

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 2406*

Short Title: Swain Settlement Funds. (Public)

Sponsors: Representative Haire.

Referred to: Judiciary III, if favorable, Appropriations.

May 26, 2008

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR THE ORDERLY FISCAL MANAGEMENT OF ANY
2 MONETARY SETTLEMENT OF THE 1943 AGREEMENT BETWEEN SWAIN
3 COUNTY AND THE UNITED STATES DEPARTMENT OF INTERIOR.
4

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Legislative Findings. – It is hereby determined and declared as
7 a matter of legislative finding that:

- 8 (1) Flooding caused by the construction of Fontana Dam destroyed a road
9 that had been constructed with road bonds which had been assumed by
10 Swain County.
- 11 (2) The United States Department of Interior and the Tennessee Valley
12 Authority entered into an agreement in 1943 with Swain County and
13 the State of North Carolina to compensate Swain County for this loss
14 by, among other obligations, constructing a new road, which would
15 traverse the Great Smoky Mountains National Park.
- 16 (3) The promised road has not been built. Early attempts to construct the
17 road were abandoned by the National Park Service because of the
18 expense involved and concerns about environmental impacts.
- 19 (4) In 2007, the National Park Service concluded, after completing a full
20 environmental impact statement of the road proposal, that construction
21 of the road would have unacceptable impacts to the natural
22 environment in the Great Smoky Mountains National Park. The
23 National Park Service instead has endorsed an alternative proposal,
24 also supported by Swain County, to negotiate a monetary settlement of
25 the United States' unfulfilled obligations under its 1943 agreement
26 with Swain County.
- 27 (5) The proposed monetary settlement of the 1943 agreement between
28 Swain County and the United States Department of Interior is an

1 unprecedented opportunity to provide for the future prosperity of the
2 people of Swain County.

3 (6) Appropriate fiscal management of this significant monetary settlement
4 requires authority and programs not currently provided by North
5 Carolina law.

6 (7) The Swain County Board of Commissioners has by resolution
7 announced its desire and intention that the proceeds of any monetary
8 settlement with the United States be managed for the long-term
9 prosperity of the people of Swain County.

10 (8) The Swain County Board of Commissioners has by resolution
11 announced its desire and intention that the proceeds of a monetary
12 settlement with the United States Department of Interior be preserved
13 and insulated from improvident expenditure.

14 **SECTION 2.** Fund Managed by State Treasurer. – G.S. 147-69.2(a) is
15 amended by adding a new subdivision to read:

16 "(19) The Swain County Settlement Trust Fund."

17 **SECTION 3.** Fund Provisions. – Article 6 of Chapter 147 of the General
18 Statutes is amended by adding a new section to read:

19 "§ 147-69.6. Swain County Settlement Trust Fund.

20 (a) The Swain County Settlement Trust Fund is established as a special fund in
21 the Office of the State Treasurer under the management of the Treasurer. The Fund shall
22 consist of the proceeds of any payments made by the United States in settlement of the
23 1943 agreement between Swain County and the United States Department of Interior,
24 such other contributions as Swain County or other entities may choose to make to the
25 Fund, and the interest and other investment income earned by the Fund. Contributions
26 to the Fund are irrevocable. Assets in the Fund may be disbursed only to Swain County.

27 (b) On such schedule as the State Treasurer may determine, in consultation with
28 the Board of Commissioners of Swain County, the State Treasurer shall disburse to
29 Swain County amounts requested by the Swain County Board of Commissioners
30 pursuant to a majority vote of that body, provided that disbursements to Swain County
31 under this subsection in any fiscal year shall not exceed the total interest and investment
32 income earned by the Fund in that fiscal year. At the start of each fiscal year, the State
33 Treasurer shall issue a nonbinding opinion and recommendation to the Swain County
34 Board of Commissioners suggesting an appropriate amount of interest and investment
35 income to be reinvested in the Fund to ensure that the principal investment grows to
36 keep pace with inflation.

37 (c) No portion of the principal balance of the Fund may be disbursed to Swain
38 County absent a request by the Swain County Board of Commissioners accompanied by
39 a certification by the Swain County Board of Elections that two-thirds of the registered
40 voters of Swain County voted in favor of the disbursement and subsequent expenditure
41 of the amount requested in a referendum conducted under subsection (h) of this section.

42 (d) Funds disbursed to Swain County under subsections (b) or (c) of this section
43 shall be managed by the county in accordance with the requirements of the Local
44 Government Budget and Fiscal Control Act as amended from time to time.

1 (e) No part of the principal of the Swain County Settlement Trust Fund or of any
2 interest or other income earned on that principal may be paid to or received by any
3 agent or attorney on account of services rendered in connection with negotiating the
4 settlement agreement between Swain County and the United States Department of
5 Interior or obtaining the monetary settlement from the United States.

6 (f) The Board of Commissioners of Swain County may direct the Swain County
7 Board of Elections to conduct an advisory referendum on the question of whether any
8 portion of the principal of the Fund should be disbursed to and expended by the county
9 for a particular purpose. The election shall be held on a date jointly agreed upon by the
10 two boards, which may be the same day as any other referendum or election in the
11 county, but may not otherwise be during the period beginning 30 days before and
12 ending 30 days after the day of any other referendum or election to be conducted by the
13 board of elections and already validly called or scheduled by law. The election shall be
14 held in accordance with the procedures of G.S. 163-287. The question to be presented
15 on the ballot shall disclose the specific purpose proposed for expenditure of the
16 principal investment of the Trust Fund and the amount proposed for expenditure.

17 (g) The Swain County Settlement Trust Fund is subject to the oversight of the
18 State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

19 (h) The Swain County Settlement Trust Fund and the income therefrom shall not
20 take the place of or be counted against any other State appropriations or program
21 providing funds or disbursements to Swain County."

22 **SECTION 4.** This act is effective when it becomes law.