

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 222

Finance Committee Substitute Adopted 5/20/99

House Committee Substitute Favorable 6/28/99

Short Title: Government Accept Electronic Payment.

(Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR STATE AND LOCAL GOVERNMENTS TO ACCEPT CREDIT CARDS, CHARGE CARDS, DEBIT CARDS, AND ELECTRONIC FUNDS TRANSFERS FOR PAYMENT OF GOVERNMENT FEES, COSTS, AND DEBTS, AND TO ALLOW LOCAL GOVERNMENTS TO ACCEPT CREDIT CARDS, CHARGE CARDS, DEBIT CARDS, AND ELECTRONIC FUNDS TRANSFERS FOR PAYMENT OF PROPERTY TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-86.20 is amended by adding a new subdivision to read:

"(2a) Electronic payment. – Payment by charge card, credit card, debit card, or by electronic funds transfer as defined in this subsection."

Section 2. G.S. 147-86.10 reads as rewritten:

"§ 147-86.10. Statement of policy.

It is the policy of the State of North Carolina that all agencies, institutions, departments, bureaus, boards, ~~commissions~~–commissions, and officers of the State, whether or not subject to the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, shall devise techniques and procedures for the receipt, deposit, and disbursement of moneys coming into their control and custody which are designed to maximize

1 interest-bearing investment of cash, and to minimize idle and nonproductive cash  
2 balances. This policy shall apply to the General Court of Justice as defined in Article IV  
3 of the North Carolina Constitution, the public school administrative units, and the  
4 community colleges with respect to the receipt, deposit, and disbursement of moneys  
5 required by law to be deposited with the State Treasurer and with respect to moneys  
6 made available to them for expenditure by warrants drawn on the State Treasurer. This  
7 policy shall include the acceptance of electronic payments in accordance with G.S. 147-  
8 86.22 to the maximum extent possible consistent with sound business practices."

9 Section 3. G.S. 147-86.22(b) reads as rewritten:

10 "(b) ~~Credit Card Electronic Payment.~~ – Notwithstanding the provisions of G.S. 147-  
11 86.20 and G.S. 147-86.21, this subsection applies to debts owed a community college, a  
12 local school administrative unit, an area mental health, developmental disabilities, and  
13 substance abuse authority, and the Administrative Office of the Courts, and to debts  
14 payable to or through the office of a clerk of superior court or a magistrate, as well as to  
15 debts owed to other State agencies as defined in G.S. 147-86.20. The

16 The State Controller may shall establish policies that allow accounts receivable to be  
17 payable under certain conditions, with the concurrence of the State Treasurer, by credit card.  
18 conditions by electronic payment. These policies shall be established with the  
19 concurrence of the State Treasurer. In addition, any policies that apply to debts payable  
20 to or through the office of a clerk of superior court or a magistrate shall be established  
21 with the concurrence of the Administrative Officer of the Courts. The Administrative  
22 Officer of the Courts may also establish policies otherwise authorized by law that apply  
23 to these debts as long as those policies are not inconsistent with the Controller's policies.

24 A condition of payment by ~~credit card~~ electronic payment is receipt by the appropriate  
25 State agency of the full amount of the account receivable owed to the State agency. A  
26 debtor who pays by ~~credit card~~ electronic payment ~~shall may~~ be required to ~~include an~~  
27 ~~amount equal to any fee charged by a depository financial institution for processing the credit~~  
28 ~~card payment~~ pay any fee or charge associated with the use of electronic payment. Fees  
29 associated with processing electronic payments may be paid out of the General Fund and  
30 Highway Fund if the payment of the fee by the State is economically beneficial to the  
31 State and the payment of the fee by the State has been approved by the State Controller  
32 and State Treasurer.

33 The State Controller and State Treasurer shall consult with the Joint Legislative  
34 Commission on Governmental Operations before establishing policies that allow  
35 accounts receivable to be payable by electronic payment and before authorizing fees  
36 associated with electronic payment to be paid out of the General Fund and Highway  
37 Fund. A State agency must also consult with the Joint Legislative Commission on  
38 Governmental Operations before implementing any program to accept payment under the  
39 policies established pursuant to this subsection.

40 A payment of an account receivable that is made by ~~credit card~~ electronic payment and  
41 is not honored by the issuer of the ~~credit card~~ or the financial institution offering  
42 electronic funds transfer does not relieve the debtor of the obligation to pay the account  
43 receivable."

1 Section 4. G.S. 147-86.11 reads as rewritten:

2 **"§ 147-86.11. Cash management for the State.**

3 (a) Uniform Plan. – The State Controller, with the advice and assistance of the  
4 State Treasurer, the State Budget Officer, and the State Auditor, shall develop, implement  
5 and amend as necessary a uniform statewide plan to carry out the cash management  
6 policy for all State agencies. The State Auditor shall report annually to the Advisory  
7 Budget Commission and the General Assembly on the implementation of the plan as  
8 shown in the audits completed during the prior fiscal year. The State Treasurer shall  
9 recommend periodically to the General Assembly any implementing legislation necessary  
10 or desirable in the furtherance of the State policy. When used in this section, 'State  
11 agency' means any agency, institution, bureau, board, commission or officer of the State;  
12 however, except as provided in G.S. 147-86.12, 147-86.13, ~~and~~ 147-86.14, and 147-  
13 86.22, this Article ~~shall~~ does not apply to the agencies, institutions, bureaus, boards,  
14 commissions and officers of the General Court of Justice as defined in Article IV of the  
15 North Carolina Constitution or to the local school administrative units and community  
16 colleges and their officers and employees.

17 (b) Duties of Auditor. – The State Auditor pursuant to ~~his~~ authority under G.S.  
18 147-64.6 shall monitor agency compliance with this Article, and make any comments,  
19 suggestions, and recommendations ~~he~~ the Auditor deems advisable to the agencies.

20 (c) Treasurer's Report. – The State Treasurer shall publish a quarterly report on all  
21 funds in the control or custody of the State Treasurer showing cash balances on hand,  
22 investments of cash balances and a comparative analysis of earnings and investment  
23 performances.

24 (d) Earnings on Trust Funds. – The statewide cash management plan shall provide  
25 that any net earnings on invested funds, whose beneficial owner is not the State or a local  
26 governmental unit, shall be paid to the beneficial owners of the funds. 'Net earnings' are  
27 the amounts remaining after allowance for the cost of administration, management, and  
28 operation of the invested funds.

29 (e) Elements of Plan. – For moneys received or to be received, the statewide cash  
30 management plan shall provide at a minimum that:

31 (1) Except as otherwise provided by law, moneys received by  
32 employees of State agencies in the normal course of their  
33 employment shall be deposited as follows:

34 a. Moneys received in trust for specific beneficiaries for which the  
35 employee-custodian has a duty to invest shall be deposited with  
36 the State Treasurer under the provisions of G.S. 147-69.3.

37 b. All other moneys received shall be deposited with the State  
38 Treasurer pursuant to G.S. 147-77 and G.S. 147-69.1.

39 (2) Moneys received shall be deposited daily in the form and amounts  
40 received, except as otherwise provided by ~~statute~~; statute.

41 (3) Moneys due to a State agency by another governmental agency or by  
42 private persons shall be promptly billed, collected and ~~deposited~~;  
43 deposited.

- 1           (4)       Unpaid billings due to a State agency shall be turned over to the  
2           Attorney General for collection no more than 90 days after the due  
3           date of the billing, except that a State agency need not turn over to  
4           the Attorney General unpaid billings of less than five hundred  
5           dollars (\$500.00), or (for institutions where applicable) amounts  
6           owed by all patients which are less than the federally established  
7           deductible applicable to Part A of the Medicare program, and instead  
8           may handle these unpaid bills pursuant to agency debt collection  
9           ~~procedures; and procedures.~~
- 10          (5)       Moneys received in the form of warrants drawn on the State  
11          Treasurer shall be deposited by the State agency directly with the  
12          State Treasurer and not through the banking system, unless  
13          otherwise approved by the State Treasurer.
- 14          (6)       State agencies shall accept payment by electronic payment in  
15          accordance with G.S. 147-86.22 to the maximum extent possible  
16          consistent with sound business practices.
- 17          (f)       Disbursement Requirements. – For the disbursement of money, the statewide  
18          cash management plan shall provide at a minimum that:
- 19               (1)       Moneys deposited with the State Treasurer remain on deposit with  
20               the State Treasurer until final disbursement to the ultimate ~~payee;~~  
21               payee.
- 22               (2)       The order in which appropriations and other available resources are  
23               expended shall be subject to the provisions of G.S. 143-27 regardless  
24               of whether the State agency disbursing or expending the moneys is  
25               subject to the Executive Budget ~~Act;~~ Act.
- 26               (3)       Federal and other reimbursements of expenditures paid from State  
27               funds shall be paid immediately to the source of the State ~~funds;~~  
28               funds.
- 29               (4)       Billings to the State for goods received or services rendered shall be  
30               paid neither early nor late but on the discount date or the due date to  
31               the extent ~~practicable; and practicable.~~
- 32               (5)       Disbursement cycles for each agency shall be established to the  
33               extent practicable so that the overall efficiency of the warrant  
34               disbursement system is maximized while maintaining prompt  
35               payment of bills due.
- 36          (g)       Interest Maximized. – The interest earnings of the General Fund and Highway  
37          Fund shall be maximized to the extent practicable. To this end:
- 38               (1)       Interest earnings shall not be allocated to an account by the State  
39               Treasurer unless all of the moneys in the account are expressly  
40               eligible by law for receiving interest ~~allocations;~~ allocations.
- 41               (2)       State officers and employees who received moneys in trust or for  
42               investment shall be solely responsible for properly segregating such  
43               funds for investment in the manner prescribed by law. The officer or

1 employee charged with the responsibility for these moneys shall be  
2 under a duty to segregate the funds in a timely manner. No  
3 investment income shall be allocated by the State Treasurer to trust  
4 or other investment accounts until properly segregated into  
5 investment accounts as provided by law and the rules of the State  
6 Treasurer.

7 (h) New Technologies. – The statewide cash management plan shall consider new  
8 technologies and procedures whenever the technologies and procedures are economically  
9 beneficial to the State as a whole. Where the new technologies and procedures may be  
10 implemented without additional legislation, the technologies and procedures shall be  
11 implemented in the plan.

12 (i) Penalty. – A willful or continued failure of an employee paid from State funds  
13 or employed by a State agency to follow the statewide cash management plan is sufficient  
14 cause for immediate dismissal of the employee."

15 Section 5. Article 3 of Chapter 159 of the General Statutes is amended by  
16 adding a new section to read:

17 "**§ 159-32.1. Electronic payment.**

18 A unit of local government or public authority may, in lieu of payment by cash or  
19 check, accept payment by electronic payment as defined in G.S. 146-86.20 for any tax,  
20 assessment, rate, fee, charge, rent, interest, penalty, or other receivable owed to it. A unit  
21 of local government or public authority may pay any negotiated discount, processing fee,  
22 transaction fee, or other charge imposed by a credit card, charge card, or debit card  
23 company, or by a third-party merchant bank, as a condition of contracting for the unit's or  
24 the authority's acceptance of electronic payment. A unit or authority may impose the fee  
25 or charge as a surcharge on the amount paid by the person using electronic payment."

26 Section 6. G.S. 105-357(b) reads as rewritten:

27 "(b) Acceptance of Checks and Credit Cards.~~Checks and Electronic Payment.~~ – The  
28 tax collector may accept ~~checks, credit cards, or both~~ checks and electronic payments, as  
29 defined in G.S. 147-86.20, in payment of taxes.~~taxes, as authorized by G.S. 159-32.1.~~  
30 Acceptance of a check or ~~credit card~~ electronic payment is at the tax collector's own risk.  
31 A tax collector who accepts ~~credit cards in payment~~ electronic payment of taxes may add a  
32 fee to each ~~credit card~~ electronic payment transaction to offset the service charge the  
33 taxing unit pays for ~~credit card~~ electronic payment service. A tax collector who accepts a  
34 ~~credit card~~ electronic payment or check in payment of taxes may issue the tax receipt  
35 immediately or withhold the receipt until the check has been collected or the ~~credit card~~  
36 electronic payment invoice has been honored by the issuer.

37 If a tax collector accepts a check or a ~~credit card~~ an electronic payment and issues a tax  
38 receipt and the check is returned unpaid (without negligence on the part of the tax  
39 collector in presenting the check for payment) or the ~~credit card~~ electronic payment  
40 invoice is not honored by the issuer, the taxes for which the check or ~~credit card~~ electronic  
41 payment was given shall be deemed unpaid; the tax collector shall immediately correct  
42 the copy of the tax receipt and other appropriate records to show the fact of nonpayment,  
43 and shall give written notice by certified or registered mail to the person to whom the tax

1 receipt was issued to return it to the tax collector. After correcting the records to show  
2 the fact of nonpayment, the tax collector shall proceed to collect the taxes by the use of  
3 any remedies allowed for the collection of taxes or by bringing a civil action on the check  
4 or ~~credit card~~ electronic payment.

5 A financial institution with which a taxing unit has contracted for receipt of payment  
6 of taxes may accept a check in payment of taxes. If the check is honored, the financial  
7 institution shall so notify the tax collector, who shall, upon request of the taxpayer, issue  
8 a receipt for payment of the taxes. If the check is returned unpaid, the financial  
9 institution shall so notify the tax collector, who shall proceed to collect the taxes by use  
10 of any remedy allowed for collection of taxes or by bringing a civil action on the check.

11 (1) Effect on Tax Lien. – If the tax collector accepts a check or ~~credit~~  
12 ~~card~~ electronic payment in payment of taxes on real property and  
13 issues the receipt, and the check is later returned unpaid or the ~~credit~~  
14 ~~card~~ electronic payment invoice is not honored by the issuer, the  
15 taxing unit's lien for taxes on the real property shall be inferior to the  
16 rights of purchasers for value and of persons acquiring liens of  
17 record for value if the purchasers or lienholders acquire their rights  
18 in good faith and without actual knowledge that the check has not  
19 been collected or the ~~credit card~~ electronic payment invoice has not  
20 been honored, after examination of the copy of the tax receipt in the  
21 tax collector's office during the time that record showed the taxes as  
22 paid or after examination of the official receipt issued to the taxpayer  
23 prior to the date on which the tax collector notified the taxpayer to  
24 return the receipt.

25 (2) Penalty. – In addition to interest for nonpayment of taxes provided  
26 by G.S. 105-360 and in addition to any criminal penalties provided  
27 by law for the giving of worthless checks, the penalty for giving in  
28 payment of taxes a check that is returned because of insufficient  
29 funds or nonexistence of an account of the drawer is ten percent  
30 (10%) of the amount of the check, subject to a minimum of one  
31 dollar (\$1.00) and a maximum of one thousand dollars (\$1,000).  
32 This penalty does not apply if the tax collector finds that, when the  
33 check was presented for payment, the drawer of the check had  
34 sufficient funds in an account at a financial institution in this State to  
35 pay the check and, by inadvertance, the drawer of the check failed to  
36 draw the check on the account that had sufficient funds. This  
37 penalty shall be added to and collected in the same manner as the  
38 taxes for which the check was given."

39 Section 7. G.S. 132-1.2 reads as rewritten:

40 "**§ 132-1.2. Confidential information.**

41 Nothing in this ~~Article~~ Chapter shall be construed to require or authorize a public  
42 agency or its subdivision to disclose any information ~~which~~ that:

43 (1) Meets all of the following conditions:

- 1           ~~(1)~~a. Constitutes a "trade secret" as defined in ~~G.S. 66-152(3);~~ G.S. 66-152(3).  
2           ~~(2)~~b. Is the property of a private "person" as defined in ~~G.S. 66-152(2);~~ G.S.  
3           66-152(2).  
4           ~~(3)~~c. Is disclosed or furnished to the public agency in connection with the  
5           owner's performance of a public contract or in connection with a bid,  
6           application, proposal, industrial development project, or in compliance  
7           with laws, regulations, rules, or ordinances of the United States, the  
8           State, or political subdivisions of the ~~State; and State.~~  
9           ~~(4)~~d. Is designated or indicated as "confidential" or as a "trade secret" at the  
10          time of its initial disclosure to the public agency.  
11          (2)       Reveals an account number for electronic payment, as defined in  
12          G.S. 147-86.20, and obtained pursuant to Articles 6A or 6B of  
13          Chapter 147 of the General Statutes or G.S. 159-32.1."  
14          Section 8. This act is effective when it becomes law.