

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 18  
Finance Committee Substitute Adopted 6/27/07

Short Title: Modify McDowell County Occupancy Tax.

(Local)

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Sponsors:

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Referred to:

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February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE MCDOWELL COUNTY TO LEVY AN ADDITIONAL  
TWO PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX  
AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 892 of the 1985 Session Laws reads as rewritten:

"Section 1. Occupancy Tax. – (a) Authorization and Scope. – The McDowell County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 405-~~164.4(3).~~105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by ~~educational organizations, religious organizations, or summer camps.~~ nonprofit charitable, educational, or religious organizations when furnished in furtherance of the nonprofit purpose.

(a1) Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the McDowell County Board of Commissioners may levy an additional room occupancy tax of two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. McDowell County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and~~

1 furnish to all appropriate businesses and persons in the county the necessary forms for  
2 filing returns and instructions to ensure the full collection of the tax.

3 (c) Administration. – A tax levied under this act shall be levied, administered,  
4 collected, and repealed as provided in G.S. 153A-155. The penalties provided in  
5 G.S. 153A-155 apply to a tax levied under this act. The county shall administer a tax  
6 levied under this act. A tax levied under this act is due and payable to the county finance  
7 officer in monthly installments on or before the 15th day of the month following the  
8 month in which the tax accrues. Every person, firm, corporation, or association liable  
9 for the tax shall, on or before the 15th day of each month, prepare and render a return on  
10 a form prescribed by the county. The return shall state the total gross receipts derived in  
11 the preceding month from rentals upon which the tax is levied.

12 A return filed with the county finance officer under this act is not a public record as  
13 defined by G.S. 132-1 and may not be disclosed except as required by law.

14 (d) Penalties. A person, firm, corporation, or association who fails or refuses to file  
15 the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's  
16 omission. In case of failure or refusal to file the return or pay the tax for a period of 30  
17 days after the time required for filing the return or for paying the tax, there shall be an  
18 additional tax, as a penalty, of five percent (5%) of the tax due for each additional  
19 month or fraction thereof until the tax is paid.

20 Any person who willfully attempts in any manner to evade a tax imposed under this  
21 act or who willfully fails to pay the tax or make and file a return shall, in addition to all  
22 other penalties provided by law, be guilty of a misdemeanor and shall be punishable by  
23 a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six  
24 months, or both. The board of commissioners may, for good cause shown, compromise  
25 or forgive the penalties imposed by this subsection.

26 (e) Distribution and Use of Tax Revenue. – McDowell County shall, on a  
27 quarterly basis, remit the net proceeds of the occupancy tax to the McDowell Tourism  
28 Development Authority. The Authority may spend funds remitted to it under this  
29 subsection only to further the development of travel, tourism, and conventions in the  
30 county through state, national, and international advertising and promotion. As used in  
31 this subsection, "net proceeds" means gross proceeds less the cost to the county of  
32 administering and collecting the tax, as determined by the finance officer. The Authority  
33 shall use at least two-thirds of the funds remitted to it under this subsection to promote  
34 travel and tourism in McDowell County and shall use the remainder for tourism-related  
35 expenditures.

36 The following definitions apply in this subsection:

37 (1) Net proceeds. – Gross proceeds less the cost to the county of  
38 administering and collecting the tax, as determined by the finance  
39 officer, not to exceed three percent (3%) of the first five hundred  
40 thousand dollars (\$500,000) of gross proceeds collected each year and  
41 one percent (1%) of the remaining gross receipts collected each year.

42 (2) Promote travel and tourism. – To advertise or market an area or  
43 activity, publish and distribute pamphlets and other materials, conduct  
44 market research, or engage in similar promotional activities that attract

1 tourists or business travelers to the area. The term includes  
2 administrative expenses incurred in engaging in the listed activities.

- 3 (3) Tourism-related expenditures. – Expenditures that, in the judgment of  
4 the Tourism Development Authority, are designed to increase the use  
5 of lodging facilities, meeting facilities, or convention facilities in a  
6 county or to attract tourists or business travelers to the county. The  
7 term includes tourism-related capital expenditures. Tourism-related  
8 capital expenditures may include expenditures to purchase, renovate,  
9 maintain, or operate heritage tourism sites, such as the McDowell  
10 House, the Carson House, Fort Davidson, or Heritage Trails.

11 ~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the~~  
12 ~~date specified in the resolution levying the tax. That date must be the first day of a~~  
13 ~~calendar month, however, and may not be earlier than January 1, 1987, and may not be~~  
14 ~~earlier than the first day of the second month after the date the resolution is adopted.~~

15 ~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by~~  
16 ~~the McDowell County Board of Commissioners. Repeal of a tax levied under this act~~  
17 ~~shall become effective on the first day of a month and may not become effective until~~  
18 ~~the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax~~  
19 ~~levied under this act does not affect a liability for a tax that attached before the effective~~  
20 ~~date of the repeal, nor does it affect a right to a refund of a tax that accrued before the~~  
21 ~~effective date of the repeal.~~

22 "Sec. 2. Tourism Development Authority. (a) Appointment and Membership. =  
23 When the board of commissioners adopts a resolution levying a room occupancy tax  
24 under this act, it shall also adopt a resolution creating a county Tourism Development  
25 Authority, which shall be a public authority under the Local Government Budget and  
26 Fiscal Control Act and shall be composed of the following nine members: Act. The  
27 resolution shall provide for the membership of the Authority, including the members'  
28 terms of office, and for the filling of vacancies on the Authority. At least one-half of the  
29 members shall be individuals who are affiliated with businesses that collect the tax in  
30 the county, and at least one-third of the members shall be individuals who are currently  
31 active in the promotion of travel and tourism in the county. The Authority must be  
32 comprised of the following seven voting members and two nonvoting, ex officio  
33 members:

- 34 (1) The Executive Director of the McDowell Chamber of Commerce, who  
35 shall serve as an ex officio, nonvoting ~~member;~~ member.  
36 (2) A county commissioner appointed by the McDowell County Board of  
37 Commissioners, who shall serve as an ex officio, nonvoting ~~member;~~  
38 member.  
39 (3) Four owners or operators of hotels, motels, or other taxable  
40 accommodations, of whom shall be appointed by the McDowell  
41 County Board of Commissioners, and two of whom shall be appointed  
42 by the McDowell Chamber of Commerce. Two of these appointees  
43 shall own or operate hotels, motels, or other accommodations with

1 more than 50 rental units, and two shall own or operate hotels, motels,  
2 or other accommodations with 50 or fewer rental ~~units;~~ units.

- 3 (4) ~~Three individuals involved in tourist businesses who have~~  
4 ~~demonstrated an interest in tourism development and do not own or~~  
5 ~~operate hotels, motels, or other taxable accommodations, who are~~  
6 currently active in the promotion of travel and tourism in the county,  
7 appointed as follows: two by the McDowell Chamber of Commerce  
8 and one by the McDowell County Board of Commissioners.

9 All members of the Authority shall serve without compensation. Vacancies in the  
10 Authority shall be filled by the appointing authority of the member creating the  
11 vacancy. Members appointed to fill vacancies shall serve for the remainder of the  
12 unexpired term which they are appointed to fill. ~~Except as provided in subsection (b) for~~  
13 ~~initial members, members~~ Members shall serve three-year terms. ~~Members may serve~~  
14 ~~no more than two consecutive terms.~~ The members shall elect a chairman from the  
15 membership of the Authority, who shall serve for a term of two years. The Authority  
16 shall meet at the call of the chairman and shall adopt rules of procedure to govern its  
17 meetings. The Finance Officer for McDowell County shall be the ex officio finance  
18 officer of the Authority.

19 ~~(b) Terms of Initial Members. The following initial members shall serve terms for~~  
20 ~~other than three years:~~

- 21 ~~(1) The appointed county commissioner and the member appointed by the~~  
22 ~~board of commissioners under subdivision (a)(4) of this section, who~~  
23 ~~shall serve one year terms; and~~  
24 ~~(2) One of the members appointed under subdivision (a)(3) of this section~~  
25 ~~by the Chamber, one of the members appointed under subdivision~~  
26 ~~(a)(4) by the Chamber, and one of the members appointed under~~  
27 ~~subdivision (a)(3) by the board of commissioners, as designated by the~~  
28 ~~appointing body, who shall serve two year terms.~~

29 (c) Duties. ~~—~~ The Authority shall expend the net proceeds of the tax levied under  
30 this act for the purposes provided in this act. The Authority shall promote travel,  
31 tourism, and conventions in McDowell County, sponsor tourist-related events  
32 and activities in the county, and finance tourist-related capital projects in the county. In  
33 performing its duties, the Authority may contract with any person, firm, or agency to  
34 advise and assist it and may recommend to the board of county commissioners that  
35 county staff be employed for this advice and assistance. Any county staff employed  
36 upon a recommendation made by the Authority shall be hired and supervised by the  
37 Authority, which shall pay the salaries and expenses of this staff.

38 (d) Reports. ~~—~~ The Authority shall report quarterly and at the close of the fiscal  
39 year to the board of county commissioners on its receipts and expenditures for the  
40 preceding quarter and for the year in such detail as the board may require.

41 ~~"Sec. 3. Review of Levy. Three years from the effective date of a tax levied under~~  
42 ~~this act, the McDowell County Board of Commissioners shall conduct a thorough~~  
43 ~~review of the tax and the function of the Tourism and Development Authority~~

1 ~~established under this act to determine the effectiveness of the levy and of the~~  
2 ~~Authority.~~

3 "Sec. 4. This act is effective upon ratification."

4 **SECTION 2.** G.S. 153A-155(g) reads as rewritten:

5 "(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe,  
6 Cabarrus, Camden, Carteret, Chowan, Clay, Craven, Cumberland, Currituck, Dare,  
7 Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Martin, McDowell,  
8 Montgomery, Nash, New Hanover, New Hanover County District U, Pasquotank,  
9 Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly,  
10 Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U,  
11 and to the Township of Averagesboro in Harnett County."

12 **SECTION 3.** This act is effective when it becomes law. The McDowell  
13 County Board of Commissioners has 30 days from the date the act becomes effective to  
14 ensure that the membership of the Authority is in compliance with this act.