

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 336  
Finance Committee Substitute Adopted 3/15/07

Short Title: Occupancy Tax Modifications for Swain County.

(Local)

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Sponsors:

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Referred to:

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February 27, 2007

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE SWAIN COUNTY TO LEVY AN ADDITIONAL ROOM  
2 OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER  
3 ADMINISTRATIVE CHANGES.  
4

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter 923 of the 1985 Session Laws reads as rewritten:

7 "Section 1. Occupancy Tax. (a) Authorization and Scope. ~~— The Swain County~~  
8 ~~Board of Commissioners may by resolution, after not less than 10 days' public notice~~  
9 ~~and after a public hearing held pursuant thereto, levy a room occupancy tax of up to~~  
10 ~~three percent (3%) of the gross receipts derived from the rental of any room, lodging, or~~  
11 ~~similar accommodation furnished by a hotel, motel, inn, tourist camp, or similar place~~  
12 ~~within the county that is subject to sales tax imposed by the State under G.S. 405-~~  
13 ~~164.4(3), 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax~~  
14 ~~does not apply to accommodations furnished by nonprofit charitable, educational, or~~  
15 ~~religious organizations, organizations when furnished in furtherance of their nonprofit~~  
16 ~~purpose.~~

17 (a1) Authorization of Additional Tax. – In addition to the tax authorized by  
18 subsection (a) of this section, the Swain County Board of Commissioners may levy an  
19 additional room occupancy tax of up to one percent (1%) of the gross receipts derived  
20 from the rental of accommodations taxable under subsection (a) of this section. The  
21 levy, collection, administration, and repeal of the tax authorized by this subsection shall  
22 be in accordance with the provisions of this section. Swain County may not levy a tax  
23 under this subsection unless it also levies the maximum tax authorized under subsection  
24 (a) of this section.

25 ~~(b) Collection. Every operator of a business subject to the tax levied under this~~  
26 ~~act shall, on and after the effective date of the levy of the tax, collect the tax. This tax~~  
27 ~~shall be collected as part of the charge for furnishing a taxable accommodation. The tax~~  
28 ~~shall be stated and charged separately from the sales records, and shall be paid by the~~  
29 ~~purchaser to the operator of the business as trustee for and on account of the county.~~

1 The tax shall be added to the sales price and shall be passed on to the purchaser instead  
2 of being borne by the operator of the business. The county shall design, print, and  
3 furnish to all appropriate businesses and persons in the county the necessary forms for  
4 filing returns and instructions to ensure the full collection of the tax.

5 (c) Administration. ~~— The county shall administer a tax levied under this act. A~~  
6 ~~tax levied under this act is due and payable to the county finance officer in monthly~~  
7 ~~installments on or before the 15th day of the month following the month in which the~~  
8 ~~tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or~~  
9 ~~before the 15th day of each month, prepare and render a return on a form prescribed by~~  
10 ~~the county. The return shall state the total gross receipts derived in the preceding month~~  
11 ~~from rentals and sales upon which the tax is levied.~~

12 A return filed with the county finance officer under this act is not a public record as  
13 defined by G.S. 132-1 and may not be disclosed except as required by law. A tax levied  
14 under this section shall be levied, administered, collected, and repealed as provided in  
15 G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under  
16 this section.

17 (d) Penalties. ~~A person, firm, corporation, or association who fails or refuses to~~  
18 ~~file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each~~  
19 ~~day's omission. In case of failure or refusal to file the return or pay the tax for a period~~  
20 ~~of 30 days after the time required for filing the return or for paying the tax, there shall~~  
21 ~~be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional~~  
22 ~~month or fraction thereof until the tax is paid.~~

23 ~~Any person who willfully attempts in any manner to evade a tax imposed under this~~  
24 ~~act or who willfully fails to pay the tax or make and file a return shall, in addition to all~~  
25 ~~other penalties provided by law, be guilty of a misdemeanor and shall be punishable by~~  
26 ~~a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six~~  
27 ~~months, or both. The board of commissioners may, for good cause shown, compromise~~  
28 ~~or forgive the penalties imposed by this subsection.~~

29 (e) Distribution and Use of Tax Revenue. ~~— Swain County shall, on a quarterly~~  
30 ~~basis, remit the net proceeds of the occupancy tax to the Swain Tourism Development~~  
31 ~~Authority. The Authority may spend funds remitted to it under this subsection only to~~  
32 ~~further the development of travel, tourism, and conventions in the county through state,~~  
33 ~~national, and international advertising and promotion. No more than twenty five~~  
34 ~~percent (25%) of the funds remitted to the Authority may be used for salaries, wages,~~  
35 ~~and administrative expenses. shall use at least two-thirds of the funds remitted to it under~~  
36 ~~this subsection to promote travel and tourism in Swain County and shall use the~~  
37 ~~remainder for tourism-related expenditures.~~

38 The following definitions apply in this subsection:

- 39 (1) As used in this subsection, "net proceeds" means gross  
40 Net proceeds. —  
41 Gross proceeds less the cost to the county of administering and  
42 collecting the tax, as determined by the finance officer-officer, not to  
43 exceed three percent (3%) of the first five hundred thousand dollars  
44 (\$500,000) of gross proceeds collected each year and one percent (1%)  
of the remaining gross proceeds collected each year.

1           (2) Promote travel and tourism. – To advertise or market an area or  
2           activity, publish and distribute pamphlets and other materials, conduct  
3           market research, or engage in similar promotional activities that attract  
4           tourists or business travelers to the area; the term includes  
5           administrative expenses incurred in engaging in the listed activities.

6           (3) Tourism-related expenditures. – Expenditures that, in the judgment of  
7           Swain County Tourism Development Authority, are designed to  
8           increase the use of lodging facilities, meeting facilities, or convention  
9           facilities in the county or to attract tourists or business travelers to the  
10          county. The term includes tourism-related capital expenditures.

11          ~~(f) Effective Date of Levy. A tax levied under this act shall become effective on~~  
12          ~~the date specified in the resolution levying the tax. That date must be the first day of a~~  
13          ~~calendar month, however, and may not be earlier than the first day of the second month~~  
14          ~~after the date the resolution is adopted.~~

15          ~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted~~  
16          ~~by the Swain County Board of Commissioners. Repeal of a tax levied under this act~~  
17          ~~shall become effective on the first day of a month and may not become effective until~~  
18          ~~the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax~~  
19          ~~levied under this act does not affect a liability for a tax that attached before the effective~~  
20          ~~date of the repeal, nor does it affect a right to a refund of a tax that accrued before the~~  
21          ~~effective date of the repeal.~~

22          ~~"Sec. 2. Tourism Development Authority. – (a) Appointment and Membership. –~~  
23          ~~When the board of commissioners adopts a resolution levying a room occupancy tax~~  
24          ~~under this act, it shall also adopt a resolution creating a county Tourism Development~~  
25          ~~Authority, which shall be a public authority under the Local Government Budget and~~  
26          ~~Fiscal Control Act and shall be composed of the following five members:~~

27                 ~~(1) Two tourist oriented business members appointed by the Swain~~  
28                 ~~County Chamber of Commerce; and~~

29                 ~~(2) Three tourist oriented business members appointed by the Swain~~  
30                 ~~County Board of Commissioners.~~

31          ~~The Chamber shall designate one of its initial appointees to serve a two year term~~  
32          ~~and one to serve a three year term. The board of commissioners shall designate one of~~  
33          ~~its initial appointees to serve a one year term, one to serve a two year term, and one to~~  
34          ~~serve a three year term. Thereafter, all members shall serve three-year terms. Vacancies~~  
35          ~~shall be filled by the appointing authority of the member who created the vacancy.~~  
36          ~~Members appointed to fill vacancies shall serve the remainder of the unexpired term for~~  
37          ~~which they are appointed to fill.~~

38          ~~The members of the Authority shall elect from its membership a chairman. Act. The~~  
39          ~~resolution shall provide for the membership of the Authority, including the members'~~  
40          ~~terms of office, and for the filling of vacancies on the Authority. At least one-third of~~  
41          ~~the members shall be individuals who are affiliated with businesses that collect the tax~~  
42          ~~in the county, and at least one-half of the members shall be individuals who are~~  
43          ~~currently active in the promotion of travel and tourism in the county. The board of~~

1 commissioners shall designate one member of the Authority as chair and shall  
2 determine the compensation, if any, to be paid to members of the Authority.

3 The Authority shall meet at the call of the ~~chairman~~ chair and shall adopt rules of  
4 procedure to govern its meetings. The finance officer of Swain County shall ~~serve~~ be  
5 the ex officio as the finance officer of the Authority.

6 (b) Duties. ~~—~~ The Authority shall promote travel, tourism, and conventions in  
7 Swain County. expend the net proceeds of the tax levied under this act for the purposes  
8 provided in Section 1 of this act. The Authority shall promote travel, tourism, and  
9 conventions in Swain County, sponsor tourist-related events and activities in the county,  
10 and finance tourist-related capital projects in the county.

11 (c) ~~Report.~~ Reports. ~~—~~ The Authority shall report quarterly and at the close of the  
12 fiscal year to the board of county commissioners on its receipts and disbursements  
13 expenditures for the preceding quarter and for the year in such detail as the board may  
14 require.

15 "Sec. 3. This act is effective upon ratification."

16 **SECTION 2.** This act is effective when it becomes law. The Board of  
17 Commissioners has 30 days from the date the act becomes effective to ensure that the  
18 membership of the Authority is in compliance with this act.