

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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HOUSE BILL 2690

Short Title: Durham County Meals Tax. (Local)

Sponsors: Representatives Michaux, Hall, Luebke, Wilkins (Primary Sponsors); and Hughes.

Referred to: Finance.

May 28, 2008

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE COUNTY OF DURHAM TO LEVY A ONE
2 PERCENT SALES TAX ON RESTAURANT MEALS IN THE COUNTY OF
3 DURHAM IF APPROVED BY THE VOTERS.
4

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Authorization. – If the majority of those voting in a
7 referendum held pursuant to this act vote for the levy of the tax, the Board of
8 Commissioners for the county may, by resolution, levy a local prepared food tax up to
9 one percent (1%) of the sales price in addition to any other State and local sales and use
10 taxes levied pursuant to law. The tax applies to the sales price of prepared food and
11 drink sold within the taxing unit, including all municipalities located therein, at retail,
12 for consumption on or off the premises, by a retailer within the county that is subject to
13 sales tax under G.S. 105-164.4(a)(1). A prepared food tax must become effective on the
14 date specified in the resolution levying the tax. That date must be the first day of a
15 calendar month, however, and may not be earlier than the first day of the second month
16 after the date the resolution is adopted.

17 **SECTION 2.** Vote. – The governing body of a taxing unit may direct the
18 county board of elections to conduct an advisory referendum on the question of whether
19 to levy a local prepared food tax in the taxing unit as provided in this act. The election
20 shall be held on November 4, 2008, and shall be held in accordance with the procedures
21 of G.S. 163-287.

22 **SECTION 3.** Ballot Question. – The form of the question to be presented on
23 a ballot for a special election concerning the levy of the tax authorized by this act shall
24 be:

"[] FOR [] AGAINST

25 One percent (1%) local prepared food tax, in addition to the current local sales and
26 use taxes."
27

1 **SECTION 4.** Definitions. – The definitions in G.S. 105-164.3 apply to this
2 act. In addition, the following definitions apply in this act:

- 3 (1) County. – Defined in G.S. 153A-1.
- 4 (2) Person. – Defined in G.S. 105-228.90.
- 5 (3) Prepared food and drink. – The same meaning as "prepared food"
6 under G.S. 105-164.3.
- 7 (4) Taxing unit. – A county.

8 **SECTION 5.** Exemptions. – The prepared food tax levied under this act
9 does not apply to the following sales of prepared food and drink:

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

25 **SECTION 6.** Collection. – Every retailer subject to a tax levied under this
26 act must, on and after the effective date of the levy of the tax, collect the tax. This tax
27 must be collected as part of the charge for furnishing prepared food and drink. The tax
28 must be stated and charged separately from the sales records and must be paid by the
29 purchaser to the retailer as trustee for and on account of the taxing unit. The tax must be
30 added to the sales price and passed on to the purchaser instead of being borne by the
31 retailer. The taxing unit must design, print, and furnish to all appropriate businesses and
32 persons in the taxing unit the necessary forms for filing returns and instructions to
33 ensure the full collection of the tax.

34 **SECTION 7.** Administration. – The taxing unit must administer a tax levied
35 under this act. A tax levied under this act is due and payable to the local finance officer
36 in monthly installments on or before the 15th day of the month following the month in
37 which the tax accrues. Every retailer liable for the tax must, on or before the 15th day of
38 each month, prepare and file a return on a form prescribed by the taxing unit. The return
39 must show the total gross receipts derived in the preceding month from sales to which
40 the tax applies.

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

43 **SECTION 8.** Refunds. – The taxing unit must refund to a nonprofit or
44 governmental entity the prepared food tax paid by the entity on eligible purchases of

1 prepared food and drink. A nonprofit or governmental entity's purchase of prepared
2 food and drink is eligible for a refund under this section if the entity is entitled to a
3 refund under G.S. 105-164.14(b) or (c) of local sales and use tax paid on the purchase or
4 if the sale is exempt under G.S. 105-164.13. The time limitations, application
5 requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) apply
6 to refunds to nonprofit entities; the time, limitations, application requirements, penalties,
7 and restrictions provided in G.S. 105-164.14(c) and (d) apply to refunds to
8 governmental entities. When an entity applies for a refund of the prepared food tax paid
9 by it on purchases, it must attach to its application a copy of the application submitted to
10 the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax
11 on the same purchases or a written statement that the purchases were exempt from the
12 tax. An applicant for a refund under this section must provide any information required
13 by the taxing unit to substantiate the claim.

14 **SECTION 9.** Penalties. – A person that fails or refuses to file the return or
15 pay a tax levied under this act is subject to the civil and criminal penalties set by
16 G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The
17 governing body of the taxing unit has the same authority to waive the penalties for a tax
18 levied under this act that the Secretary of Revenue has to waive the penalties for State
19 sales and use taxes.

20 **SECTION 10.** Repeal or Reduction. – A prepared food tax levied under this
21 act may be repealed or reduced by a resolution adopted by the governing body of the
22 taxing unit. Repeal or reduction of a prepared food tax must become effective on the
23 first day of a month and may not become effective until the end of the fiscal year in
24 which the resolution was adopted. Repeal or reduction of a prepared food tax does not
25 affect a liability for a tax that was attached before the effective date of the repeal or
26 reduction, nor does it affect a right to a refund of a tax that accrued before the effective
27 date of the repeal or reduction.

28 **SECTION 11.** Taxing Proceeds. – If the referendum passes, the county may
29 deduct from the gross proceeds of the taxes collected under this act an amount not to
30 exceed three percent (3%) of the gross proceeds to pay for the direct cost of
31 administering and collecting the taxes. The remaining proceeds shall be distributed as
32 follows:

- 33 (1) Eighty percent (80%) for civic and cultural amenities.
- 34 (2) Ten percent (10%) for marketing.
- 35 (3) Five percent (5%) for workforce training.
- 36 (4) Five percent (5%) for community cleanup.

37 **SECTION 12.** Scope; Conditions. – This act applies to the County of
38 Durham only. An interlocal agreement adopting the percentages set out in Section 11 of
39 this act shall be adopted by both the City of Durham and the County of Durham prior to
40 the referendum on the November 4, 2008, ballot and shall, without modification, be in
41 effect at all times.

42 **SECTION 13.** This act is effective when it becomes law.