

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1839

Short Title: Local Government Meals Tax. (Local)

Sponsors: Senators McKissick; and Atwater.

Referred to: Finance.

May 22, 2008

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE COUNTY OF DURHAM TO LEVY A ONE
2 PERCENT SALES TAX ON RESTAURANT MEALS IN THE COUNTY OF
3 DURHAM IF APPROVED BY THE VOTERS.
4

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Authorization. – If the majority of those voting in a
7 referendum held pursuant to this act vote for the levy of the tax, the Board of
8 Commissioners for the county may, by resolution, levy a local prepared food tax up to
9 one percent (1%) of the sales price in addition to any other State and local sales and use
10 taxes levied pursuant to law. The tax applies to the sales price of prepared food and
11 drink sold within the taxing unit, including all municipalities located therein, at retail,
12 for consumption on or off the premises, by a retailer within the county that is subject to
13 sales tax under G.S. 105-164.4(a)(1). A prepared food tax must become effective on the
14 date specified in the resolution levying the tax. That date must be the first day of a
15 calendar month, however, and may not be earlier than the first day of the second month
16 after the date the resolution is adopted.

17 **SECTION 2.** Vote. – The governing body of a taxing unit may direct the
18 county board of elections to conduct an advisory referendum on the question of whether
19 to levy a local prepared food tax in the taxing unit as provided in this act. The election
20 shall be held on November 4, 2008, and shall be held in accordance with the procedures
21 of G.S. 163-287.

22 **SECTION 3.** Ballot Question. – The form of the question to be presented on
23 a ballot for a special election concerning the levy of the tax authorized by this act shall
24 be:

[] FOR [] AGAINST

25
26 One percent (1%) local prepared food tax, in addition to the current local
27 sales and use taxes.

28 **SECTION 4.** Definitions. – The definitions in G.S. 105-164.3 apply to this
29 act. In addition, the following definitions apply in this act:

- 1 (1) County. – Defined in G.S. 153A-1.
- 2 (2) Person. – Defined in G.S. 105-228.90.
- 3 (3) Prepared food and drink. – The same meaning as "prepared food"
- 4 under G.S. 105-164.3.
- 5 (4) Taxing unit. – A county.

6 **SECTION 5.** Exemptions. – The prepared food tax levied under this act
7 does not apply to the following sales of prepared food and drink:

- 8 (1) Prepared food and drink served to residents in boardinghouses and
9 sold together on a periodic basis with rental of a sleeping room or
10 lodging.
- 11 (2) Retail sales exempt from taxation under G.S. 105-164.13.
- 12 (3) Retail sales through or by means of vending machines.
- 13 (4) Prepared food and drink served by a retailer subject to the local
14 occupancy tax if the charge for the prepared food and drink is included
15 in a single, nonitemized sales price together with the charge for rental
16 of a room, lodging, or accommodation furnished by the retailer.
- 17 (5) Prepared food and drink furnished without charge by an employer to
18 10 an employee.
- 19 (6) Retail sales by grocers or by grocery sections of supermarkets or other
20 diversified retail establishments, other than sales of prepared food and
21 drink in the delicatessen or similar department of the grocer or grocery
22 section.

23 **SECTION 6.** Collection. – Every retailer subject to a tax levied under this
24 act must, on and after the effective date of the levy of the tax, collect the tax. This tax
25 must be collected as part of the charge for furnishing prepared food and drink. The tax
26 must be stated and charged separately from the sales records and must be paid by the
27 purchaser to the retailer as trustee for and on account of the taxing unit. The tax must be
28 added to the sales price and passed on to the purchaser instead of being borne by the
29 retailer. The taxing unit must design, print, and furnish to all appropriate businesses and
30 persons in the taxing unit the necessary forms for filing returns and instructions to
31 ensure the full collection of the tax.

32 **SECTION 7.** Administration. – The taxing unit must administer a tax levied
33 under this act. A tax levied under this act is due and payable to the local finance officer
34 in monthly installments on or before the 15th day of the month following the month in
35 which the tax accrues. Every retailer liable for the tax must, on or before the 15th day of
36 each month, prepare and file a return on a form prescribed by the taxing unit. The return
37 must show the total gross receipts derived in the preceding month from sales to which
38 the tax applies.

39 A return filed with the local finance officer under this act is not a public record and
40 may not be disclosed except as provided in G.S. 153A-148.1.

41 **SECTION 8.** Refunds. – The taxing unit must refund to a nonprofit or
42 governmental entity the prepared food tax paid by the entity on eligible purchases of
43 prepared food and drink. A nonprofit or governmental entity's purchase of prepared
44 food and drink is eligible for a refund under this section if the entity is entitled to a

1 refund under G.S. 105-164.14(b) or (c) of local sales and use tax paid on the purchase or
2 if the sale is exempt under G.S. 105-164.13. The time limitations, application
3 requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) apply
4 to refunds to nonprofit entities; the time, limitations, application requirements, penalties,
5 and restrictions provided in G.S. 105-164.14(c) and (d) apply to refunds to
6 governmental entities. When an entity applies for a refund of the prepared food tax paid
7 by it on purchases, it must attach to its application a copy of the application submitted to
8 the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax
9 on the same purchases or a written statement that the purchases were exempt from the
10 tax. An applicant for a refund under this section must provide any information required
11 by the taxing unit to substantiate the claim.

12 **SECTION 9.** Penalties. – A person that fails or refuses to file the return or
13 pay a tax levied under this act is subject to the civil and criminal penalties set by
14 G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The
15 governing body of the taxing unit has the same authority to waive the penalties for a tax
16 levied under this act that the Secretary of Revenue has to waive the penalties for State
17 sales and use taxes.

18 **SECTION 10.** Repeal or reduction. – A prepared food tax levied under this
19 act may be repealed or reduced by a resolution adopted by the governing body of the
20 taxing unit. Repeal or reduction of a prepared food tax must become effective on the
21 first day of a month and may not become effective until the end of the fiscal year in
22 which the resolution was adopted. Repeal or reduction of a prepared food tax does not
23 affect a liability for a tax that was attached before the effective date of the repeal or
24 reduction, nor does it affect a right to a refund of a tax that accrued before the effective
25 date of the repeal or reduction.

26 **SECTION 11.** Taxing Proceeds. – If the referendum passes, such authorized
27 taxes will be collected and shall be used to fund marketing, civic and cultural capital,
28 workforce training, and community cleanup projects jointly approved through an
29 interlocal agreement between the City of Durham and the County of Durham. The
30 interlocal agreement must be adopted by both the City of Durham and the County of
31 Durham prior to the referendum on the November 4, 2008, ballot.

32 **SECTION 12.** This act is effective when it becomes law.