Question. – The question may either restrict the use of the tax proceeds
41 to specific purposes designated by the board of commissioners or may contain no use
42 restrictions. If the county wishes to restrict the use of the tax proceeds, the question to
43 be presented on a ballot for a special election in a county concerning the levy of a tax
44 authorized by this Article must be in the following form:

1 FOR AGAINST
2 [X] percent (X%) county excise tax on conveyances of real property, in addition to
3 the current State excise tax on conveyances of real property, to be used only for [specify
4 purposes].'

5 If the taxing unit does not wish to restrict the use of the tax proceeds, the question to
6 be presented on a ballot for a special election in a taxing unit concerning the levy of a
7 tax authorized by this Article must be in the following form:

8 FOR AGAINST
9 [X] percent (X%) county excise tax on conveyances of real property, in addition to
10 the current State excise tax on conveyances of real property.'

11 (c) Levy. – If the majority of those voting in an election held pursuant to this
12 Article vote for the levy of the tax in a county, the board of commissioners of the county
13 may, by resolution, levy a local excise tax on conveyances at a rate of up to one percent
14 (1%) on instruments conveying interests in real property located in the county.

15 (d) Basis and Effective Date. – The tax applies to the consideration or value,
16 whichever is greater, of the interest conveyed, including the value of any lien or
17 encumbrance remaining on the property at the time of sale. The levy of the tax may
18 become effective only on the first day of a calendar month set in the resolution levying
19 the tax, which may not be earlier than the first day of the second succeeding calendar
20 month after the date the resolution is adopted.

21 **"§ 105-633. Administration.**

22 (a) Resolution. – The board of commissioners of a county must, upon adoption of
23 a resolution levying a tax under this Article, immediately deliver a certified copy of the
24 resolution to the register of deeds of the county. Upon receipt of this document, the
25 register of deeds shall administer the tax in the county as provided in this Article.

26 (b) Scope. – A tax levied under this Article does not apply to a transfer exempt
27 pursuant to G.S. 105-228.28 or G.S. 105-228.29 from the tax levied by Article 8E of
28 this Chapter. In addition, the tax does not apply to a transfer to the owner's spouse,
29 siblings, parents, grandparents, children, or grandchildren.

30 The tax is in addition to the tax levied by Article 8E of this Chapter. A tax levied
31 under this Article applies to transfers of interests in real property located within the
32 county. If the property is located in two or more counties, a transfer of an interest in the
33 property is taxable only by the county in which the greater part of the property, with
34 respect to value, lies.

35 (c) Collection. – A tax levied under this Article is payable by the transferor of the
36 interest. Except as otherwise provided in this Article, the provisions of G.S. 105-228.32
37 through G.S. 105-228.37 apply to a tax levied under this Article. The county must
38 provide metering or similar equipment for the collection of the tax in lieu of the use of
39 tax stamps.

40 (d) Repeal or Reduction. – A taxing county may, by resolution, repeal or reduce
41 the rate of a tax levied under this Article. Repeal or reduction of the tax must become
42 effective on the first day of a month and may not become effective until the end of the
43 fiscal year in which the repeal or reduction resolution was adopted. Repeal of an excise
44 tax on conveyances, or reduction of its rate, under this Article does not affect a liability

1 for a tax that attached before the effective date of the repeal or reduction, nor does it
2 affect a right to a refund of a tax that accrued before the effective date of the repeal or
3 reduction.

4 "**§ 105-634. Distribution and use.**

5 (a) Distribution. – A taxing county must distribute the net proceeds of a tax
6 levied under this Article between the county and the cities and towns located in the
7 county according to the formula by which local sales tax proceeds are divided between
8 the county and its cities and towns under G.S. 105-472 or under Chapter 1096 of the
9 1967 Session Laws.

10 (b) Use. – The proceeds of the tax may be used for any lawful purpose. If the
11 special election approved by the voters restricted the use of the tax proceeds to specified
12 purposes, the proceeds may be used only in accordance with those restrictions."

13 **SECTION 2.2.** Section 5 of Chapter 413 of the 1993 Session Laws reads as
14 rewritten:

15 "**Sec. 5.** Administration. – A tax levied under this act is due and payable to the
16 county in monthly installments on or before the ~~25th~~15th day of the month following
17 the month in which the tax accrues. Every retailer liable for the tax shall, on or before
18 the ~~25th~~15th day of each month, prepare and render a return on a form prescribed by
19 the county. The return shall show the total gross receipts derived in the preceding month
20 from sales to which the tax applies. The county shall design, print, and furnish to all
21 appropriate retailers the necessary forms for filing returns and instructions to ensure the
22 full collection of the tax.

23 A return filed with the county under this act is not a public record ~~as defined by G.S.~~
24 ~~132-1 and may not be disclosed except as required by law.~~and may not be disclosed
25 except as provided in G.S. 153A-148.1."

26 **SECTION 2.3.** Section 1(e) of Chapter 449 of the 1993 Session Laws reads
27 as rewritten:

28 "**Section 1.** Hillsborough Prepared Food and Beverage Tax.

29 ...

30 (e) Administration. – The town shall administer a tax levied under this section. A
31 tax levied under this section is due and payable to the town's finance officer in monthly
32 installments on or before the ~~25th~~15th day of the month following the month in which
33 the tax accrues. Every retailer liable for the tax shall, on or before the ~~25th~~15th day of
34 each month, prepare and render a return on a form prescribed by the town. The return
35 shall show the total gross receipts derived in the preceding month from sales to which
36 the tax applies.

37 A return filed with the town's finance officer under this section is not a public record
38 and may not be disclosed except in accordance with G.S. 160A-208.1.~~as defined by~~
39 ~~G.S. 132-1 and may not be disclosed except as required by law."~~

40
41 **PART 3. IMPACT FEES**

42 **SECTION 3.1.** The General Statutes are amended by adding a new Chapter
43 to read:

44 "**Chapter 159J.**

"Local Government Impact Fees."**"§ 159J-1. Purpose."**

It is the purpose of this Chapter to place an equitable share of the cost of providing new community service facilities upon all new inhabitants and upon those associated with the development process.

"§ 159J-2. Definitions."

The following definitions apply in this Chapter:

- (1) Capital costs. – Costs spent for developing community service facilities. Capital costs are limited to capital outlay items listed in the 'Uniform Local Government Accounting Systems' procedural manual prepared by the North Carolina Local Government Commission.
- (2) Community services facilities. – The following public facilities or improvements provided or established by the local government or in conjunction with other units of government:
 - a. Water, sewer, and drainage projects.
 - b. Parks, open spaces, and recreational facilities.
 - c. Streets, sidewalks, thoroughfare rights-of-way, and public transit stations and capital equipment.
 - d. Emergency medical services facilities.
 - e. Fire stations.
 - f. Schools.
 - g. Cultural facilities, including libraries.
 - h. Solid waste collection, handling, disposal, and recycling.
- (3) Developer. – An individual, corporation, partnership, organization, association, firm, political subdivision, or other legal entity constructing or creating new construction.
- (4) Impact fee. – The charge imposed upon new construction under this Chapter.
- (5) Local government. – A city as defined by G.S. 160A-1 or a county.
- (6) New construction. – Any new development, construction, or installation for which a building or zoning permit, a certification, or any other type of governmental approval is required. New construction includes the installation of a mobile home, factory-built housing, or modular housing. New construction does not include: (i) renovation and repair of existing structures, structures incidental to accessory uses, or additions, unless the renovation, repairs, or additions will cause an increase in off-street parking requirements or a change in occupancy as occupancy is defined by the North Carolina State Building Code; (ii) fences, billboards, poles, pipelines, transmission lines, advertising signs, or similar structures that do not generate a need for community service facilities.

"§ 159J-3. Imposition of impact fee."

(a) A city may not impose an impact fee for schools. A city may, for the purposes of placing an equitable share of the cost of providing other new community

1 service facilities upon developers and inhabitants of newly developed areas, impose an
2 impact fee upon all new construction within the city's corporate limits or extraterritorial
3 planning jurisdiction.

4 (b) A county may, for the purpose of placing an equitable share of the cost of
5 providing new community service facilities upon developers and inhabitants of newly
6 developed areas, impose an impact fee, other than for schools, upon all new
7 construction in the county that is not within a city's corporate limits or extraterritorial
8 planning jurisdiction.

9 (c) A county may impose an impact fee for schools upon all new construction
10 within the county for the purpose of placing an equitable share of the cost of providing
11 community service facilities upon developers and inhabitants of newly developed areas.

12 **"§ 159J-4. Amount of fee.**

13 (a) The amount of each impact fee imposed shall be uniform and based upon the
14 capital costs to be incurred by the local government as a result of the new construction.
15 In establishing the impact fee, the local government may establish zones within which
16 the costs of providing community service facilities are estimated. Zones may have
17 different impact fees, depending upon the community service facilities available and the
18 extent to which capital costs have been paid in each zone. Facilities upon which fees are
19 based must directly result in additional capital costs, and fees must be expended within
20 the same zone as or otherwise benefit the new construction upon which the fee is
21 imposed. The governing body of the local government must hold a public hearing
22 before it may establish the zones authorized in this section.

23 (b) The amount of each impact fee shall be based upon documented needs and
24 upon specific classifications and rates that shall be uniformly applied. Classifications
25 upon which fees are based must account for the costs and extent of the additional
26 burden placed upon community service facilities by different types and sizes of new
27 construction.

28 (c) Before imposing an impact fee, the local government shall prepare, or have
29 prepared, a report containing each of the following:

30 (1) A description of the anticipated capital cost to the local government of
31 each additional or expanded community service facility necessitated
32 by the new construction.

33 (2) A description of the characteristics of the new construction that
34 necessitate the additional or expanded community service facility, such
35 as population, trip generation, stormwater runoff, and flow
36 characteristics.

37 (3) A plan for providing the community service facilities necessitated by
38 the new construction.

39 **"§ 159J-5. Enactment of ordinances.**

40 A local government may enact ordinances to exercise the authority granted by this
41 Chapter. Before enacting any ordinance to exercise the authority granted by this
42 Chapter, a local government must hold a public hearing on the ordinance. Notice of the
43 public hearing shall be given in accordance with G.S. 153A-323 or G.S. 160A-364.

44 **"§ 159J-6. Funds.**

1 Funds for each community service facility for which an impact fee is collected shall
2 be placed in a separate capital reserve fund under Part 2 of Article 3 of Chapter 159 of
3 the General Statutes. Separate capital reserve funds shall be established for separate
4 zones. All funds shall be expended for the facility for which they were collected.
5 Payment of impact fees does not entitle the payer to any greater right to use or
6 ownership in the facility for which the fee is collected than is shared by the general
7 public.

8 **"§ 159J-7. Credits for improvements.**

9 An ordinance adopted under this Chapter shall provide for credits against required
10 impact fees when a developer installs improvements of a type that generally would be
11 paid for by the local government out of a capital reserve account funded by impact fees.
12 The ordinance may specify the circumstances under which a developer will be allowed
13 to install improvements and receive credits.

14 **"§ 159J-8. Effect on local acts.**

15 This Chapter supplements but does not supplant the authority of a local government
16 to levy an impact fee under a local act.

17 **"§ 159J-9. Challenge to impact fee.**

18 To challenge an impact fee, a developer shall pay the amount charged by the local
19 government, clearly identify that payment is made under protest, and give notice of
20 appeal within 30 days after the date that payment under protest is made. The notice
21 required by this section shall be delivered by personal service or by registered or
22 certified mail, return receipt requested, to:

23 (1) In the case of an impact fee levied by a city:

24 a. The city manager; or

25 b. The mayor, if the city does not have a city manager.

26 (2) In the case of an impact fee levied by a county:

27 a. The county manager; or

28 b. The chair of the county board of commissioners, if the county
29 does not have a county manager.

30 The governing body of the local government shall hold a public hearing to review
31 the appeal within 35 days after receiving the notice of appeal. The decision of the
32 governing body on the appeal is subject to review by the superior court of the county
33 where the new construction is to occur, in the nature of certiorari. A petition for review
34 by the superior court shall be filed with the Clerk of Superior Court within 30 days after
35 the date that the governing body delivers its decision in writing, either by personal
36 service, or by registered or certified mail, return receipt requested, to the appealing
37 party.

38
39 **PART 4. EFFECTIVE DATE**

40 **SECTION 3.** This act is effective when it becomes law.