

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2005**

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**HOUSE DRH50267-LYx-210A (03/21)**

Short Title: Orange/Chatham Impact Tax. (Local)

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Sponsors: Representatives Insko and Hackney (Primary Sponsors).

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO CONVERT THE ORANGE COUNTY AND CHATHAM COUNTY  
IMPACT FEES INTO IMPACT TAXES.

The General Assembly of North Carolina enacts:

**PART I. ORANGE COUNTY IMPACT TAX**

**SECTION 1.1.** Sections 17 through 18.1 of Chapter 460 of the 1987 Session  
Laws, as amended by Chapter 324 of the 1991 Session Laws, are repealed.

**SECTION 1.2.** Definitions. – The following definitions apply to this part:

(1) Commercial building enclosed floor space. – All enclosed floor space  
used for any purpose except:

- a. Dwelling units and accessory structures to dwelling units.
- b. Recreational facilities constructed as part of a residential  
development and used primarily by residents of the  
development.
- c. Buildings owned by the United States, the State of North  
Carolina, any county, or any municipal corporation.
- d. Buildings owned and operated by nonprofit entities for  
noncommercial and nonresidential purposes.
- e. Schools and day care centers.

(2) Dwelling unit. – An enclosure containing sleeping, kitchen, and  
bathroom facilities designed for and used or held ready for use as a  
permanent residence by one family.

(3) Land development. –

a. Land development includes any of the following:

1. Construction of any dwelling unit, other than one  
excluded under sub-subdivision b. of this subdivision,  
for which a building permit was issued or should have

- 1                                    been issued after the effective date of an ordinance
- 2                                    adopted under this part.
- 3                                    2.     Construction of any commercial building enclosed floor
- 4                                    space for which a building permit was issued or should
- 5                                    have been issued after the effective date of an ordinance
- 6                                    adopted under this part.
- 7                                    3.     Conversion of a building that adds one or more new
- 8                                    dwelling units or that creates new commercial building
- 9                                    enclosed floor space.
- 10                                  4.     The initial location of a manufactured home or other
- 11                                  dwelling or commercial structure within Orange County.
- 12                                  b.     For purposes of determining the impact of land development for
- 13                                  this part, land development does not include:
- 14                                    1.     Construction of an addition to a dwelling unit.
- 15                                    2.     The relocation within Orange County of any structure
- 16                                    located within the county on the effective date of an
- 17                                    ordinance adopted pursuant to this part or any structure
- 18                                    with respect to which an impact tax pursuant to this part
- 19                                    has been paid.
- 20                                    3.     Within the county, the reconstruction or replacement of
- 21                                    one dwelling unit by another or the replacement or
- 22                                    reconstruction of commercial building enclosed floor
- 23                                    space that was in existence on the effective date of an
- 24                                    ordinance adopted pursuant to this part or of any such
- 25                                    floor space with respect to which an impact tax adopted
- 26                                    pursuant to this part has been paid.
- 27                                  (4)    Net proceeds. – The gross proceeds of the tax less the cost to the
- 28                                  county of collecting and administering the tax.
- 29                                  (5)    Person. – An individual, a partnership, a corporation, or another legal
- 30                                  entity.
- 31                                  (6)    Person responsible for the impact of land development. – The owner of
- 32                                  any dwelling unit or commercial building enclosed floor space on the
- 33                                  date an occupancy permit is issued for the dwelling unit or commercial
- 34                                  floor space or, if no occupancy permit is issued, the date the dwelling
- 35                                  unit or commercial floor space is occupied.

36                    **SECTION 1.3.** Authorization. – Orange County may adopt an ordinance  
 37 levying a tax on the impact of land development within the county and provide for the  
 38 administration, enforcement, and collection of the tax.

39                    **SECTION 1.4.** Use of Tax Proceeds. – The purpose of the tax authorized by  
 40 this part is to generate funds to partially offset the cost of constructing new school  
 41 capital facilities or replacing, expanding, or improving existing school capital facilities  
 42 necessitated in part by new growth within Orange County. Accordingly, the net  
 43 proceeds generated by the tax authorized by this part shall be deposited by Orange  
 44 County in its capital reserve improvements fund or funds established under Part 2 of

1 Article 3 of Chapter 159 of the General Statutes and may be expended, to the extent  
2 otherwise authorized by law, only for capital improvements projects related to public  
3 schools.

4 **SECTION 1.5.** Liability; Administration. – An ordinance adopted pursuant  
5 to this part shall provide that:

- 6 (1) A person responsible for the impact of land development shall pay an  
7 impact tax for each square foot of dwelling space and commercial  
8 building enclosed floor space for which an occupancy permit is issued  
9 or, if no occupancy permit is issued, for each square foot of dwelling  
10 space in an occupied dwelling and for each square foot of occupied  
11 enclosed floor space in a commercial building.
- 12 (2) The tax shall be due on or before the date an occupancy permit is  
13 initially issued for the dwelling unit or commercial building enclosed  
14 floor space in question or, if no occupancy permit is issued, the date  
15 the dwelling unit or commercial floor space is initially occupied.  
16 However, no tax due shall be considered delinquent until 60 days after  
17 the tax becomes due. Delinquent taxes shall bear interest at the legal  
18 rate.
- 19 (3) Taxes authorized by this part may be collected pursuant to  
20 G.S. 153A-147 or G.S. 160A-207. In addition, taxes authorized by this  
21 part may be recovered in a civil action in the nature of debt including  
22 an award of reasonable attorneys' fees as part of costs.

23 **SECTION 1.6.** Rates. – Orange County shall establish annually at the time it  
24 adopts its annual budget the tax rate to be levied per square foot of dwelling space and  
25 per square foot of commercial building enclosed floor space for the ensuing fiscal year.  
26 Different tax rates may be established for different types of dwelling units and different  
27 types of commercial building enclosed floor space.

28 **SECTION 1.7.** Disclosure. – Whenever the sale of real property located in  
29 Orange County involves new construction, the seller shall prepare and sign, and the  
30 buyer shall receive and sign, a disclosure statement. The disclosure statement shall  
31 either be included in a contract for sale or contained in a separate document executed  
32 prior to the execution of a sales contract. This disclosure statement shall fully and  
33 completely disclose that the owner of the property at the time an occupancy permit is  
34 issued for the new construction or, if no occupancy permit is issued, on the date the new  
35 construction is occupied, may be subject to a tax levied by the county on the impact of  
36 land development. If a seller fails to make this disclosure and the buyer suffers injury  
37 as a result of the seller's failure to disclose, the seller is liable to the buyer to the extent  
38 of the buyer's injury.

39 **SECTION 1.8.** Refunds. – If any provision of this part or an ordinance  
40 adopted under this part is held invalid by a final decision of a court of competent  
41 jurisdiction, then any impact taxes collected under this part shall be refunded with  
42 interest at the rate established in G.S. 105-241.1(i).

43 **SECTION 1.9.** Limitation on Actions. – Any action contesting the validity  
44 of an ordinance adopted under this part must be commenced not later than nine months

1 after the effective date of the ordinance. Any action seeking to recover an impact tax  
2 must be commenced not later than nine months after the impact tax is paid.

3 **PART II. CHATHAM COUNTY IMPACT TAX**

4 **SECTION 2.1.** Sections 4 through 12.1 of Chapter 460 of the 1987 Session  
5 Laws are repealed.

6 **SECTION 2.2.** Definitions. – The following definitions apply in this part:

7 (1) Commercial building enclosed floor space. – All enclosed floor space  
8 used for any purpose except:

- 9 a. Dwelling units and accessory structures to dwelling units.  
10 b. Recreational facilities constructed as part of a residential  
11 development and used primarily by residents of the  
12 development.  
13 c. Buildings owned by the United States, the State of North  
14 Carolina, any county, or any municipal corporation.  
15 d. Buildings owned and operated by nonprofit entities for  
16 noncommercial and nonresidential purposes.  
17 e. Schools or day care centers.

18 (2) Dwelling unit. – An enclosure containing sleeping, kitchen, and  
19 bathroom facilities designed for and used or held ready for use as a  
20 permanent residence by one family.

21 (3) Land development. –

22 a. Land development includes any of the following:

- 23 1. Construction of any dwelling unit, other than one  
24 excluded under sub-subdivision b. of this subdivision,  
25 for which a building permit was issued or should have  
26 been issued after the effective date of an ordinance  
27 adopted under this part.  
28 2. Construction of any commercial building enclosed floor  
29 space for which a building permit was issued or should  
30 have been issued after the effective date of an ordinance  
31 adopted under this part.  
32 3. Conversion of a building that adds one or more new  
33 dwelling units or that creates new commercial building  
34 enclosed floor space.  
35 4. The initial location of a manufactured home or other  
36 dwelling or commercial structure within Chatham  
37 County.

38 b. For purposes of determining the impact of land development for  
39 this part, land development does not include:

- 40 1. Construction of an addition to a dwelling unit.  
41 2. The relocation within Chatham County of any structure  
42 located within the county on the effective date of an  
43 ordinance adopted pursuant to this part or any structure

1 with respect to which an impact tax pursuant to this part  
2 has been paid.

3 3. Within the county, the reconstruction or replacement of  
4 one dwelling unit by another or the replacement or  
5 reconstruction of commercial building enclosed floor  
6 space that was in existence on the effective date of an  
7 ordinance adopted pursuant to this part or of any such  
8 floor space with respect to which an impact tax adopted  
9 pursuant to this part has been paid.

10 (4) Net proceeds. – The gross proceeds of the tax less the cost to the  
11 county of collecting and administering the tax.

12 (5) Person. – An individual, a partnership, a corporation, or another legal  
13 entity.

14 (6) Person responsible for the impact of land development. – The owner of  
15 any dwelling unit or commercial building enclosed floor space on the  
16 date an occupancy permit is issued for the dwelling unit or commercial  
17 floor space or, if no occupancy permit is issued, the date the dwelling  
18 unit or commercial floor space is occupied.

19 **SECTION 2.3.** Authorization. – Chatham County may adopt an ordinance  
20 levying a tax on the impact of land development within the county and provide for the  
21 administration, enforcement, and collection of the tax.

22 **SECTION 2.4.** Use of Tax Proceeds. – The purpose of the tax authorized by  
23 this part is to generate funds to partially offset the cost of constructing new school  
24 capital facilities or replacing, expanding, or improving existing school capital facilities  
25 necessitated in part by new growth within Chatham County. Accordingly, the net  
26 proceeds generated by the tax authorized by this part shall be deposited by Chatham  
27 County in its capital reserve improvements fund or funds established under Part 2 of  
28 Article 3 of Chapter 159 of the General Statutes and may be expended, to the extent  
29 otherwise authorized by law, only for capital improvements projects related to public  
30 schools.

31 **SECTION 2.5.** Liability; Administration. – An ordinance adopted pursuant  
32 to this part shall provide that:

33 (1) A person responsible for the impact of land development shall pay an  
34 impact tax for each square foot of dwelling space and commercial  
35 building enclosed floor space for which an occupancy permit is issued  
36 or, if no occupancy permit is issued, for each square foot of dwelling  
37 space in an occupied dwelling and for each square foot of occupied  
38 enclosed floor space in a commercial building.

39 (2) The tax shall be due on or before the date an occupancy permit is  
40 initially issued for the dwelling unit or commercial building enclosed  
41 floor space in question or, if no occupancy permit is issued, the date  
42 the dwelling unit or commercial floor space is initially occupied.  
43 However, no tax due shall be considered delinquent until 60 days after

1 the tax becomes due. There shall be added to delinquent taxes interest  
2 at the legal rate.

3 (3) Taxes authorized by this part may be collected pursuant to  
4 G.S. 153A-147 or G.S. 160A-207. In addition, taxes authorized by this  
5 part may be recovered in a civil action in the nature of debt including  
6 an award of reasonable attorneys' fees as part of costs.

7 **SECTION 2.6. Rates.** – Chatham County shall establish annually at the time  
8 it adopts its annual budget the tax rate to be levied per square foot of dwelling space and  
9 per square foot of commercial building enclosed floor space for the ensuing fiscal year.  
10 Different tax rates may be established for different types of dwelling units and different  
11 types of commercial building enclosed floor space.

12 **SECTION 2.7. Disclosure.** – Whenever the sale of real property located in  
13 Chatham County involves new construction, the seller shall prepare and sign, and the  
14 buyer shall receive and sign, a disclosure statement. The disclosure statement shall  
15 either be included in a contract for sale or contained in a separate document executed  
16 prior to the execution of a sales contract. This disclosure statement shall fully and  
17 completely disclose that the owner of the property at the time an occupancy permit is  
18 issued for the new construction or, if no occupancy permit is issued, the date the new  
19 construction is occupied, may be subject to a tax levied by the county on the impact of  
20 land development. If a seller fails to make this disclosure and the buyer suffers injury  
21 as a result of the seller's failure to disclose, the seller is liable to the buyer to the extent  
22 of the buyer's injury.

23 **SECTION 2.8. Refunds.** – If any provision of this part or an ordinance  
24 adopted under this part is held invalid by a final decision of a court of competent  
25 jurisdiction, then any impact taxes collected under this part shall be refunded with  
26 interest at the rate established in G.S. 105-241.1(i).

27 **SECTION 2.9. Limitation on Actions.** – Any action contesting the validity  
28 of an ordinance adopted under this part must be commenced not later than nine months  
29 after the effective date of the ordinance. Any action seeking to recover an impact tax  
30 must be commenced not later than nine months after the impact tax is paid.

### 31 **PART III. EFFECTIVE DATE**

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