

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 662

Short Title: Chapel Hill Utility Tax District. (Local)

Sponsors: Representatives Insko and Hackney (Primary Sponsors).

Referred to: Finance.

March 25, 2003

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF CHAPEL HILL TO CREATE SPECIAL TAX DISTRICTS TO UNDERGROUND ELECTRIC UTILITY LINES.

The General Assembly of North Carolina enacts:

SECTION 1. Authorization to Create Utility Districts. – The governing board of a municipality may create one or more utility districts for the purpose of raising and expending funds to underground electric utility lines in the district.

SECTION 2. Procedure. – The governing board of a municipality may by resolution signify its determination to create a utility district under the provisions of this act. The resolution shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the municipality. The notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the boundaries of the district, and shall state the time and place of the public hearing. No other publication of the resolution is required under the provisions of any other law.

SECTION 3. Resolution. – The resolution shall set forth:

- (1) The name of the district;
- (2) A statement that the district is organized under this act; and
- (3) A description of the boundaries, which may include any territory designated by the municipal governing board that is within the corporate limits of that municipality.

SECTION 4. Territory. – No territory may be in more than one district.

SECTION 5. Municipality. – All territory of a district shall be within the municipality.

SECTION 6. Filing Resolution. – A certified copy of the resolution signifying the determination to organize a district under the provisions of this act shall be filed with the Secretary of State, together with proof of publication of the notice of hearing on the resolution. If the Secretary of State finds that the resolution conforms to

1 the provisions of this act and that the notice of hearing was properly published, the
2 Secretary of State shall file the resolution and proof of publication in the records of that
3 office. The filing of the resolution in the office of the Secretary of State shall be
4 conclusive evidence of the fact that the district has been duly created and established
5 under the provisions of this act.

6 **SECTION 7.** Annexation. – By adoption of a resolution, the governing
7 board of a municipality may annex any area within that municipality to a utility district,
8 but no area may be in more than one district. The resolution shall be adopted by the
9 governing board of the municipality after a public hearing thereon, notice of which
10 hearing shall be given by publication at least once, not less than 10 days prior to the date
11 fixed for the hearing, in a newspaper having a general circulation in the municipality.
12 The notice shall contain a brief statement of the substance of the proposed resolution
13 and the boundaries of the proposed annexation and shall state the time and place of the
14 public hearing. No other publication of the resolution is required under the provisions of
15 any other law.

16 **SECTION 8.** Governing Board. – The governing board of the municipality
17 shall serve as the governing board of each utility district established pursuant to this act.

18 **SECTION 9.** Powers. – By resolution the governing board of the
19 municipality may levy a tax of up to one dollar (\$1.00) per month on each residential
20 electric power customer bill for service within the district and up to five dollars (\$5.00)
21 per month on each commercial or industrial electric power customer bill within the
22 district.

23 **SECTION 10.** The utility district may receive contributions from the State
24 of North Carolina, a local government, and the private sector for corporate purposes
25 authorized by this act.

26 **SECTION 11.** The municipality may contract with the State of North
27 Carolina, a local government, or a private entity for carrying out the projects authorized
28 by this act.

29 **SECTION 12.** Use of Funds. – The taxes levied under this act, after being
30 expended for the necessary administrative expenses of the utility district, shall be used
31 only for undergrounding of electric utility lines within the district. The budget for the
32 utility district shall be adopted by the governing board of the municipality each year as
33 part of the annual budget for the municipality.

34 **SECTION 13.** Corporate Existence. – A municipal governing board that
35 creates a utility district under this act shall have the power granted by this act and may
36 do all acts reasonably necessary to fulfill this purpose. In acting for the utility district, a
37 municipal governing board shall follow the same procedures regarding quorum and
38 voting that are applicable for the governing board when it is performing other
39 governmental purposes on behalf of the municipality.

40 **SECTION 14.** In creating and operating a utility district established under
41 this act, a municipality shall follow the applicable provisions of Chapter 159 of the
42 General Statutes.

43 **SECTION 15.** Levy. – A tax authorized by this act may be levied only by
44 resolution, after not less than 10 days' public notice, and after a public hearing held

1 pursuant thereto. A tax authorized by this act shall become effective on the date
2 specified in the resolution levying the tax. That date must be the first day of a calendar
3 month, however, and may not be earlier than the first day of the third month after the
4 date the resolution is adopted. In establishing the effective date, the municipal
5 governing board shall consult with any utility that will be collecting the tax to determine
6 any administrative lead times that might be desirable.

7 **SECTION 16.** Collection. – Every electric utility subject to a tax authorized
8 by this act shall, on and after the effective date of the levy of the tax, collect the tax. The
9 tax shall be collected as part of the charge for furnishing electric power. The tax shall be
10 stated and charged separately and shall be paid by the purchaser to the utility as trustee
11 for and on account of the utility district. The tax shall be added to the sales price and
12 shall be passed on to the purchaser instead of being borne by the utility. The utility
13 district shall design, print, and furnish to all appropriate utilities in the district the
14 necessary forms for filing returns and instructions to ensure the full collection of the tax.
15 A utility who collects a tax authorized by this act may deduct from the amount remitted
16 to the utility district a discount equal to the discount the State allows the utility for State
17 sales and use tax. For the purpose of this act, a utility includes a government entity
18 providing electric service, a cooperative, and any other electric utility. A utility shall
19 have the same right to suspend or terminate service for nonpayment of the tax that it has
20 to suspend or terminate service for payment of any other part of the utility bill. The
21 obligation of the utility to pay the tax if the customer has not paid the bill is the same as
22 its liability under G.S. 105-164.4(a)(4a).

23 **SECTION 17.** Administration. – The municipality shall administer a tax it
24 levies under this act. A tax authorized by this act is due and payable to the municipal
25 finance officer in monthly installments on or before the last day of the month following
26 the month in which the tax accrues. Every person, firm, corporation, or association
27 liable for the tax shall, on or before the 15th day of each month, prepare and render a
28 return on a form prescribed by the municipality. The return shall state the total gross
29 receipts derived in the preceding month from rentals upon which the tax is levied. A tax
30 return filed with the municipal finance officer is not a public record and may not be
31 disclosed except in accordance with G.S. 153A-148.1 as if the utility district were a
32 county. The municipality may adopt a payment schedule keyed to the billing cycle of
33 the utility collecting the tax rather than the calendar month, as long as there are at least
34 12 billing cycles per year.

35 **SECTION 18.** Penalties. – A person, firm, corporation, or association who
36 fails or refuses to file a tax return or pay a tax authorized by this act as required by law
37 is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file
38 a return for State sales and use taxes. The governing board of the municipality has the
39 same authority to waive the penalties for a tax authorized by this act that the Secretary
40 of Revenue has to waive the penalties for State sales and use taxes.

41 **SECTION 19.** Increase, Repeal, or Reduction. – A tax levied by a
42 municipality under this act may be increased not in excess of the maximum allowed by
43 this act, repealed, or reduced by a resolution adopted by the governing board of the
44 municipality, acting on behalf of the utility district. Repeal or reduction of a tax

1 authorized by this act shall become effective on the first day of a month and may not be
2 earlier than the first day of the third month after the date the resolution is adopted.
3 Repeal or reduction of a tax authorized by this act does not affect a liability for a tax
4 that was attached before the effective date of the repeal or reduction, nor does it affect a
5 right to a refund of a tax that accrued before the effective date of the repeal or reduction.
6 In establishing the effective date, the municipal governing board shall consult with any
7 utility that will be collecting the tax to determine any administrative lead times that
8 might be desirable.

9 **SECTION 20.** This act applies to the Town of Chapel Hill only.

10 **SECTION 21.** This act is effective when it becomes law.