

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1529

Short Title: Implement Modernization Commission Recommend. (Public)

Sponsors: Senator Clodfelter.

Referred to: Finance.

March 28, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT THE LOCAL GOVERNMENT RECOMMENDATIONS
3 OF THE STATE AND LOCAL FISCAL MODERNIZATION STUDY
4 COMMISSION AND TO MAKE OTHER CHANGES THAT PROMOTE FISCAL
5 MODERNIZATION.

6 The General Assembly of North Carolina enacts:

7 SECTION 1.(a) Chapter 105 of the General Statutes is amended by adding a
8 new Subchapter to read:

9 **"SUBCHAPTER X. LOCAL OPTION COUNTY TAXES.**

10 "Article 60.

11 "General Provisions.

12 **"§ 105-600. Definitions.**

13 The definitions in G.S. 105-164.3 apply to this Subchapter. In addition, the
14 following definitions apply in this Subchapter:

15 (1) City. – Defined in G.S. 153A-1.

16 (2) Person. – Defined in G.S. 105-228.90.

17 (3) Prepared food and drink. – The term includes the following:

18 a. Prepared food, as defined in G.S. 105-164.3.

19 b. An alcoholic beverage, as defined in G.S. 18B-101, that meets
20 at least one of the conditions of prepared food under
21 G.S. 105-164.3.

22 (4) Taxing unit. – A city or a county.

23 **"§ 105-601. Levying taxes under this Subchapter.**

24 (a) After Vote. – If a majority of those voting in a special election held pursuant
25 to this Subchapter vote for the levy of the taxes in a taxing unit, the governing body of
26 the taxing unit may, by resolution, levy taxes authorized by this Subchapter.

27 (b) Without Vote. – If the question of whether to levy taxes under this
28 Subchapter has not been defeated in a special election held in the taxing unit within two
29 years, the governing board of the taxing unit may, by resolution, levy taxes authorized

1 in this Subchapter. Before adopting a resolution under this subsection, the governing
2 body must give at least 10 days' public notice of its intent to adopt the resolution and
3 must hold a public hearing on the issue of adopting the resolution.

4 **"§ 105-602. Election on levying taxes under this Subchapter.**

5 (a) Resolution. – The governing body of a taxing unit may direct the county
6 board of elections to conduct a special election on the question of whether to levy taxes
7 authorized under this Subchapter in the taxing unit as provided in this Subchapter. The
8 election must be held on a date jointly agreed upon by the two boards and must be held
9 in accordance with the procedures of G.S. 163-287.

10 (b) Ballot Question. – The question to be presented on a ballot for a special
11 election concerning the levy of the taxes authorized by this Subchapter must be in the
12 following form:

13 FOR AGAINST
14 percent (X%) local [specify tax type] taxes, in addition
15 to all current State and local taxes.'

16 **"§ 105-603. Effective date.**

17 A tax levied under this Subchapter must become effective on the date specified in
18 the resolution levying the tax. That date must be the first day of a calendar month,
19 however, and may not be earlier than the first day of the second month after the date the
20 resolution is adopted.

21 **"§ 105-604. Repeal or refund.**

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

30 "Article 61.

31 "Local Government Meals Tax.

32 **"§ 105-610. Short title.**

33 This Article is the Local Government Meals Tax Act.

34 **"§ 105-611. Levy.**

35 As provided in Article 60 of this Subchapter, a taxing unit may levy a meals tax on
36 sales of prepared food and drink within the unit. The tax applies to the sales price of
37 prepared food and drink sold within the taxing unit at retail, for consumption on or off
38 the premises, by a retailer within the county that is subject to sales tax under
39 G.S. 105-164.4(a)(1).

40 **"§ 105-612. Exemptions.**

41 A meals tax levied under this Article does not apply to the following sales of
42 prepared food and drink:

- 1 (1) Prepared food and drink served to residents in boardinghouses and
2 sold together on a periodic basis with rental of a sleeping room or
3 lodging.
- 4 (2) Retail sales exempt from taxation under G.S. 105-164.13.
- 5 (3) Retail sales through or by means of vending machines.
- 6 (4) Prepared food and drink served by a retailer subject to the local
7 occupancy tax if the charge for the prepared food and drink is included
8 in a single, nonitemized sales price together with the charge for rental
9 of a room, lodging, or accommodation furnished by the retailer.
- 10 (5) Prepared food and drink furnished without charge by an employer to
11 an employee.

12 **"§ 105-613. Collection.**

13 Every retailer subject to a tax levied under this Article must, on and after the
14 effective date of the levy of the tax, collect the tax. This tax must be collected as part of
15 the charge for furnishing prepared food and drink. The tax must be stated and charged
16 separately from the sales records and must be paid by the purchaser to the retailer as
17 trustee for and on account of the taxing unit. The tax must be added to the sales price
18 and passed on to the purchaser instead of being borne by the retailer. The taxing unit
19 must design, print, and furnish to all appropriate businesses and persons in the taxing
20 unit the necessary forms for filing returns and instructions to ensure the full collection
21 of the tax.

22 **"§ 105-614. Administration.**

23 The taxing unit must administer a tax levied under this Article. A tax levied under
24 this Article is due and payable to the local finance officer in monthly installments on or
25 before the 15th day of the month following the month in which the tax accrues. Every
26 retailer liable for the tax must, on or before the 15th day of each month, prepare and file
27 a return on a form prescribed by the taxing unit. The return must show the total gross
28 receipts derived in the preceding month from sales to which the tax applies.

29 A return filed with the local finance officer under this Article is not a public record
30 and may not be disclosed except as provided in G.S. 153A-148.1 or G.S. 160A-208.1.

31 **"§ 105-615. Refunds.**

32 The taxing unit must refund to a nonprofit or governmental entity the meals tax paid
33 by the entity on eligible purchases of prepared food and drink. A nonprofit or
34 governmental entity's purchase of prepared food and drink is eligible for a refund under
35 this section if the entity is entitled to a refund under G.S. 105-164.14(b) or (c) of local
36 sales and use tax paid on the purchase or if the sale is exempt under G.S. 105-164.13.
37 The time limitations, application requirements, penalties, and restrictions provided in
38 G.S. 105-164.14(b) and (d) apply to refunds to nonprofit entities; the time, limitations,
39 application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and
40 (d) apply to refunds to governmental entities. When an entity applies for a refund of the
41 meals tax paid by it on purchases, it must attach to its application a copy of the
42 application submitted to the Department of Revenue under G.S. 105-164.14 for a refund
43 of the sales and use tax on the same purchases or a written statement that the purchases

1 were exempt from the tax. An applicant for a refund under this section must provide any
2 information required by the taxing unit to substantiate the claim.

3 **"§ 105-616. Penalties.**

4 A person that fails or refuses to file the return or pay a tax levied under this Article is
5 subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a
6 return for State sales and use taxes. The governing body of the taxing unit has the same
7 authority to waive the penalties for a tax levied under this Article that the Secretary of
8 Revenue has to waive the penalties for State sales and use taxes.

9 **"§ 105-617. Limitations.**

10 A county and a city within the county may not both levy a tax under this Article. A
11 county that levies a tax under this Article must share the proceeds of the tax levied
12 under this Article with the municipalities within the county. The proceeds shall be
13 distributed between the county and the municipalities in the county as provided in
14 G.S. 105-472(b)(1).

15 **"§ 105-618. Effect on local acts.**

16 If a taxing unit levies a meals tax under this Article, that taxing unit may not also
17 levy a meals tax under a local act. This section does not repeal any local act authorizing
18 a taxing unit to levy a meals tax. However, a taxing unit's levy of a meals tax under this
19 Article automatically removes the taxing unit's authority to levy a meals tax under a
20 local act. Repeal of a taxing unit's meals tax levied under this Article does not revive the
21 taxing unit's authority to levy a meals tax under a local act.

22 "Article 62.

23 "Local Government Occupancy Tax.

24 **"§ 105-620. Short title.**

25 This Article is the Local Government Occupancy Tax Act.

26 **"§ 105-621. Effect of local acts.**

27 (a) Limitations. – This Article supplements but does not supplant the authority of
28 a county or a city to levy an occupancy tax pursuant to a local act. If a local act
29 authorizes a county to levy an occupancy tax, the maximum rate the county could
30 otherwise levy under this Article is reduced by the maximum rate the county is
31 authorized to levy under all local acts, and the maximum rate any city in the county
32 could otherwise levy under this Article may not exceed a total of six percent (6%) when
33 added to the maximum rate the county is authorized to levy under all local acts. If a
34 local act authorizes a city to levy an occupancy tax, the maximum rate the city could
35 otherwise levy under this Article is reduced by the maximum rate the city is authorized
36 to levy under all local acts, and the maximum rate the county in which the city is located
37 could otherwise levy under this Article may not exceed a total of six percent (6%) when
38 added to the maximum rate the city is authorized to levy under all local acts.

39 (b) Examples of Limitations. – The following examples illustrate the limitations
40 provided in subsection (a) of this section:

- 41 (1) If a local act authorizes a city to levy an occupancy tax of up to one
42 percent (1%), the maximum rate the city can levy under this Article is
43 two percent (2%), and the maximum rate the county can levy under

1 this Article is five percent (5%), whether or not the city levies the tax
2 authorized by local act.

3 (2) If a local act authorizes a county to levy an occupancy tax of up to six
4 percent (6%), neither the county nor any city in the county may levy
5 an occupancy tax under this Article, whether or not the county levies
6 the tax authorized by local act.

7 **"§ 105-622. Levy.**

8 (a) Levy. – As provided in Article 60 of this Subchapter, the governing body of
9 the taxing unit may, by resolution, levy a local occupancy tax of up to the maximum
10 rate provided in this Article.

11 (b) Maximum Rate. – Subject to the limitations provided in G.S. 105-621, the
12 maximum rate of tax that a county may levy under this Article is a total of six percent
13 (6%) when added to the rate of any occupancy tax levied by a city within the county.
14 Subject to the limitations provided in G.S. 105-622, the maximum rate of tax that a city
15 may levy under this Article is three percent (3%).

16 (c) Scope. – The tax applies to the gross receipts derived from the rental of any
17 room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or
18 similar place within the taxing unit that is subject to sales tax imposed by the State
19 under G.S. 105-164.4(a)(3). The tax is in addition to any State or local sales tax.

20 **"§ 105-623. Administration.**

21 A tax levied under this Article shall be levied, administered, collected, and repealed
22 as provided in G.S. 153A-155 in the case of a county tax and in G.S. 160A-215 in the
23 case of a city tax. The penalties provided in G.S. 153A-155 and G.S. 160A-215 apply to
24 a tax levied under this Article."

25 **SECTION 1.(b)** Article 8E of Chapter 105 of the General Statutes is
26 amended by adding a new section to read:

27 **"§ 105-228.30A. Levy of local tax.**

28 (a) Levy. – Subject to the provisions of Subchapter X of this Chapter, the board
29 of commissioners of a county may levy a local excise tax on each instrument conveying
30 an interest in property that is subject to tax under G.S. 105-228.30. The tax rate is fifty
31 cents (50¢) on each five hundred dollars (\$500.00) or fractional part thereof of the
32 consideration or value of the interest conveyed. The transferor must pay the tax to the
33 register of deeds of the county in which the real estate is located before recording the
34 instrument of conveyance. If the instrument transfers a parcel of real estate lying in two
35 or more counties, however, the tax must be paid to the register of deeds of the county in
36 which the greater part of the real estate with respect to value lies.

37 (b) Effect on Local Acts. – If a county levies a land transfer tax under this
38 Article, that county may not also levy a land transfer tax under a local act. This section
39 does not repeal any local act authorizing a county to levy a land transfer tax. However, a
40 county's levy of a land transfer tax under this Article automatically removes the county's
41 authority to levy a land transfer tax under a local act. Repeal of a county's land transfer
42 tax levied under this Article does not revive the county's authority to levy a land transfer
43 tax under a local act. A tax may not be levied under this section in any county that

1 imposes an impact fee either as a separate fee or as part of an adequate public facilities
2 ordinance.

3 (c) Distribution. – A county that levies a tax under this section must share the
4 proceeds of the tax levied under this section with the municipalities within the county.
5 The proceeds shall be distributed between the county and the municipalities in the
6 county as provided in G.S. 105-472(b)(1).

7 (d) Use. – The proceeds of a tax levied under this section may be used for capital
8 improvement projects only."

9 **SECTION 2.** Article 44 of Chapter 105 of the General Statutes, and any tax
10 levied under that Article, is repealed.

11 **SECTION 3.** G.S. 105-269.14(b) reads as rewritten:

12 "(b) Distribution. – The Secretary must distribute a portion of the net use tax
13 proceeds collected under this section to counties and cities. The portion to be distributed
14 to all counties and cities is the total net use tax proceeds collected under this section
15 multiplied by a fraction. The numerator of the fraction is the local use tax proceeds
16 collected under this section. The denominator of the fraction is the total use tax
17 proceeds collected under this section. The Secretary must distribute this portion to the
18 counties and cities in proportion to their total distributions under Articles 39, 40, 42, 43,
19 and ~~44~~ 46 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most
20 recent period for which data are available. The provisions of G.S. 105-472, 105-486,
21 ~~and 105-501~~ 105-501, 105-510, and 105-531 do not apply to tax proceeds distributed
22 under this section."

23 **SECTION 4.** G.S. 105-164.4(a) reads as rewritten:

24 "(a) A privilege tax is imposed on a retailer at the following percentage rates of
25 the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is
26 four ~~and one-half percent (4%).~~ (4.5%).

27"

28 **SECTION 5.** G.S. 108A-54 reads as rewritten:

29 **"§ 108A-54. Authorization of Medical Assistance Program.**

30 The Department ~~is authorized and empowered to~~ may establish a Medical Assistance
31 Program from ~~federal, State and county~~ federal and State appropriations and to adopt
32 rules and regulations under which payments are to be made in accordance with the
33 provisions of this Part. ~~The nonfederal share may be divided between the State and the~~
34 ~~counties, in a manner consistent with the provisions of the federal Social Security Act,~~
35 ~~except that the share required from the counties may not exceed the share required from~~
36 ~~the state. If a portion of the nonfederal share is required from the counties, the boards of~~
37 ~~county commissioners of the several counties shall levy, impose and collect the taxes~~
38 ~~required for the special purpose of medical assistance as provided in this Part, in an~~
39 ~~amount sufficient to cover each county's share of such assistance."~~

40 **SECTION 6.** G.S. 105-113.5 reads as rewritten:

41 **"§ 105-113.5. Tax on cigarettes.**

42 A tax is levied on the sale or possession for sale in this State, by a distributor, of all
43 cigarettes at the rate of ~~one-three~~ and three-fourths cents ~~(1.75¢)~~ (3.75¢) per individual
44 cigarette."

1 **SECTION 7.(a)** G.S. 20-97 reads as rewritten:

2 "(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not
3 more than ~~five dollars (\$5.00)~~twenty dollars (\$20.00) per year upon any vehicle resident
4 in the city or town. The proceeds of the tax may be used for any lawful purpose."

5 **SECTION 7.(b)** This section does not affect the validity of any local act that
6 authorizes a city or town to levy the tax authorized under G.S. 20-97 at a rate higher
7 than twenty dollars (\$20.00).

8 **SECTION 8.** Section 1 of this act is effective when it becomes law;
9 however, a tax levied under Article 61 or 62 of Chapter 105 of the General Statutes or
10 under G.S. 105-228.30A, as enacted by Section 1 of this act, may not become effective
11 before July 1, 2007. Section 3 of this act is effective for taxable years beginning on or
12 after January 1, 2008. The remainder of this act becomes effective July 1, 2007.