

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 29

Short Title: Local Gasoline Sales Tax for Roads.

(Public)

Sponsors: Senator Johnson of Cabarrus.

Referred to: Local Government.

January 19, 1989

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTIES AND CERTAIN CITIES TO LEVY LOCAL SALES AND USE TAXES ON GASOLINE IF THESE TAXES ARE APPROVED BY THE VOTERS, TO REQUIRE THAT THE TAX REVENUE FROM THESE TAXES BE USED TO BUILD AND MAINTAIN STREETS IN THE CITY AND ACQUIRE RIGHTS-OF-WAY IN THE COUNTY FROM WHICH THE TAXES WERE COLLECTED, AND TO GRANT CITIES AND COUNTIES ADDITIONAL POWERS WITH RESPECT TO ACQUISITION OF RIGHTS-OF-WAY.

The General Assembly of North Carolina enacts:

Section 1. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding the following new Articles to read:

**"ARTICLE 43.**

**"COUNTY SALES AND USE TAXES ON MOTOR FUEL.**

**"§ 105-510. Purpose of Article.**

This Article provides the counties of this State with a means to obtain revenue to acquire rights-of-way for proposed street construction and improvement projects by giving them the authority to levy sales and use taxes on motor fuel and by requiring that the revenue from these taxes be used for purchasing rights-of-way in the county.

**"§ 105-511. Definitions.**

The definitions in Article 5 of this Chapter apply to this Article. In addition, the following definitions apply to this Article:

(1) Motor Fuel. Defined in G.S. 105-430.

1           (2) Street. Defined in G.S. 20-4.01(46).

2 **"§ 105-512. Levy and collection of county taxes.**

3           The board of county commissioners of a county may, by resolution, levy county  
4 sales and use taxes on motor fuel, not to exceed four percent (4%) of the sales price of  
5 the motor fuel, if the voters of the county approve the taxes in a referendum on the  
6 issue. These taxes may be levied even though motor fuel is exempt from State sales and  
7 use taxes and from local sales and use taxes levied under Articles 39, 40, 41, or 42 of  
8 this Chapter. These taxes are in addition to the excise tax on motor fuel levied by  
9 Article 36 of this Chapter. Taxes levied under this Article shall be collected by the  
10 Secretary.

11           In collecting the tax from the purchaser, the retailer shall cause the tax to be  
12 added to the sales or cost price at the motor fuel pump.

13           Except as provided in this Article, the adoption, levy, collection, distribution,  
14 administration, and repeal of these taxes shall be in accordance with the procedures in  
15 Article 39 of this Chapter for local sales and use taxes. In applying the provisions of  
16 Article 39 of this Chapter to this Article, references to 'this Article' mean Article 43 of  
17 Chapter 105.

18 **"§ 105-513. Form of ballot.**

19           (a) Levy. The form of the question to be presented on a ballot for a special  
20 election concerning the levy of taxes authorized by this Article shall be: 'FOR (X)  
21 percent (X%) county sales and use taxes on gasoline, to be used to acquire rights-of-  
22 way for streets in the county' or 'AGAINST (X) percent (X%) local sales and use taxes  
23 on gasoline, to be used to acquire rights-of-way for streets in the county'.

24           (b) Repeal. The form of the question to be presented on a ballot for a special  
25 election concerning the repeal of any taxes levied pursuant to this Article shall be:  
26 'FOR repeal of the (X) percent (X%) county sales and use taxes on gasoline' or  
27 'AGAINST repeal of the (X) percent (X%) county sales and use taxes on gasoline'.

28 **"§ 105-514. Retail collection bracket.**

29           The following bracket applies to collections by retailers in a county that levies two  
30 percent (2%) sales and use taxes on motor fuel under this Article:

31           (1) No amount on sales of less than 10¢;

32           (2) 1¢ on sales of 10¢ through 55¢;

33           (3) 2¢ on sales of 56¢ through \$1.05;

34           (4) Sales of over \$1.06- straight two percent (2%) with major fractions  
35 governing.

36 The retail collection bracket in G.S. 105-164.10 applies to retailers in a county that  
37 levies three percent (3%) sales and use taxes on motor fuel under this Article, and the  
38 retail collection bracket in G.S. 105-470 applies to retailers in a county that levies four  
39 percent (4%) sales and use taxes on motor fuel under this Article. If a county levies a  
40 tax under this Article at a rate other than two percent (2%), three percent (3%), or four  
41 percent (4%), the Secretary shall establish a retail collection bracket for the tax.

42 **"§ 105-515. Distribution and use of additional taxes.**

43           The Secretary shall, on a quarterly basis, distribute to each taxing county under this  
44 Article the net proceeds of the taxes collected under this Article during the preceding

1 quarter from that county. Amounts distributed to a county under this section may be  
2 used only for the acquisition of rights-of-way for proposed street construction or  
3 improvement projects.

4 **"ARTICLE 44.**  
5 **"CITY SALES AND USE**  
6 **TAXES ON MOTOR FUEL.**

7 **"§ 105-516. Purpose of Article.**

8 This Article provides the cities of this State whose population exceeds 500 with a  
9 means to obtain revenue to build and maintain streets by giving them the authority to  
10 levy sales and use taxes on motor fuel and by requiring that the revenue from these  
11 taxes be used for streets in the city.

12 **"§ 105-517. Definitions.**

13 The definitions in Article 5 of this Chapter apply to this Article. In addition, the  
14 following definitions apply to this Article:

- 15 (1) City. A city, as defined in G.S. 153A-1(1), whose population exceeds  
16 500 people, as determined by the most recent annual population  
17 estimates certified by the State Budget Officer.  
18 (2) Motor Fuel. Defined in G.S. 105-430.  
19 (3) Street. Defined in G.S. 20-4.01(46).

20 **"§ 105-518. Levy and collection of city taxes.**

21 The governing body of a city may, by resolution, levy city sales and use taxes on  
22 motor fuel, not to exceed four percent (4%) of the sales price of the motor fuel, if the  
23 voters of the city approve the taxes in a referendum on the issue. These taxes may be  
24 levied even though motor fuel is exempt from State sales and use taxes and from local  
25 sales and use taxes levied under Articles 39, 40, 41, or 42 of this Chapter. These taxes  
26 are in addition to the excise tax on motor fuel levied by Article 36 of this Chapter.  
27 Taxes levied under this Article shall be collected by the Secretary.

28 In collecting the tax from the purchaser, the retailer shall cause the tax to be  
29 added to the sales or cost price at the motor fuel pump.

30 Except as provided in this Article, the adoption, levy, collection, distribution,  
31 administration, and repeal of these taxes shall be in accordance with the procedures in  
32 Article 39 of this Chapter for local sales and use taxes. In applying the provisions of  
33 Article 39 of this Chapter to this Article, references to 'this Article' mean Article 43 of  
34 Chapter 105.

35 **"§ 105-519. Form of ballot.**

36 (a) Levy. The form of the question to be presented on a ballot for a special  
37 election concerning the levy of taxes authorized by this Article shall be: 'FOR (X)  
38 percent (X%) city sales and use taxes on gasoline, to be used to build and maintain  
39 streets in the city' or 'AGAINST (X) percent (X%) local sales and use taxes on gasoline,  
40 to be used to build and maintain streets in the city'.

41 (b) Repeal. The form of the question to be presented on a ballot for a special  
42 election concerning the repeal of any taxes levied pursuant to this Article shall be:  
43 'FOR repeal of the (X) percent (X%) city sales and use taxes on gasoline' or 'AGAINST  
44 repeal of the (X) percent (X%) city sales and use taxes on gasoline'.

1 **"§ 105-520. Retail collection bracket.**

2 The following bracket applies to collections by retailers in a city that levies two  
3 percent (2%) sales and use taxes on motor fuel under this Article:

- 4 (1) No amount on sales of less than 10¢;  
5 (2) 1¢ on sales of 10¢ through 55¢;  
6 (3) 2¢ on sales of 56¢ through \$1.05;  
7 (4) Sales of over \$1.06- straight two percent (2%) with major fractions  
8 governing.

9 The retail collection bracket in G.S. 105-164.10 applies to retailers in a city that levies  
10 three percent (3%) sales and use taxes on motor fuel under this Article, and the retail  
11 collection bracket in G.S. 105-470 applies to retailers in a city that levies four percent  
12 (4%) sales and use taxes on motor fuel under this Article. If a city levies a tax under  
13 this Article at a rate other than two percent (2%), three percent (3%), or four percent  
14 (4%), or if the city rate when combined with the county rate is at a rate other than two  
15 percent (2%), three percent (3%), or four percent (4%), the Secretary shall establish a  
16 retail collection bracket for the tax.

17 **"§ 105-521. Distribution and use of additional taxes.**

18 (a) The Secretary shall, on a quarterly basis, allocate to each taxing city under  
19 this Article the net proceeds of the taxes collected under this Article during the  
20 preceding quarter from that city. The Secretary shall distribute to each city the amount  
21 allocated to it reduced by the city's budget factor calculated in subsection (b). If the  
22 city's budget factor is greater than one, the Secretary shall distribute the city's entire  
23 allocation to the city. Amounts distributed to a city under this section may be used by  
24 the city only for streets. Amounts allocated to a city but not distributed to the city  
25 because the city's budget factor was less than one shall be transferred, on a quarterly  
26 basis, to the Highway Fund.

27 (b) The Secretary shall, on an annual basis, calculate for each taxing city  
28 under this Article a budget factor to be used to determine the amount of the tax proceeds  
29 to be distributed to the city pursuant to subsection (a). The budget factor shall be a  
30 fraction, the numerator of which is the percentage of the city's revenue, other than  
31 proceeds received under this section, appropriated for streets during the immediately  
32 preceding fiscal year and the denominator of which is the average of the percentages of  
33 the city's revenue appropriated for streets during the five fiscal years immediately  
34 preceding the city's levy of a tax under this Article.

35 **"§ 105-522. Effect of city tax on county tax.**

36 If a city levies a tax on motor fuel under this Article, and the county in which the  
37 city is located has previously levied or subsequently adopts a resolution levying a sales  
38 tax on motor fuel in the county, the tax levied by the county does not apply in the city as  
39 of the effective date of the city levy unless the county tax rate exceeds the city tax rate.  
40 If the county tax rate exceeds the city tax rate, the county sales and use taxes on motor  
41 fuel shall continue to apply in the city, but the county tax rate in the city shall be the  
42 difference between the county tax rate and the city tax rate.

1           When both city and county taxes are in effect in a city, the net proceeds of the  
2 revenue from the city tax shall be used distributed to the city and the net proceeds of the  
3 revenue from the county tax shall be distributed to the county."

4           Sec. 2. G.S. 136-98 reads as rewritten:

5       **"§ 136-98. Prohibition of ~~local road taxes and bonds~~ and construction of roads by**  
6 **local authorities; existing contracts.**

7           From and after the first day of July, 1931, no county or road district by authority of  
8 any public, public-local, or private act shall ~~levy any taxes for the maintenance,~~  
9 ~~improvement, reconstruction, or construction of any of the public roads in the various and~~  
10 ~~several counties of the State, nor shall any county, through the board of commissioners thereof~~  
11 ~~or the highway commission, nor shall any district or township highway commission,~~ issue or  
12 sell or enter into any contract to issue or sell any bonds heretofore authorized to be  
13 issued and sold, but unissued and unsold, for the purpose of obtaining money with  
14 which to improve, maintain, reconstruct, or construct roads, except for the purpose of  
15 discharging obligations entered into prior to the ratification of this section, and all acts  
16 authorizing the board of county commissioners, the county highway commissions,  
17 district highway or township commissions, to issue and sell bonds for the purpose  
18 aforesaid, are hereby amended so as to conform to this section. No board of county  
19 commissioners nor county highway commission, nor district nor township highway  
20 commission from and after the passage of this section shall enter into any contract to  
21 build or construct roads in the various and several counties except for such projects as  
22 can be completed and paid for prior to July 1, 1931. All contracts heretofore entered  
23 into by any county through the board of county commissioners, county highway  
24 commission, and all contracts heretofore entered into by any district or township  
25 highway commission which shall be incomplete on July 1, 1931, shall be taken over by  
26 the Department of Transportation and completed by the Department of Transportation  
27 by the use of money and funds applicable thereto, by the terms of the said contracts.  
28 Nothing in this section or in any section of Chapter 145 of the Public Laws of 1931 that  
29 may appear in this Code shall be construed to prohibit the levying of taxes authorized  
30 by law for the payment of interest or principal on outstanding bonds or other evidences  
31 of debt lawfully issued. Any county or road district which has heretofore issued bonds  
32 or other evidences of debt by authority of law for road improvement purposes may  
33 refund said bonds or other evidences of debt under and pursuant to the laws of the State  
34 of North Carolina relative thereto."

35           Sec. 3. Chapter 136 of the General Statutes is amended by adding a new  
36 section to read:

37       **"§ 136-66.8. City right-of-way power.**

38           In order for a city to acquire rights-of-way outside its corporate limits for street or  
39 sidewalk construction and to construct the streets or sidewalks or for a county to jointly  
40 fund with the city that acquisition and construction, the comprehensive plan provided  
41 for in G.S. 136-66.2 must also be adopted by the Board of County Commissioners of the  
42 county where the land or interest in the land to be acquired or the street or sidewalk to  
43 be constructed is located."

44           Sec. 4. G.S.136-66.3(a) reads as rewritten:

1       "(a) Except as otherwise authorized by this Article, no municipality shall  
2 participate in the cost of any State highway system improvement project approved by  
3 the Board of Transportation under G.S. 143B-350(f)(4). No municipality shall be  
4 required to contribute to the right-of-way and construction costs of any State highway  
5 system improvement approved by the Board of Transportation under G.S. 143B-  
6 350(f)(4), nor shall the Department of Transportation accept any participation, directly  
7 or indirectly, from a municipality except as authorized by this Article. Any such  
8 agreement may, with the approval of the county where the land is located, provide for  
9 that county to provide funds to the city to acquire rights-of-way necessary for such  
10 project or projects."

11               Sec. 5. G.S. 136-66.3(b) reads as rewritten:

12       "(b) The restrictions imposed by this section on participation by municipalities in  
13 the implementation of improvements on the State highway system shall not apply to  
14 those improvements approved by the Board of Transportation which are financed by  
15 funds allocated by the General Assembly for the 'Small Urban Construction Program'.  
16 The municipalities may, but shall not be required to, participate in the right-of-way and  
17 construction cost of 'Small Urban Construction Program' highway improvements.  
18 Whenever a county and municipality jointly agree under G.S. 160A-297.1 that the  
19 county will fund acquisition of rights-of-way for a State highway system street  
20 improvement project, the Department of Transportation may reimburse the county or  
21 the municipality in whole or in part for expenditures made by the county or municipality  
22 to acquire or fund the acquisition of the right-of-way."

23               Sec. 6. G.S. 136-66.3(e) reads as rewritten:

24       "(e) A municipality may pursuant to an agreement with the Department of  
25 Transportation reimburse the Department of Transportation for the cost of all  
26 improvements, including additional right-of-way, for a street or highway improvement  
27 project approved by the Board of Transportation under G.S. 143B-350(f)(4) that are in  
28 addition to those improvements that the Department of Transportation would normally  
29 include in the project. Any agreement under subsection (a) of this section or under G.S.  
30 136-66.8 which includes the county as a party may only be amended with respect to the  
31 role of the county with the consent of that county."

32               Sec. 7. G.S. 153A-149(c) reads as rewritten:

33       "(c) Each county may levy property taxes for one or more of the purposes listed in  
34 this subsection up to an effective combined rate of one dollar and fifty cents (\$1.50) on  
35 the one hundred dollars (\$100.00) appraised value of property subject to taxation before  
36 the application of any assessment ratio. To find the actual rate limit for a particular  
37 county, divide the effective rate limit of one dollar and fifty cents (\$1.50) by the county  
38 assessment ratio. Authorized purposes subject to the rate limitation are:

- 39               (1) To provide for the general administration of the county through the  
40 board of county commissioners, the office of the county manager, the  
41 office of the county budget officer, the office of the county finance  
42 officer, the office of the county assessor, the office of the county tax  
43 collector, the county purchasing agent, and the county attorney, and for

- 1 all other general administrative costs not allocated to a particular  
2 board, commission, office, agency, or activity of the county.
- 3 (2) Agricultural Extension. – To provide for the county's share of the cost  
4 of maintaining and administering programs and services offered to  
5 agriculture by or through the Agricultural Extension Service or other  
6 agencies.
- 7 (3) Air Pollution. – To maintain and administer air pollution control  
8 programs.
- 9 (4) Airports. – To establish and maintain airports and related aeronautical  
10 facilities.
- 11 (5) Ambulance Service. – To provide ambulance services, rescue squads,  
12 and other emergency medical services.
- 13 (6) Animal Protection and Control. – To provide animal protection and  
14 control programs.
- 15 (6a) Arts Programs and Museums. – To provide for arts programs and  
16 museums as authorized in G.S. 160A-488.
- 17 (6b) Auditoriums, coliseums, and convention and civic centers. – To  
18 provide public auditoriums, coliseums, and convention and civic  
19 centers.
- 20 (7) Beach Erosion and Natural Disasters. – To provide for shoreline  
21 protection, beach erosion control, and flood and hurricane protection.
- 22 (8) Cemeteries. – To provide for cemeteries.
- 23 (9) Civil Preparedness. – To provide for civil preparedness programs.
- 24 (10) Debts and Judgments. – To pay and discharge any valid debt of the  
25 county or any judgment lodged against it, other than debts and  
26 judgments evidenced by or based on bonds and notes.
- 27 (10a) Defense of Employees and Officers. – To provide for the defense of,  
28 and payment of civil judgments against, employees and officers or  
29 former employees and officers, as authorized by this Chapter.
- 30 (10b) Economic Development. – To provide for economic development as  
31 authorized by G.S. 158-12.
- 32 (11) Fire Protection. – To provide fire protection services and fire  
33 prevention programs.
- 34 (12) Forest Protection. – To provide forest management and protection  
35 programs.
- 36 (13) Health. – To provide for the county's share of maintaining and  
37 administering services offered by or through the county or district  
38 health department.
- 39 (14) Historic Preservation. – To undertake historic preservation programs  
40 and projects.
- 41 (15) Hospitals. – To establish, support and maintain public hospitals and  
42 clinics, and other related health programs and facility, or to aid any  
43 private, nonprofit hospital, clinic, related facilities, or other health  
44 program or facility.

- 1 (15a) Housing Rehabilitation. – To provide for personnel costs related to  
2 planning and administration of housing rehabilitation programs  
3 authorized by G.S. 153A-376. This subdivision only applies to  
4 counties with a population of 400,000 or more, according to the most  
5 recent decennial federal census.
- 6 (16) Human Relations. – To undertake human relations programs.
- 7 (16a) Industrial Development. – To provide for industrial development as  
8 authorized by G.S. 158-7.1.
- 9 (17) Joint Undertakings. – To cooperate with any other county, city, or  
10 political subdivision in providing any of the functions, services, or  
11 activities listed in this subsection.
- 12 (18) Law Enforcement. – To provide for the operation of the office of the  
13 sheriff of the county and for any other county law-enforcement  
14 agency not under the sheriff's jurisdiction.
- 15 (19) Libraries. – To establish and maintain public libraries.
- 16 (20) Mapping. – To provide for mapping the lands of the county.
- 17 (21) Medical Examiner. – To provide for the county medical examiner or  
18 coroner.
- 19 (22) Mental Health. – To provide for the county's share of the cost of  
20 maintaining and administering services offered by or through the  
21 area mental health, mental retardation, and substance abuse  
22 authority.
- 23 (23) Open Space. – To acquire open space land and easements in  
24 accordance with Article 19, Part 4, Chapter 160A of the General  
25 Statutes.
- 26 (24) Parking. – To provide off-street lots and garages for the parking and  
27 storage of motor vehicles.
- 28 (25) Parks and Recreation. – To establish, support and maintain public  
29 parks and programs of supervised recreation.
- 30 (26) Planning. – To provide for a program of planning and regulation of  
31 development in accordance with Article 18 of this Chapter and  
32 Article 19, Parts 3A and 6, of Chapter 160A of the General Statutes.
- 33 (27) Ports and Harbors. – To participate in programs with the North  
34 Carolina Ports Authority and provide for harbor masters.
- 35 (28) Register of Deeds. – To provide for the operation of the office of the  
36 register of deeds of the county.
- 37 (29) Sewage. – To provide sewage collection and treatment services as  
38 defined in G.S. 153A-274(2).
- 39 (30) Social Services. – To provide for the public welfare through the  
40 maintenance and administration of public assistance programs not  
41 required by Chapters 108A and 111 of the General Statutes, and by  
42 establishing and maintaining a county home.
- 43 (31) Solid Waste. – To provide solid waste collection and disposal  
44 services, and to acquire and operate landfills.

- 1 (32) Surveyor. – To provide for a county surveyor.  
 2 (33) Veterans' Service Officer. – To provide for the county's share of the  
 3 cost of services offered by or through the county veterans' service  
 4 officer.  
 5 (34) Water. – To provide water supply and distribution systems.  
 6 (35) Watershed Improvement. – To undertake watershed improvement  
 7 projects.  
 8 (36) Water Resources. – To participate in federal water resources  
 9 development projects.  
 10 (37) Armories. – To supplement available State or federal funds to be  
 11 used for the construction (including the acquisition of land),  
 12 enlargement or repair of armory facilities for the North Carolina  
 13 National Guard.  
 14 (38) Rights-of-Way. To carry out an agreement with a city whereby the  
 15 city or the State acquires rights-of-ways for streets as provided by  
 16 G.S. 153A-245."

17 Sec. 8. Chapter 153A of the General Statutes is amended by adding a new  
 18 section to read:

19 **"§ 153A-245. County expenditures on rights-of-way.**

20 Counties may expend funds not otherwise limited as to use by law for the purpose of  
 21 jointly participating with a city in the acquisition of rights-of-way for street construction  
 22 or improvement projects which have been approved for county participation under G.S.  
 23 160A-297.1, G.S. 136-66.8 and G.S. 136-66.3(a). This section shall not be construed to  
 24 authorize counties to acquire rights-of-way for State highways by purchase or  
 25 condemnation."

26 Sec. 9. G.S. 159-48(c) reads as rewritten:

27 "(c) Each county is authorized to borrow money and issue its bonds under this Article  
 28 in evidence thereof for the purpose of, in the case of subdivisions (1) to (4), inclusive,  
 29 paying any capital costs of any one or more of the purposes mentioned therein and, in  
 30 the case of the remaining subdivisions (5), to finance the cost thereof:

- 31 (1) Providing community college and technical institute facilities,  
 32 including without limitation buildings, plants, and other facilities,  
 33 physical and vocational educational buildings and facilities,  
 34 including in connection therewith classrooms, laboratories, libraries,  
 35 auditoriums, administrative offices, student unions, dormitories,  
 36 gymnasiums, athletic fields, cafeterias, utility plants, and garages.  
 37 (2) Providing courthouses, including without limitation offices, meeting  
 38 rooms, court facilities and rooms, and detention facilities.  
 39 (3) Providing county homes for the indigent and infirm.  
 40 (4) Providing school facilities, including without limitation  
 41 schoolhouses, buildings, plants and other facilities, physical and  
 42 vocational educational buildings and facilities, including in  
 43 connection therewith classrooms, laboratories, libraries, auditoriums,  
 44 administrative offices, gymnasiums, athletic fields, lunchrooms,

1 utility plants, garages, and school buses and other necessary  
2 vehicles.

3 (4a) Providing improvements to subdivision and residential streets  
4 pursuant to G.S. 153A-205.

5 (5) Providing for the octennial revaluation of real property for taxation.

6 (6) Appropriating funds to carry out an agreement with a city whereby  
7 the city or the State acquires rights-of-way for streets pursuant to  
8 G.S. 153A-245."

9 Sec. 10. Chapter 160A of the General Statutes is amended by adding a new  
10 section to read:

11 "**§ 160A-297.1. Joint city-county funding and acquisition.**

12 A city and county may jointly agree that the county will fund acquisition of rights-  
13 of-way for a State highway system street improvement project."

14 Sec. 11. This act is effective upon ratification.