

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2015

SESSION LAW 2016-23

SENATE BILL 575

1 AN ACT TO MAKE LEGISLATIVE CHANGES TO FACILITATE THE WORK OF THE  
2 BOUNDARY COMMISSION IN CONFIRMING AND REESTABLISHING THE  
3 ORIGINAL BOUNDARY EXISTING BETWEEN THE STATES OF NORTH CAROLINA  
4 AND SOUTH CAROLINA.  
5

6 The General Assembly of North Carolina enacts:  
7

8 **PART I. GENERAL PROVISIONS**

9 **SECTION 1.(a)** Findings. – The General Assembly finds that:

- 10 (1) North Carolina and South Carolina were created as separate British colonies.  
11 (2) Surveys to determine the boundary between North Carolina and South Carolina  
12 began in 1735 and concluded in 1815.  
13 (3) Resurveys of three sections of the boundary between North Carolina and South  
14 Carolina were performed in 1813, 1905, and 1928.  
15 (4) The boundary between North Carolina and South Carolina has not changed;  
16 however, over the course of time from the original survey of the boundary,  
17 some of the markers denoting the boundary from the original surveys have been  
18 lost or destroyed by the elements.  
19 (5) The boundary commission authorized pursuant to Chapter 141 of the General  
20 Statutes has worked with commissioners appointed by South Carolina to  
21 reestablish the boundary between North Carolina and South Carolina.

22 **SECTION 1.(b)** Intent. – It is the intent of the General Assembly to address the  
23 effects on persons or land with a situs recognized, as a result of a boundary certification, to be in  
24 this State and to avoid disputes with such persons or owners of such land. This act does not apply  
25 to persons whose property, rights, and businesses are not affected by boundary certification. For  
26 purposes of this act, "boundary certification" means the certification by the General Assembly of  
27 the boundary between North Carolina and South Carolina, as provided for in subsection (c) of this  
28 section.

29 **SECTION 1.(c)** Certification. – For purposes other than property tax, the General  
30 Assembly hereby certifies that, as of January 1, 2017, the boundary between North Carolina and  
31 South Carolina is the boundary that was established by the original survey and resurveys that were  
32 adopted through legislative and executive actions, and the reestablished boundary has been  
33 approved by the boundary commissions of North Carolina and South Carolina and proclaimed as  
34 the boundary by the Governor, pursuant to G.S. 141-5. For property tax purposes, the General  
35 Assembly hereby certifies that, as of January 1 of the year following the year this act becomes  
36 effective or the year an executive order has been issued by the Governor proclaiming the boundary  
37 between North Carolina and South Carolina, whichever is earlier, the boundary between North  
38 Carolina and South Carolina is the boundary that was established by the original survey and  
39 resurveys that were adopted through legislative and executive actions, and the reestablished  
40 boundary has been approved by the boundary commissions of North Carolina and South Carolina  
41 and proclaimed as the boundary by the Governor, pursuant to G.S. 141-5.  
42

43 **PART II. TAX LIABILITY**

44 **SECTION 2.(a)** Taxes. – The following provisions apply to taxes affected by  
45 boundary certification:

- 46 (1) Neither the State nor a subdivision of the State may assess a tax on a person for  
47 activities occurring prior to the date of certification where the basis of the  
48 assessment is the certification.



- 1 (2) The State and its subdivisions may assess a tax for activities occurring on or  
2 after the date of certification subject to the following conditions:  
3 a. For taxes imposed for a taxable period, the tax may not be imposed for a  
4 period beginning prior to the date of certification.  
5 b. For sales and use taxes for an item that is provided and billed on a  
6 monthly or other periodic basis, the tax may not be assessed for periods  
7 beginning prior to the date of certification.  
8 c. For a person subject to taxes levied under Article 2A of Chapter 105 of  
9 the General Statutes who, on the date of the certification, has on hand  
10 any tobacco products, the person must file a complete inventory of the  
11 tobacco products within 20 days after date of certification and must pay  
12 an additional tax to the Secretary of Revenue when filing the inventory.  
13 The amount of the tax due is the amount due based on the current tax  
14 rate less any tax paid on the inventory to another state.  
15 d. For installments and carryforwards of tax benefits allowed by this State  
16 at the time of boundary certification for activities with a situs in South  
17 Carolina, a person may claim remaining installments and carryforwards  
18 against State tax liability.  
19 e. For land that is classified under G.S. 105-277.3 at the time of boundary  
20 certification and that fails to meet the size requirements of  
21 G.S. 105-277.3 solely because of boundary certification, (i) no deferred  
22 taxes are due as a result of boundary certification, (ii) the deferred taxes  
23 remain a lien on the land located in this State, and (iii) the deferred taxes  
24 for the land in this State are otherwise payable in accordance with  
25 G.S. 105-277.3. The tax benefit provided in this sub-subdivision is  
26 forfeited if any portion of the land located in this State is sold.  
27 f. For land receiving a property tax benefit other than classification under  
28 G.S. 105-277.3 at the time of boundary certification that fails to meet  
29 the requirements for the property tax benefit solely because of boundary  
30 certification, the land is not entitled to receive the property tax benefit  
31 after the time of boundary certification unless it meets the statutory  
32 requirements, but the lien on the land for the deferred taxes is  
33 extinguished as if it has been paid in full.  
34 (3) A person may not seek a refund for activities occurring prior to the date of  
35 certification where the basis of the refund is the certification.

36 **SECTION 2.(b)** An establishment to which permits may be issued pursuant to  
37 G.S. 18B-1006(n1), as enacted by this act, is designated a special class of property under Section  
38 2(2) of Article V of the North Carolina Constitution, and the motor fuel sold by that establishment  
39 is taxable in accordance with this section. Notwithstanding G.S. 105-449.80, the motor fuel excise  
40 tax rate for an establishment to which permits may be issued pursuant to G.S. 18B-1006(n1), as  
41 enacted by this act, is sixteen cents (16¢) per gallon. The Revenue Laws Study Committee shall  
42 annually compare the motor fuel excise tax rate imposed by this section with the rate levied by the  
43 State of South Carolina on motor fuels and may recommend a change in the rate imposed by this  
44 section to an amount no greater than the rate then in effect for the State of South Carolina. An  
45 establishment designated as a special class of property by this section may obtain monthly refunds  
46 on the difference between the motor fuel excise tax imposed under G.S. 105-449.80 and the motor  
47 fuel excise tax imposed by this section. The Department shall calculate for each calendar year the  
48 difference between the motor fuel excise tax that would have been imposed under G.S. 105-449.80  
49 on the motor fuel sold by an establishment classified by this section in the absence of this  
50 classification and the motor fuel excise tax that was imposed on the motor fuel sold by the  
51 establishment due to the classification. The difference in taxes, together with any interest,  
52 penalties, or costs that may accrue thereon, are a lien on the real property underlying the  
53 establishment as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in  
54 the records of the Department as deferred taxes. The deferred taxes for the preceding three  
55 calendar years are due and payable on the day this subsection becomes ineffective due to the  
56 occurrence of a disqualifying event; provided, however, the amount collected for deferred taxes  
57 pursuant to this subsection does not exceed the tax value of the property. A disqualifying event  
58 occurs when the title to the real property underlying the establishment is transferred to a new

1 owner. A lien for deferred taxes is extinguished when the amount required by this subsection is  
2 paid.

3 **SECTION 2.(c)** For property tax purposes, this Part is effective on the date of  
4 certification applicable to property tax purposes provided in Section 1(c) of this act. For all other  
5 purposes, this Part is effective for taxable periods beginning on or after January 1, 2017.  
6

### 7 **PART III. INSTRUMENTS OF TITLE TO REAL PROPERTY**

8 **SECTION 3.(a)** The North Carolina Geodetic Survey shall record the final survey of  
9 the confirmed boundary in the office of the register of deeds in every county in this State where  
10 real property has been affected by the certification of the boundary. The applicable uniform fees  
11 provided in G.S. 161-10 shall apply to the recordation of the final survey. The register of deeds  
12 shall register and index the surveys in accordance with the provisions of Article 2 of Chapter 161  
13 of the General Statutes.

14 **SECTION 3.(b)** For parcels of real property affected by the certification of the  
15 boundary, situated in whole or in part within the boundaries of this State, the North Carolina  
16 Geodetic Survey shall record a Notice of Affected Parcel in the office of the register of deeds in  
17 the county or counties where each affected parcel is situated. The register of deeds shall register  
18 and index the Notice in accordance with the provisions of Article 2 of Chapter 161 of the General  
19 Statutes. Notwithstanding any other provision of law to the contrary, the register of deeds shall not  
20 collect any fees or taxes for the Notice recorded pursuant to this subsection. The Notice shall  
21 contain at least all of the following information:

- 22 (1) Reference to this act.
- 23 (2) The recording reference for the final survey of the confirmed boundary  
24 recorded pursuant to subsection (a) of this section.
- 25 (3) The names of the record owners of the parcel.
- 26 (4) The property address of the parcel.
- 27 (5) A tax parcel identification number or other applicable identifier used by a  
28 county tax office, if available.
- 29 (6) A brief description of the parcel, if available.
- 30 (7) A source deed reference for the parcel, if available.

31 **SECTION 3.(c)** Title to real property previously treated as being subject to the  
32 jurisdiction of the State of South Carolina but that is recognized as being within the boundaries of  
33 this State as a result of the certification of the boundary is not affected by the certification of the  
34 boundary or the recognition of the real property as being within the boundaries of this State. All  
35 conveyances and instruments of title, of any sort, made prior to the certification of the boundary  
36 shall be recognized and given full faith and credit in this State according to the law, jurisdiction,  
37 and terms in effect at the time of the conveyance in the jurisdiction the property was previously  
38 treated as being subject to. For the purposes of this subsection, "instruments of title" means any  
39 instrument that affects title or constitutes the chain of title to real property, including, but not  
40 limited to, all deeds, wills, estate documents evidencing transfer of title, plats, surveys, easements,  
41 rights-of-way, outstanding mortgages and deeds of trust, judicial orders or decrees, and documents  
42 evidencing intestate succession.

43 **SECTION 3.(d)** Liens recorded prior to the date of boundary certification with the  
44 register of deeds or docketed with the clerk of superior court in the county in this State where the  
45 affected parcel is situated shall attach, as a class, to the affected parcel as of the effective date and  
46 time of the boundary certification. This class of liens shall be assigned priority as of the date of  
47 boundary certification but shall retain the same priority among themselves as if this subsection did  
48 not apply.

49 **SECTION 3.(e)** The Commissioner of Insurance shall not take any of the following  
50 actions with respect to a real estate title insurance company that previously operated only in South  
51 Carolina and issued a policy of title insurance in compliance under South Carolina law for a parcel  
52 of real estate now determined to be located wholly or partially in North Carolina:

- 53 (1) Require a certificate of authority to do business as a real estate title insurance  
54 company under Article 26 of Chapter 58 of the General Statutes.
- 55 (2) Take enforcement action against any title insurance company for failure to  
56 comply with the requirements of Article 26, 27, or 28 of Chapter 58 of the  
57 General Statutes applicable to real estate title insurance companies in North  
58 Carolina or any other statutory or regulatory requirements applicable to all  
59 insurance companies in North Carolina.

1 Nothing in this section is intended to prevent the Commissioner of Insurance from  
2 entering into a memorandum of agreement with the South Carolina Department of Insurance with  
3 respect to enforcement of South Carolina law against real estate title insurance companies subject  
4 to this section.  
5

#### 6 **PART IV. FORECLOSURE OF DEEDS OF TRUST AND MORTGAGES**

7 **SECTION 4.(a)** Foreclosure actions initiated on real property encumbered by a  
8 security instrument recorded in South Carolina wherein the real property is situated, in whole or in  
9 part, within the certified North Carolina boundaries shall be governed by the terms of the security  
10 instrument sought to be enforced for that portion of real property recognized as being in a different  
11 state. If the security instrument contains a power of sale clause, the party seeking to enforce the  
12 terms of the security instrument may initiate a foreclosure action in the county where the real  
13 property is situated pursuant to Chapter 45 of the General Statutes. A party seeking to enforce the  
14 terms of the security instrument may also resort to judicial foreclosure, pursuant to Article 29A of  
15 Chapter 1 of the General Statutes, in accordance with the terms within the security instrument.  
16 Judgments or orders of foreclosure entered by courts of this State are binding and effective only  
17 with respect to the portion of real property situated within this State. Prior to initiating an action to  
18 enforce a security instrument, the security instrument or a certified copy shall be recorded in the  
19 office of the register of deeds for the county where the subject property is situated. The provisions  
20 of G.S. 45-10(a) shall apply with regard to the appointment or substitution of a trustee for any  
21 mortgage or deed of trust foreclosed pursuant to this section.

22 **SECTION 4.(b)** Notwithstanding any other provision of law to the contrary, for  
23 mortgages foreclosed pursuant to subsection (a) of this section, a mortgagee or its successors or  
24 assigns shall be entitled to bid at a foreclosure sale conducted pursuant to a judgment or order of  
25 foreclosure entered by the courts of this State.  
26

#### 27 **PART V. PUBLIC SCHOOL STUDENT ENROLLMENT**

28 **SECTION 5.(a)** Notwithstanding any other provision of law, a student who (i) was  
29 eligible to enroll in a North Carolina local school administrative unit in accordance with  
30 G.S. 115C-366 prior to the date of the certification and (ii) loses the eligibility to enroll in a public  
31 school, including a charter school, as a result of certification may attend a North Carolina public  
32 school located within the local school administrative unit or attend a North Carolina charter  
33 school, without the payment of tuition, until that student:

- 34 (1) Reaches the age of 21.
- 35 (2) Obtains a high school diploma.
- 36 (3) No longer meets the requirements of G.S. 115C-366 that were the basis for the  
37 student's eligibility for enrollment prior to the date of certification.
- 38 (4) Loses eligibility pursuant to subsection (b) of this section.

39 **SECTION 5.(b)** A student who attends a North Carolina public school or charter  
40 school under subsection (a) of this section and the student's parent, legal guardian, or custodian  
41 shall be subject to the laws and rules governing North Carolina public schools and charter schools  
42 in accordance with Chapter 115C of the General Statutes, including meeting the requirements of  
43 the compulsory attendance law under Part 1 of Article 26 of Chapter 115C of the General Statutes.

44 Notwithstanding the enforcement provisions of G.S. 115C-378(f), 115C-380,  
45 115C-381, and 115C-382, a parent, guardian, or custodian of a student enrolled in a North  
46 Carolina public school or charter school under this section who is determined by the principal of  
47 the student's public school or the charter school to be in violation of the compulsory attendance  
48 laws shall no longer be eligible to enroll the student in a North Carolina public school or charter  
49 school pursuant to subsection (a) of this section in a subsequent semester of the school year. In  
50 addition, the local school administrative unit or charter school in which the student is enrolled  
51 shall notify, based on the student's place of residence in South Carolina, the juvenile court or such  
52 other court in the county that has jurisdiction of juveniles and, if applicable, the attendance  
53 supervisor for that county.

54 **SECTION 5.(c)** The State Board of Education shall provide that a student enrolled in  
55 a North Carolina public school or charter school in accordance with subsection (a) of this section  
56 be included in calculations for average daily membership, reporting for the Uniform Education  
57 Reporting System, and eligibility for State and federal funds.

1           **SECTION 5.(d)** Except as otherwise provided by this section or G.S. 115C-366, a  
2 student who is a legal resident of South Carolina shall not be entitled to enroll in a North Carolina  
3 public school.  
4

#### 5 **PART VI. DRIVER EDUCATION ELIGIBILITY/BEGINNER LICENSE**

6           **SECTION 6.(a)** Notwithstanding State Board of Education policy, GCS-R-004, or  
7 any other provision of law, if a student enrolled in a North Carolina public school or charter  
8 school under subsection (a) of Section 5 of this act obtains a beginner's permit in South Carolina,  
9 the student shall be eligible to participate in behind-the-wheel instruction as part of a driver  
10 education course offered by the local school administrative unit in which the student is enrolled.

11           **SECTION 6.(b)** Notwithstanding G.S. 20-11(b)(1), a student who (i) as a result of the  
12 boundary certification becomes a legal resident of North Carolina on the date of the certification  
13 and (ii) is enrolled in a South Carolina school district in which his or her residence was located  
14 prior to certification or in the South Carolina statewide public charter school district may meet the  
15 requirement in G.S. 20-11(b)(1) for obtaining a limited learner's permit if the student passes a  
16 course of driver education offered by the South Carolina high school in which the student is  
17 enrolled.

18           **SECTION 6.(c)** The Department of Transportation, Division of Motor Vehicles, in  
19 collaboration with the State Board of Education, shall develop a procedure for any North Carolina  
20 resident who is a student enrolled in a South Carolina school pursuant to the conditions described  
21 in subsection (b) of this section to satisfy the driver eligibility certificate requirements of  
22 G.S. 20-11 to obtain and continue to hold a limited or full provisional license under this section.  
23

#### 24 **PART VII. ELIGIBILITY FOR IN-STATE TUITION**

25           **SECTION 7.(a)** Notwithstanding any other provision of law, independent persons and  
26 their dependents formerly domiciled in North Carolina counties who are domiciled in South  
27 Carolina counties as a result of the North Carolina-South Carolina boundary certification may be  
28 considered eligible for in-State tuition rates for a period of up to 10 years from the effective date  
29 of the boundary change. To be eligible for in-State tuition rates, such persons must have been  
30 domiciled and reside on property in North Carolina in accordance with G.S. 116-143.1  
31 immediately prior to the effective date of North Carolina legislation approving the North  
32 Carolina-South Carolina boundary certification and must maintain residence and domicile on that  
33 same property within South Carolina.

34           **SECTION 7.(b)** Notwithstanding any other provision of law, independent persons and  
35 their dependents previously domiciled on property in South Carolina which is located in North  
36 Carolina as a result of the North Carolina-South Carolina boundary certification may, for a period  
37 of two years from the effective date of the boundary certification, be eligible for in-State rates  
38 without the requirement of residency and domicile for 12 months in this State provided such  
39 independent persons have evidenced the intent to establish domicile in North Carolina in  
40 accordance with G.S. 116-143.1. To be eligible under this provision, such persons must reside on  
41 the same property that was in South Carolina immediately prior to the effective date of North  
42 Carolina legislation approving the certified North Carolina-South Carolina boundary. To maintain  
43 eligibility for in-State tuition rates longer than the two years permitted under this paragraph, the  
44 independent persons and their dependents must satisfy the requirements of G.S. 116-143.1.

45           **SECTION 7.(c)** The provisions established under subsections (a) and (b) of this  
46 section are not transferable to persons other than those independent persons and their dependents  
47 falling within the scope of those provisions.

48           **SECTION 7.(d)** Should the domicile and residence of independent persons and their  
49 dependents change from the property affected by the boundary certification, maintenance of  
50 eligibility for in-State rates will be determined as provided in G.S. 116-143.1.  
51

#### 52 **PART VIII. ABC PERMITS**

53           **SECTION 8.** G.S. 18B-1006 is amended by adding a new subsection to read:  
54           "(n1) State Boundary Certification. – The Commission may issue permits listed in  
55 G.S. 18B-1001(2) and (4), without approval at an election, to qualified establishments defined in  
56 G.S. 18B-1000(7) that meet all of the following requirements:

- 57           (1) The establishment is located in a county that borders on another state.  
58           (2) The location of the establishment was reclassified from out-of-state to North  
59 Carolina as a result of a State boundary certification.

1           (3)   The establishment was licensed or permitted by the previous state of record to  
2           sell malt beverages and unfortified wine."  
3

4   **PART IX. TITLE, REGISTRATION, AND HIGHWAY USE TAX**

5           **SECTION 9.(a)** Definition. – For purposes of this section, "impacted person" shall  
6 mean any person who is the owner of a motor vehicle titled and registered in South Carolina and  
7 who has now been determined to be a resident of North Carolina as a result of a boundary  
8 certification agreed to by the states of North Carolina and South Carolina.

9           **SECTION 9.(b)** The Division of Motor Vehicles of the Department of Transportation  
10 shall require title, registration, and the payment of highway use tax from impacted persons in the  
11 same manner as it currently uses for persons moving to North Carolina from another state.  
12

13   **PART X. ENVIRONMENTAL COMPLIANCE SCHEDULE**

14           **SECTION 10.(a)** Definition. – For purposes of this section, "impacted location" shall  
15 mean any facility or property that has now been determined to be located in North Carolina as a  
16 result of a boundary certification recognized by the states of North Carolina and South Carolina,  
17 and, as a result, either of the following applies to the facility or property:

- 18           (1)   It is required to obtain a permit, license, or approval from the North Carolina  
19           Department of Environmental Quality.  
20           (2)   It is subject to a permit, license, or approval program that is operated by a local  
21           government and is delegated from or approved by the North Carolina  
22           Department of Environmental Quality.

23           **SECTION 10.(b)** Notwithstanding any other provision of law to the contrary, the  
24 Department of Environmental Quality, the Environmental Management Commission, or any local  
25 program delegated or approved by the Department or the Commission (collectively, the  
26 "permitting authorities"), in issuing any environmental permit, license, or approval to an impacted  
27 location, shall provide a schedule of compliance that allows the recipient of the permit, license, or  
28 approval a period of no less than five years to come into compliance with any North Carolina  
29 environmental rule or standard established by the permitting authorities that (i) has no  
30 corresponding rule or standard under South Carolina law or regulation or (ii) is more stringent  
31 than the corresponding rule or standard established under South Carolina law or regulations. The  
32 permitting authorities may include increments of progress applicable in each year of the schedule  
33 established under this subsection. The owner or operator of an impacted location may waive the  
34 schedule of compliance required by this subsection. Nothing in this section is intended to limit the  
35 applicability or employment of existing procedures under North Carolina statutes and regulations  
36 granting waivers or variances from otherwise applicable environmental rules or standards.  
37

38   **PART XI. UTILITIES/EXTENSION OF RURAL FIRE PROTECTION DISTRICTS,**  
39   **COUNTY SERVICE DISTRICTS, AND WATER AND SEWER DISTRICTS**

40           **SECTION 11.(a)** The owner or occupant of a dwelling unit or commercial  
41 establishment on improved property that shall be deemed located in whole or in part in the State of  
42 North Carolina as a result of the boundary certification described in this act may continue to  
43 receive utility services from the South Carolina utility or its successor that is providing service to  
44 the dwelling unit or commercial establishment on January 1, 2017. However, the owner or  
45 occupant may, within his or her discretion, elect to have one or more of the utility services being  
46 provided to the property by a South Carolina utility on January 1, 2017, be provided by a North  
47 Carolina utility as long as the property is located within the North Carolina utility's service area. A  
48 North Carolina utility that is a city or county may require the owner of the property to pay a  
49 periodic availability fee authorized by law only if the owner elects to have utility service provided  
50 to the dwelling unit or commercial establishment by the North Carolina utility. A South Carolina  
51 utility that provides service to the property as authorized in this section is not a public utility under  
52 G.S. 62-3(23), and is not subject to regulation by the North Carolina Utilities Commission as it  
53 relates to providing the particular utility service involved. For purposes of this subsection only, the  
54 term "South Carolina utility" has the same meaning as the term "utility" or "utilities" in the Code  
55 of Laws of South Carolina, and the term "North Carolina utility" has the same meaning as the term  
56 "public utility" which is defined in G.S. 62-3(23), and also includes a city or county that provides  
57 any of the services listed in G.S. 160A-311 or G.S. 153A-274, an authority organized under the  
58 North Carolina Water and Sewer Authorities Act, or an electric or telephone membership  
59 corporation.

