

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

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**HOUSE DRH30564-SVx-9 (01/10)**

Short Title: New Hanover&Wilmington Occupancy Tax Changes. (Local)

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Sponsors: Representatives McComas, Wright, and Justice (Primary Sponsors).

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Referred to:

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A BILL TO BE ENTITLED

1  
2 AN ACT TO CREATE THE NEW HANOVER CONVENTION CENTER DISTRICT,  
3 TO ESTABLISH THE DISTRIBUTION OF COUNTY OCCUPANCY TAX  
4 PROCEEDS DERIVED FROM ACCOMMODATIONS LOCATED IN THE  
5 DISTRICT AND TO MODIFY THE DISTRIBUTION OF THE REMAINING  
6 OCCUPANCY TAX PROCEEDS, TO CREATE THE NEW HANOVER  
7 COUNTY DISTRICT U, TO AUTHORIZE THE NEW HANOVER COUNTY  
8 DISTRICT U TO LEVY A THREE PERCENT OCCUPANCY TAX, AND TO  
9 MAKE ADMINISTRATIVE CHANGES TO THE WILMINGTON OCCUPANCY  
10 TAX.

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** Part VIII of Chapter 908 of the 1983 Session Laws, as  
13 amended by Chapter 987 of the 1983 Session Laws, Chapters 726 and 971 of the 1985  
14 Session Laws, Chapter 540 of the 1995 Session Laws, S.L. 2002-138, and S.L.  
15 2003-166, reads as rewritten:

"Part VIII. New Hanover Occupancy Tax.

17 "Sec. 31. Levy of Tax. – (a) Two-Percent Tax. – The New Hanover County Board of  
18 Commissioners may levy a room occupancy and tourism development tax of two  
19 percent (2%) of the gross receipts derived from the rental of any ~~accommodations-room,~~  
20 lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar  
21 place within the county that ~~are~~is subject to sales tax imposed by the State under  
22 G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does  
23 not apply to accommodations furnished by nonprofit charitable, educational,  
24 benevolent, or religious ~~organizations~~organizations when furnished in furtherance of  
25 their nonprofit purpose.

26 (b) Additional One-Percent Tax. – In addition to the tax authorized by  
27 subsection (a) of this section, the New Hanover County Board of Commissioners may

1 levy a room occupancy and tourism development tax of one percent (1%) of the gross  
2 receipts derived from the rental of accommodations taxable under that subsection. The  
3 levy, collection, administration, and repeal of the tax authorized by this subsection, and  
4 the use of tax revenue from a tax levied under this subsection, shall be in accordance  
5 with Sections 31 through 35 of this Part. New Hanover County may not levy a tax under  
6 this subsection unless it also levies a tax under subsection (a) of this section.

7 "Sec. 32. Definitions. – The following definitions apply in this Part:

- 8 (1) Beach nourishment. – The placement of sand, from other sand sources,  
9 on a beach or dune by mechanical means and other associated  
10 activities that are in conformity with the North Carolina Coastal  
11 Management Program along the shorelines of the Atlantic Ocean of  
12 North Carolina and connecting inlets for the purpose of widening the  
13 beach to benefit public recreational use and mitigating damage and  
14 erosion from storms to inland property. The term includes  
15 expenditures for any of the following:  
16 a. Costs directly associated with qualifying for projects either  
17 contracted through the U.S. Army Corps of Engineers or  
18 otherwise permitted by all appropriate federal and State  
19 agencies.  
20 b. The nonfederal share of the cost required to construct these  
21 projects.  
22 c. The costs associated with providing enhanced public beach  
23 access.  
24 d. The costs of associated nonhardening activities such as the  
25 planting of vegetation, the building of dunes, and the placement  
26 of sand fences.  
27 (2) Beach towns. – Carolina Beach, Kure Beach, and Wrightsville Beach.  
28 (3) Net proceeds. – Gross proceeds less the cost to the county of  
29 administering and collecting the tax, as determined by the finance  
30 officer, not to exceed three percent (3%) of the first five hundred  
31 thousand dollars (\$500,000) of gross proceeds collected each year and  
32 one percent (1%) of the remaining gross receipts collected each year.  
33 (4) Promote travel and tourism. – To advertise or market an area or  
34 activity, publish and distribute pamphlets and other materials, conduct  
35 market research, or engage in similar promotional activities that attract  
36 tourists or business travelers to the area; the term includes  
37 administrative expenses incurred in engaging in the listed activities.  
38 (5) Tourism-related expenditures. – Expenditures that, in the judgment of  
39 the Authority, are designed to increase the use of lodging facilities,  
40 meeting facilities, and convention facilities in an area by attracting  
41 tourists or business travelers to the area. The term includes  
42 tourism-related capital expenditures and beach nourishment. These  
43 funds shall not be used for activities of projects that are ordinarily or  
44 historically funded through the town's general revenues.

1 "Sec. 33. Administration of Tax. – A tax levied under this ~~aet-Part~~ shall be levied,  
2 administered, collected, and repealed as provided in G.S. 153A-155. The penalties  
3 provided in G.S. 153A-155 apply to a tax levied under this ~~aet-Part~~.

4 "Sec. 34. Establishment of the Cape Fear Coast Convention and Visitors Bureau as a  
5 Tourism Development Authority. – (a) Creation. – As soon as practicable before  
6 February 1, 2003, the board of commissioners shall adopt a resolution creating the Cape  
7 Fear Coast Convention and Visitors Bureau, a tourism development authority, which  
8 shall be a public authority under the Local Government Budget and Fiscal Control Act.  
9 The county shall transfer to the Authority upon its creation all the assets of the county's  
10 convention and visitors bureau.

11 (b) Membership. – The Authority shall be composed of the following 15 voting  
12 members: five ex officio members or their designees and 10 additional members  
13 appointed by the board of commissioners.

14 (1) The ex officio members are listed below. Each ex officio member may  
15 designate to serve in the member's place an individual who serves on  
16 the governing body of the county or municipality that the member  
17 represents.

- 18 a. The chair of the board of county commissioners.
- 19 b. The mayor of the City of Wilmington.
- 20 c. The mayors of the beach towns.

21 (2) The board of county commissioners shall appoint the members listed  
22 below. The resolution creating the Authority must provide for  
23 staggered terms for the appointed members.

- 24 a. The owner or manager of a hotel of 150 rooms or more in the  
25 town of Wrightsville Beach. This individual must have  
26 experience in promoting travel and tourism.
- 27 b. The owner or manager of a hotel in the town of Carolina Beach  
28 and the owner or manager of a hotel in the town of Kure Beach.  
29 These individuals must have experience in promoting travel and  
30 tourism.
- 31 c. The owner or manager of a hotel of 150 rooms or more in the  
32 City of Wilmington. This individual must have experience in  
33 promoting travel and tourism.
- 34 d. The owner or manager of a hotel of fewer than 150 rooms in the  
35 City of Wilmington. This individual must have experience in  
36 promoting travel and tourism.
- 37 e. The owner or manager of a bed and breakfast facility. This  
38 individual must have experience in promoting travel and  
39 tourism.
- 40 f. The owner or manager of a company that manages and rents  
41 more than 100 vacation rental properties. This individual must  
42 have experience in promoting travel and tourism.

- 1 g. A representative of a tourism attraction in the county who is
- 2 actively involved in the promotion of travel and tourism in the
- 3 county.
- 4 h. A representative of the Wilmington Chamber of Commerce
- 5 who is actively involved in promoting travel and tourism in the
- 6 county.
- 7 i. The owner or manager of a restaurant business in the county.

8 (c) Administration. – The board of commissioners shall determine the  
9 compensation, if any, to be paid to members of the Authority. The resolution creating  
10 the Authority must designate one member of the Authority to serve as the initial chair.  
11 The Authority shall meet at the call of the chair and shall adopt rules of procedure to  
12 govern its meetings. During the first quarter of each calendar year beginning in 2004,  
13 the Authority must meet to elect a chair from among its members. The Finance Officer  
14 for New Hanover County shall be the ex officio finance officer of the Authority.

15 (d) Duties. – The Authority shall expend the net proceeds of the taxes distributed  
16 to it for the purposes provided by law. The Authority shall promote travel, tourism, and  
17 conventions in the county, sponsor tourist-related events and activities in the county,  
18 and finance tourist-related capital projects in the county.

19 (e) Reports. – The Authority shall report quarterly and at the close of the fiscal  
20 year on its receipts and expenditures for the preceding quarter and for the year in such  
21 detail as the board may require. It shall file these reports with the board of  
22 commissioners and with the governing body of each municipality in the county.

23 "Sec. 34.1. Establishment of the New Hanover County Convention Center District. –  
24 The area in Wilmington, North Carolina extending from the Isabel S. Holmes Bridge to  
25 the Cape Fear Memorial Bridge with Fourth Street on one side and the Cape Fear River  
26 on the other side shall be known as the New Hanover County Convention Center  
27 District.

28 "Sec. 35. Disposition of Taxes Collected. –

29 (a) Except as otherwise provided in subsection (b) of this section, New Hanover  
30 County shall distribute the net proceeds of the occupancy taxes levied under Section 31  
31 of this Part as provided in this ~~section~~ subsection:

32 (1) One hundred percent (100%) of the net proceeds derived from  
33 accommodations located in the New Hanover Convention Center  
34 District established in Section 34.1 of this Part shall be remitted  
35 quarterly to the convention center account, established in accordance  
36 with S.L. 2002-139, as amended by this act. The proceeds in the  
37 account shall be remitted quarterly to and used by the City of  
38 Wilmington only in accordance with Section 1(d) of S.L. 2002-139, as  
39 amended by this act.

40 (2) Seventy percent (70%) of the remaining net proceeds shall be  
41 deposited in a special fund, the cash balance of which shall be  
42 deposited at interest or invested in accordance with G.S. 159-30. These  
43 funds shall be used only for beach nourishment.

1           (2) Thirty percent (30%) of the remaining net proceeds shall be distributed  
2 on a quarterly basis to the Tourism Development Authority. These  
3 funds shall be used only to promote travel and tourism throughout  
4 New Hanover County. These funds shall not be used to plan, construct,  
5 operate, maintain, or in any way promote a civic center, convention  
6 center, public auditorium, or like facility.

7           (b) If construction has not begun on a public convention center in the New  
8 Hanover County Convention Center District by July 1, 2008, then the New Hanover  
9 County Convention Center District is dissolved, and the City of Wilmington must return  
10 to the county any funds it received under this section that have not been spent or  
11 committed. The county shall use these returned funds and all future tax proceeds  
12 derived from occupancy taxes levied under Section 31 of this Part as follows:

13           (1) ~~Sixty percent (60%)~~ Seventy percent (70%) of the net proceeds shall  
14 be deposited in a special fund, the cash balance of which shall be  
15 deposited at interest or invested in accordance with G.S. 159-30. These  
16 funds shall be used only for beach nourishment.

17           (2) ~~Forty percent (40%)~~ Thirty percent (30%) of the net proceeds shall be  
18 distributed on a quarterly basis to the Tourism Development Authority.  
19 These funds shall be used only to promote travel and tourism  
20 throughout New Hanover County. These funds shall not be used to  
21 plan, construct, operate, ~~maintain, or in any way promote or maintain~~  
22 a civic center, convention center, public auditorium, or like facility."

23           **SECTION 2.** Section 3 of S.L. 2002-138 reads as rewritten:

24           **"SECTION 3.** Section 36.1 of Chapter 908 of the 1983 Session Laws is recodified  
25 as Section ~~32(b)~~31(b) of Chapter 908 of the 1983 Session Laws."

26           **SECTION 3.(a)** New Hanover County District U Created. – New Hanover  
27 County District U is created as a taxing district. Its jurisdiction consists of that part of  
28 New Hanover County that is located outside of incorporated areas within the county.  
29 New Hanover County District U is a body politic and corporate and has the power to  
30 carry out the provisions of this section. The New Hanover County Board of  
31 Commissioners shall serve ex officio as the governing body of the district, and the  
32 officers of the county shall serve as the officers of the governing body of the district. A  
33 simple majority of the governing body constitutes a quorum, and approval by a majority  
34 of those present is sufficient to determine any matter before the governing body, if a  
35 quorum is present.

36           **SECTION 3.(b)** Authorization and Scope. – The governing body of New  
37 Hanover County District U may levy a room occupancy tax of up to three percent (3%)  
38 of the gross receipts derived from the rental of any room, lodging, or accommodation  
39 furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is  
40 subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in  
41 addition to any State or local sales or room occupancy tax. This tax does not apply to  
42 accommodations furnished by charitable, educational, or religious institutions or  
43 nonprofit organizations when furnished in furtherance of their nonprofit purpose.

1           **SECTION 3.(c)** Administration. – A tax levied under this section shall be  
2 levied, administered, collected, and repealed as provided in G.S. 153A-155 as if New  
3 Hanover County District U were a county. The penalties provided in G.S. 153A-155  
4 apply to a tax levied under this section.

5           **SECTION 3.(d)** Distribution and Use of Tax Revenue. – New Hanover  
6 County District U shall deposit one hundred percent (100%) of the net proceeds of the  
7 room occupancy and tourism development tax levied under this section into a special  
8 fund, the cash balance of which shall be deposited at interest or invested in accordance  
9 with G.S. 159-30. These funds shall be used only for beach nourishment. In accordance  
10 with the North Carolina Constitution and the United States Constitution, the tax  
11 proceeds may be used only for the direct benefit of the jurisdiction of New Hanover  
12 District U. None of the proceeds may be used for beach nourishment in areas within  
13 New Hanover County that are outside of the district."

14           **SECTION 3.(e)** G.S. 153A-155(g) reads as rewritten:

15           "(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe,  
16 Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin,  
17 Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New Hanover,  
18 New Hanover County District U, Pasquotank, Pender, Person, Randolph, Richmond,  
19 Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington  
20 Counties, to Watauga County District U, and to the Township of Averasboro in Harnett  
21 County."

22           **SECTION 4.(a)** Section 1(c) of S.L. 2002-139 reads as rewritten:

23           "**SECTION 1.(c)** Definitions. – The following definitions apply in this section:

- 24           (1) ~~Downtown Wilmington.~~ ~~The area consisting of the Central Business~~  
25 ~~District, the National Register Historic District, and the area extending~~  
26 ~~to the Holmes Bridge and the Cape Fear River in the city of~~  
27 ~~Wilmington, North Carolina.~~ New Hanover County Convention Center  
28 District. – The area in Wilmington, North Carolina extending from the  
29 Isabel S. Holmes Bridge to the Cape Fear Memorial Bridge with  
30 Fourth Street on one side and the Cape Fear River on the other side.
- 31           (2) Net proceeds. – Gross proceeds less the cost to the county of  
32 administering and collecting the tax, as determined by the finance  
33 officer, not to exceed three percent (3%) of the first five hundred  
34 thousand dollars (\$500,000) of gross proceeds collected each year and  
35 one percent (1%) of the remaining gross receipts collected each year.
- 36           (3) Promote travel and tourism. – To advertise or market an area or  
37 activity, publish and distribute pamphlets and other materials, conduct  
38 market research, or engage in similar promotional activities that attract  
39 tourists or business travelers to the area; the term includes  
40 administrative expenses incurred in engaging in the listed activities.
- 41           (4) Tourism Development Authority or Authority. – The Authority created  
42 by New Hanover County pursuant to Part VIII of Chapter 908 of the  
43 1983 Session Laws, as amended.

44           **SECTION 4.(b)** Section 1(d) of S.L. 2002-139 reads as rewritten:

1       **"SECTION 1.(d)** Use of Tax Revenue. – If a tax is levied under this section, New  
2 Hanover County shall create a convention center account. The county shall remit the net  
3 proceeds of a tax levied under this section quarterly to the convention center account.  
4 Funds in the account, including interest or investment income on the account, ~~may be~~  
5 ~~used only as provided in this subsection:~~shall be remitted quarterly to the City of  
6 Wilmington. Except as otherwise provided in this section, the City of Wilmington shall  
7 use the funds only for the construction, financing, operation, promotion, and  
8 maintenance of a public convention center.

9       If the City of Wilmington does not provide reasonable evidence to the Tourism  
10 Development Authority by July 1, 2008, that construction has begun on a convention  
11 center in the New Hanover County Convention Center District, then the city must return  
12 to the county any funds it received under this subsection that have not been spent or  
13 committed. If the county has created a Tourism Development Authority pursuant to a  
14 local act of the General Assembly, the county shall remit the funds and future  
15 occupancy tax proceeds to the Tourism Development Authority. The Authority shall use  
16 these funds only to promote travel and tourism.

17       ~~(1) The county shall hold the funds in the convention center account,~~  
18 ~~including interest or investment income, until one or more of the~~  
19 ~~conditions provided in this subsection have been met. When any of the~~  
20 ~~conditions provided in subdivision (2), (3), or (4) of this subsection~~  
21 ~~has been met, the proceeds shall be used as provided in that~~  
22 ~~subdivision.~~

23       ~~(2) If, at the end of three years after the first levy of a tax under this~~  
24 ~~section, the City of Wilmington has not demonstrated to the~~  
25 ~~satisfaction of a Tourism Development Authority created by the~~  
26 ~~county pursuant to a local act of the General Assembly that all~~  
27 ~~financing and development arrangements for a convention center have~~  
28 ~~been completed, the county shall remit all funds in the convention~~  
29 ~~center account to the Tourism Development Authority. Thereafter, all~~  
30 ~~tax proceeds remitted to the convention center account shall be~~  
31 ~~remitted quarterly to the Tourism Development Authority. The~~  
32 ~~Authority shall use these funds only to promote travel and tourism. For~~  
33 ~~the purpose of this subdivision, completion of financing and~~  
34 ~~development arrangements includes, at a minimum, obtaining~~  
35 ~~financing commitments for construction, entering into contracts for~~  
36 ~~construction and management, and securing the necessary land for the~~  
37 ~~project.~~

38       ~~(3) If, within three years after the first levy of a tax under this section, the~~  
39 ~~City of Wilmington demonstrates to the satisfaction of a Tourism~~  
40 ~~Development Authority created by the county pursuant to a local act of~~  
41 ~~the General Assembly that all financing and development~~  
42 ~~arrangements for a convention center have been completed, the county~~  
43 ~~shall remit all funds in the convention center account to the City of~~  
44 ~~Wilmington. Thereafter, except as provided in subdivision (4) of this~~

1 subsection, all tax proceeds remitted to the convention center account  
2 shall be remitted quarterly to the City of Wilmington. The City of  
3 Wilmington may use the funds only for construction, financing,  
4 operation, promotion, and maintenance of the convention center. For  
5 the purpose of this subdivision, completion of financing and  
6 development arrangements includes, at a minimum, obtaining  
7 financing commitments for construction, entering into contracts for  
8 construction and management, and securing the necessary land for the  
9 project.

- 10 (4) If the condition set out in subdivision (3) of this subsection has been  
11 met but within four years after the first levy of a tax under this section,  
12 the City of Wilmington fails to demonstrate to the satisfaction of the  
13 Tourism Development Authority that construction has begun on a  
14 convention center in Downtown Wilmington, then the city must return  
15 to the county any funds it received under this subsection that have not  
16 been spent or committed. The county shall use these funds and any tax  
17 proceeds remitted thereafter to the convention center account only to  
18 promote travel and tourism in the city. If the county has created a  
19 Tourism Development Authority pursuant to a local act of the General  
20 Assembly, the county must remit the funds and future tax proceeds to  
21 the Tourism Development Authority. The Authority shall use these  
22 funds only to promote travel and tourism in the city."

23 **SECTION 5.** Reporting Requirement. – The New Hanover Tourism  
24 Development Authority and the City of Wilmington shall report to the General  
25 Assembly by July 1, 2007, and annually thereafter, on the collection and distribution of  
26 occupancy tax proceeds, including how the amended distribution formula authorized by  
27 this act is working, on the progress of the construction of a public convention center,  
28 and on any other issues related to the use of occupancy tax proceeds in New Hanover  
29 County and the City of Wilmington as the General Assembly deems appropriate.

30 **SECTION 6.** This act becomes effective July 1, 2006.