

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1142

Short Title: Local Tax Menu with Voter Approval. (Public)

Sponsors: Representatives Michaux; Insko and Parmon.

Referred to: Finance.

April 7, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE COUNTIES AND CITIES TO LEVY A MENU OF
3 LOCAL OPTION TAXES IF APPROVED BY THE VOTERS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1.(a) Subchapter VIII of Chapter 105 of the General Statutes is
6 amended by adding a new Article to read:

7 "Article 46.

8 "Second One-Cent (1¢) Local Government Sales and Use Tax.

9 "**§ 105-532. Short title.**

10 This Article is the Second One-Cent (1¢) Local Government Sales and Use Tax Act.

11 "**§ 105-532.1. Definitions.**

12 The following definitions apply in this Article:

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

14 (2) Taxing unit. – A city or a county.

15 "**§ 105-532.2. Levy.**

16 (a) Authority. – If the majority of those voting in a referendum held pursuant to
17 this Article vote for the levy of the taxes, the governing body of a taxing unit may, by
18 resolution, levy local sales and use taxes up to the rate approved in the referendum, in
19 addition to any other State and local sales and use taxes levied pursuant to law.

20 (b) Vote. – The governing body of a taxing unit may direct the county board of
21 elections to conduct an advisory referendum on the question of whether to levy local
22 sales and use taxes in the taxing unit as provided in this Article. The election shall be
23 held on a date jointly agreed upon by the governing body and the board of elections and
24 shall be held in accordance with the procedures of G.S. 163-287.

25 (c) Ballot Question. – The form of the question to be presented on a ballot for a
26 special election concerning the levy of the taxes authorized by this Article shall be:

27 [] FOR [] AGAINST

28 [X] percent (X%) local sales and use taxes, in addition to the current local
29 sales and use taxes.'

- 1 c. Buildings owned by the United States, the State of North
2 Carolina, any county, or any municipal corporation.
- 3 d. Buildings owned and operated by nonprofit entities for
4 noncommercial and nonresidential purposes.
- 5 e. Schools or day care centers.
- 6 (3) Dwelling unit. – An enclosure containing sleeping, kitchen, and
7 bathroom facilities designed for and used or held ready for use as a
8 permanent residence by one family.
- 9 (4) Land development. –
- 10 a. Land development includes any of the following:
- 11 1. Construction of any dwelling unit, other than one
12 excluded under sub-subdivision b. of this subdivision,
13 for which a building permit was issued or should have
14 been issued after the effective date of a tax adopted
15 under this Article.
- 16 2. Construction of any commercial building enclosed floor
17 space for which a building permit was issued or should
18 have been issued after the effective date of a tax adopted
19 under this Article.
- 20 3. Conversion of a building that adds one or more new
21 dwelling units or that creates new commercial building
22 enclosed floor space.
- 23 4. The initial location of a manufactured home or other
24 dwelling or commercial structure within the taxing unit.
- 25 b. For purposes of determining the impact of land development for
26 this Article, land development does not include:
- 27 1. Construction of an addition to a dwelling unit.
- 28 2. The relocation within a taxing unit of any structure
29 located within the taxing unit on the effective date of a
30 tax adopted pursuant to this Article or of any structure
31 with respect to which an impact tax pursuant to this
32 Article has been paid.
- 33 3. Within the taxing unit, the reconstruction or replacement
34 of one dwelling unit by another or the replacement or
35 reconstruction of commercial building enclosed floor
36 space that was in existence on the effective date of a tax
37 adopted pursuant to this Article or of any such floor
38 space with respect to which an impact tax adopted
39 pursuant to this Article has been paid.
- 40 (5) Net proceeds. – The gross proceeds of the tax less the cost to the
41 taxing unit of collecting and administering the tax.
- 42 (6) Person. – Defined in G.S. 105-228.90.
- 43 (7) Person responsible for the impact of land development. – The owner of
44 any dwelling unit or commercial building enclosed floor space on the

1 date an occupancy permit is issued for the dwelling unit or commercial
2 floor space or, if no occupancy permit is issued, the date the dwelling
3 unit or commercial floor space is occupied.

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

5 **"§ 105-533.2. Levy.**

6 (a) Authority. – If the majority of those voting in a referendum held pursuant to
7 this Article vote for the levy of the tax, the governing body of a taxing unit may, by
8 resolution, levy a local tax on the impact of land development, up to the rates approved
9 in the referendum.

10 (b) Vote. – The governing body of a taxing unit may direct the county board of
11 elections to conduct an advisory referendum on the question of whether to levy a local
12 impact tax in the taxing unit as provided in this Article. The election shall be held on a
13 date jointly agreed upon by the governing body and the board of elections and shall be
14 held in accordance with the procedures of G.S. 163-287.

15 (c) Ballot Question. – The form of the question to be presented on a ballot for a
16 special election concerning the levy of the tax authorized by this Article shall be:

17 [] FOR [] AGAINST

18 A local tax on the impact of land development, at rates not to exceed [X] per
19 square foot of dwelling space and [X] per square foot of commercial building enclosed
20 floor space.'

21 (d) Effect on Local Act. – If a taxing unit levies an impact tax under this Article,
22 that taxing unit may not also levy an impact tax under a local act. This section does not
23 repeal any local act authorizing a taxing unit to levy an impact tax. However, a taxing
24 unit's levy of an impact tax under this Article automatically removes the taxing unit's
25 authority to levy an impact tax under a local act. Repeal of a taxing unit's impact tax
26 levied under this Article does not revive the taxing unit's authority to levy an impact tax
27 under a local act.

28 **"§ 105-533.3. Rates.**

29 The taxing unit shall establish annually at the time of the adoption of its annual
30 budget the tax rate to be levied per square foot of dwelling space and per square foot of
31 commercial building enclosed floor space for the ensuing fiscal year. Different tax rates
32 may be established for different types of dwelling units and different types of
33 commercial building enclosed floor space.

34 **"§ 105-533.4. Liability and administration.**

35 A resolution levying a tax pursuant to this Article must provide that:

36 (1) The person responsible for the impact of land development shall pay
37 an impact tax for each square foot of dwelling space and commercial
38 building enclosed floor space for which an occupancy permit is issued
39 or, if no occupancy permit is issued, for each square foot of dwelling
40 space in an occupied dwelling and for each square foot of occupied
41 enclosed floor space in a commercial building.

42 (2) The tax is due on or before the date an occupancy permit is initially
43 issued for the dwelling unit or commercial building enclosed floor
44 space in question or, if no occupancy permit is issued, the date the

1 dwelling unit or commercial floor space is initially occupied.
2 However, no tax due is considered delinquent until 60 days after it
3 becomes due. Interest is due on delinquent taxes at the legal rate.

- 4 (3) Taxes authorized by this Article may be collected pursuant to
5 G.S. 153A-147 or G.S. 160A-207. In addition, taxes authorized by this
6 Article may be recovered in a civil action in the nature of debt
7 including an award of reasonable attorneys' fees as part of costs.

8 **"§ 105-533.5. Disclosure requirements.**

9 Whenever the sale of real property located in a taxing unit involves new
10 construction, the seller must prepare and sign, and the buyer must receive and sign, a
11 disclosure statement. The disclosure statement must either be included in a contract or
12 sale or contained in a separate document executed before the execution of a sales
13 contract. This disclosure statement must completely disclose that the owner of the
14 property at the time an occupancy permit issued for the new construction or, if no
15 occupancy permit is issued, the date the new construction is occupied, may be subject to
16 a tax levied by the taxing unit on the impact of land development. If a seller fails to
17 make this disclosure and the buyer suffers injury as a result of the seller's failure to
18 disclose, the seller is liable to the buyer to the extent of the buyer's injury."

19 **SECTION 3.** Subchapter VIII of Chapter 105 of the General Statutes is
20 amended by adding a new Article to read:

21 "Article 48.

22 "Local Government Meals Tax.

23 **"§ 105-534. Short title.**

24 This Article is the Local Government Meals Tax Act.

25 **"§ 105-534.1. Definitions.**

26 The definitions in G.S. 105-164.3 apply to this Article. In addition, the following
27 definitions apply in this Article:

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

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

30 (3) Prepared food and drink. – The same meaning as "prepared food"
31 under G.S. 105-164.3.

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

33 **"§ 105-534.2. Levy.**

34 (a) Authority. – If the majority of those voting in a referendum held pursuant to
35 this Article vote for the levy of the tax, the governing body of a taxing unit may, by
36 resolution, levy a local meals tax up to the rate approved in the referendum, in addition
37 to any other State and local sales and use taxes levied pursuant to law. The tax applies to
38 the sales price of prepared food and drink sold within the taxing unit at retail, for
39 consumption on or off the premises, by a retailer within the county that is subject to
40 sales tax under G.S. 105-164.4(a)(1). A meals tax must become effective on the date
41 specified in the resolution levying the tax. That date must be the first day of a calendar
42 month, however, and may not be earlier than the first day of the second month after the
43 date the resolution is adopted.

1 unit the necessary forms for filing returns and instructions to ensure the full collection
2 of the tax.

3 **"§ 105-534.5. Administration.**

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

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

12 **"§ 105-534.6. Refunds.**

13 The taxing unit must refund to a nonprofit or governmental entity the meals tax paid
14 by the entity on eligible purchases of prepared food and drink. A nonprofit or
15 governmental entity's purchase of prepared food and drink is eligible for a refund under
16 this section if the entity is entitled to a refund under G.S. 105-164.14(b) or (c) of local
17 sales and use tax paid on the purchase or if the sale is exempt under G.S. 105-164.13.
18 The time limitations, application requirements, penalties, and restrictions provided in
19 G.S. 105-164.14(b) and (d) apply to refunds to nonprofit entities; the time, limitations,
20 application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and
21 (d) apply to refunds to governmental entities. When an entity applies for a refund of the
22 meals tax paid by it on purchases, it must attach to its application a copy of the
23 application submitted to the Department of Revenue under G.S. 105-164.14 for a refund
24 of the sales and use tax on the same purchases or a written statement that the purchases
25 were exempt from the tax. An applicant for a refund under this subsection must provide
26 any information required by the taxing unit to substantiate the claim.

27 **"§ 105-534.7. Penalties.**

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

33 **"§ 105-534.8. Repeal or reduction.**

34 A meals tax levied under this Article may be repealed or reduced by a resolution
35 adopted by the governing body of the taxing unit. Repeal or reduction of a meals tax
36 must become effective on the first day of a month and may not become effective until
37 the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a
38 meals tax does not affect a liability for a tax that was attached before the effective date
39 of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued
40 before the effective date of the repeal or reduction."

41 **SECTION 4.** Subchapter VIII of Chapter 105 of the General Statutes is
42 amended by adding a new Article to read:

43 "Article 49.

44 "Local Government Occupancy Tax.

1 **"§ 105-535. Short title.**

2 This Article is the Local Government Occupancy Tax Act.

3 **"§ 105-535.1. Definitions.**

4 The following definitions apply in this Article:

5 (1) City. – Defined in G.S. 153A-1.

6 (2) Taxing unit. – A city or a county.

7 **"§ 105-535.2. Levy.**

8 (a) Authority. – If the majority of those voting in a referendum held pursuant to
9 this Article vote for the levy of the tax, the governing body of a taxing unit may, by
10 resolution, levy a local occupancy tax up to the rate approved in the referendum. The
11 tax applies to the gross receipts derived from the rental of any room, lodging, or
12 accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within
13 the taxing unit that is subject to sales tax imposed by the State under
14 G.S. 105-164.4(a)(3). The tax is in addition to any State or local sales tax.

15 (b) Vote. – The governing body of a taxing unit may direct the county board of
16 elections to conduct an advisory referendum on the question of whether to levy a local
17 occupancy tax in the taxing unit as provided in this Article. The election shall be held
18 on a date jointly agreed upon by the governing body and the board of elections and shall
19 be held in accordance with the procedures of G.S. 163-287.

20 (c) Ballot Question. – The form of the question to be presented on a ballot for a
21 special election concerning the levy of the tax authorized by this Article shall be:

22 [] FOR [] AGAINST

23 [X] percent (X%) local occupancy tax, in addition to the current local sales
24 and use taxes.'

25 (d) Effect on Local Act. – If a taxing unit levies an occupancy tax under this
26 Article, that taxing unit may not also levy an occupancy tax under a local act. This
27 section does not repeal any local act authorizing a taxing unit to levy an occupancy tax.
28 However, a taxing unit's levy of an occupancy tax under this Article automatically
29 removes the taxing unit's authority to levy an occupancy tax under a local act. Repeal of
30 a taxing unit's occupancy tax levied under this Article does not revive the taxing unit's
31 authority to levy an occupancy tax under a local act.

32 **"§ 105-535.3. Administration.**

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

37 **SECTION 5.** Subchapter VIII of Chapter 105 of the General Statutes is
38 amended by adding a new Article to read:

39 "Article 49A.

40 "Local Government Income Tax.

41 **"§ 105-536. Short title.**

42 This Article is the Local Government Income Tax Act.

43 **"§ 105-536.1. Definitions.**

1 (d) Administration and Penalties. – The provisions of Article 9 of this Chapter
2 apply to a tax levied under this Article.

3 (e) Repeal or Reduction. – A tax levied under this Article may be repealed or
4 reduced by a resolution adopted by the governing body of the taxing unit. If the
5 resolution is adopted before September 1, the repeal becomes effective for taxable years
6 beginning on or after the following January 1. If the resolution is adopted on or after
7 September 1, the repeal becomes effective for taxable years beginning on or after
8 January 1 of the second calendar year following adoption of the resolution. Repeal or
9 reduction of a local income tax does not affect a liability for a tax that was attached
10 before the effective date of the repeal or reduction, nor does it affect a right to a refund
11 of a tax that accrued before the effective date of the repeal or reduction."

12 **SECTION 6.** Subchapter VIII of Chapter 105 of the General Statutes is
13 amended by adding a new Article to read:

14 "Article 49B.

15 "Local Government Land Transfer Tax.

16 "**§ 105-537. Short title.**

17 This Article is the Local Government Land Transfer Tax Act.

18 "**§ 105-537.1. Definitions.**

19 The following definitions apply in this Article:

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

21 (2) Taxing unit. – A city or a county.

22 "**§ 105-537.2. Levy.**

23 (a) Authority. – If the majority of those voting in a referendum held pursuant to
24 this Article vote for the levy of the tax, the governing body of a taxing unit may, by
25 resolution, levy a local land transfer tax on instruments conveying interests in real
26 property located in the taxing unit, up to the rate approved in the referendum. The tax
27 applies to the consideration or value, whichever is greater, of the interest conveyed,
28 including the value of any lien or encumbrance remaining on the property at the time of
29 sale. The levy of the tax may become effective only on the first day of a calendar month
30 set in the resolution levying the tax, which may not be earlier than the first day of the
31 second succeeding calendar month after the date the resolution is adopted.

32 (b) Vote. – The governing body of a taxing unit may direct the county board of
33 elections to conduct an advisory referendum on the question of whether to levy a local
34 land transfer tax in the taxing unit as provided in this Article. The election shall be held
35 on a date jointly agreed upon by the governing body and the board of elections and shall
36 be held in accordance with the procedures of G.S. 163-287.

37 (c) Ballot Question. – The form of the question to be presented on a ballot for a
38 special election concerning the levy of the tax authorized by this Article shall be:

39 ' FOR AGAINST

40 Real property transfer tax at the rate of [X] on each one hundred dollars
41 (\$100.00) of value or consideration.'

42 (d) Effect on Local Act. – If a taxing unit levies a land transfer tax under this
43 Article, that taxing unit may not also levy a land transfer tax under a local act. This
44 section does not repeal any local act authorizing a taxing unit to levy a land transfer tax.

1 However, a taxing unit's levy of a land transfer tax under this Article automatically
2 removes the taxing unit's authority to levy a land transfer tax under a local act. Repeal
3 of a taxing unit's land transfer tax levied under this Article does not revive the taxing
4 unit's authority to levy a land transfer tax under a local act.

5 **"§ 105-537.3. Administration.**

6 (a) Resolution. – The governing body of the taxing unit must, upon adoption of a
7 resolution levying a tax under this Article, immediately deliver a certified copy of the
8 resolution to the register of deeds of the county, accompanied by a certified statement
9 from the county board of elections setting forth the results of the special election
10 approving the tax in the taxing unit. Upon receipt of these documents, the register of
11 deeds shall administer the tax in the taxing unit as provided in this Article.

12 (b) Scope. – A tax levied under this Article does not apply to transfers exempt
13 pursuant to G.S. 105-228.28 or G.S. 105-228.29 from the tax levied by Article 8E of
14 this Chapter.

15 The tax is in addition to the tax levied by Article 8E of this Chapter. A tax levied
16 under this Article applies to transfers of interests in real property located within the
17 taxing unit. If the property is located in two or more taxing units, a transfer of an
18 interest in the property is taxable only by the taxing unit in which the greater part of the
19 property, with respect to value, lies.

20 (c) Administration. – A tax levied under this Article is payable by the transferor
21 of the interest. Except as otherwise provided in this Article, the provisions of
22 G.S. 105-228.31 through G.S. 105-228.36 apply to a tax levied under this Article. The
23 taxing unit must provide metering or similar equipment for the collection of the tax in
24 lieu of the use of tax stamps.

25 (d) Repeal or Reduction. – A taxing unit may, by resolution, repeal or reduce the
26 rate of a tax levied under this Article. Repeal or reduction of the tax must become
27 effective on the first day of a month and may not become effective until the end of the
28 fiscal year in which the repeal or reduction resolution was adopted. Repeal of a land
29 transfer tax, or reduction of its rate, under this Article does not affect a liability for a tax
30 that attached before the effective date of the repeal or reduction, nor does it affect a
31 right to a refund of a tax that accrued before the effective date of the repeal or
32 reduction."

33 **SECTION 7.** This act is effective when it becomes law.