

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS85135-LYx-135 (02/27)

Short Title: Wake County Revenue Options. (Local)

Sponsors: Senator Cowell.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE WAKE COUNTY WITH ADDITIONAL REVENUE
3 OPTIONS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. This act applies to Wake County only.

6 SECTION 2. Subchapter VIII of Chapter 105 of the General Statutes is
7 amended by adding a new Article to read:

8 "Article 46.

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

10 "**§ 105-535. Short title.**

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

12 "**§ 105-536. Limitations.**

13 This Article applies only to counties that levy the first one-cent (1¢) local sales and
14 use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session
15 Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this
16 Chapter, the second one-half cent (1/2¢) local sales and use tax under Article 42 of this
17 Chapter, and the third one-half cent (1/2¢) local sales and use tax under Article 44 of
18 this Chapter.

19 "**§ 105-537. Levy.**

20 (a) Authority. – If the majority of those voting in a referendum held pursuant to
21 this Article vote for the levy of the taxes, the board of commissioners of the county
22 may, by resolution, levy one percent (1%) local sales and use taxes in addition to any
23 other State and local sales and use taxes levied pursuant to law.

24 (b) Vote. – The board of commissioners of a county may, by resolution, direct
25 the county board of elections to conduct an advisory referendum on the question of
26 whether to levy local one percent (1%) sales and use taxes in the county as provided in

1 this Article. The election shall be held on a date jointly agreed upon by the two boards
2 and shall be held in accordance with the procedures of G.S. 163-287.

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

5 [] FOR [] AGAINST

6 One percent (1%) local sales and use taxes, in addition to the current local
7 sales and use taxes, to be used only for public school capital outlay purposes and
8 transportation purposes.'

9 **"§ 105-538. Administration.**

10 Except as provided in this Article, the adoption, levy, collection, administration, and
11 repeal of the additional taxes authorized by this Article shall be in accordance with
12 Article 39 of this Chapter. A tax levied under this Article does not apply to the sales
13 price of food that is exempt from tax pursuant to G.S. 105-164.13B.

14 **"§ 105-539. Distribution and use.**

15 (a) Distribution. – The Secretary shall, on a monthly basis, distribute to each
16 taxing county the net proceeds of the tax collected in that county under this Article. If
17 the Secretary collects taxes under this Article in a month and the taxes cannot be
18 identified as being attributable to a particular taxing county, the Secretary shall allocate
19 these taxes among the taxing counties in proportion to the amount of taxes collected in
20 each county under this Article in that month and shall include them in the monthly
21 distribution. The counties are not required to share taxes distributed under this Article
22 with municipalities.

23 (b) Use. – Counties may use one-half of the proceeds of a tax levied under this
24 Article only for public school capital outlay purposes as defined in G.S. 115C-426(f)
25 and to retire indebtedness incurred by the counties for these purposes on or after January
26 1, 2003, and may use one-half of the proceeds of a tax levied under this Article for
27 transportation purposes only."

28 **SECTION 3.** Chapter 105 of the General Statutes is amended by adding a
29 new Subchapter to read:

30 **"SUBCHAPTER X. LOCAL OPTION COUNTY TAXES.**

31 "Article 60.

32 "Land Transfer Tax.

33 **"§ 105-600. Short title.**

34 This Article is the County Land Transfer Tax Act.

35 **"§ 105-601. Levy.**

36 (a) Authority. – If the majority of those voting in a referendum held pursuant to
37 this Article vote for the levy of the tax, the board of county commissioners may, by
38 resolution and after 10 days' public notice, levy a local land transfer tax on instruments
39 conveying interests in real property located in the county, up to a rate of one percent
40 (1%).

41 (b) Vote. – The board of county commissioners may direct the county board of
42 elections to conduct an advisory referendum on the question of whether to levy a local
43 land transfer tax in the county as provided in this Article. The election shall be held on a

1 date jointly agreed upon by the board of county commissioners and the board of
2 elections and shall be held in accordance with the procedures of G.S. 163-287.

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

5 FOR AGAINST

6 Real property transfer tax at the rate of up to one percent (1%) of value or
7 consideration.'

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

14 **"§ 105-602. Scope of tax.**

15 (a) Scope. – A tax levied under this Article does not apply to transfers exempt
16 pursuant to G.S. 105-228.28 or G.S. 105-228.29 from the tax levied by Article 8E of
17 this Chapter. The tax is in addition to the tax levied by Article 8E of this Chapter. A tax
18 levied under this Article applies to transfers of interests in real property located within
19 the county. If the property is located in two or more counties, a transfer of an interest in
20 the property is taxable only by the county in which the greater part of the property, with
21 respect to value, lies.

22 (b) Basis and Effective Date. – A tax levied under this Article applies to the
23 consideration or value, whichever is greater, of the interest conveyed, including the
24 value of any lien or encumbrance remaining on the property at the time of conveyance.
25 The levy of the tax may become effective only on the first day of a calendar month set
26 in the resolution levying the tax, which may not be earlier than the first day of the
27 second succeeding calendar month after the date the resolution is adopted.

28 **"§ 105-603. Administration.**

29 A tax levied under this Article is payable by the transferor of the interest. Except as
30 otherwise provided in this Article, the provisions of G.S. 105-228.32 through
31 G.S. 105-228.37 apply to a tax levied under this Article. The county must provide
32 metering or similar equipment for the collection of the tax in lieu of the use of tax
33 stamps.

34 **"§ 105-604. Repeal or reduction.**

35 A county may, by resolution, repeal or reduce the rate of a tax levied under this
36 Article. Repeal or reduction of the tax must become effective on the first day of a
37 calendar month and may not become effective until the end of the fiscal year in which
38 the repeal or reduction resolution was adopted. Repeal of a land transfer tax, or
39 reduction of its rate, under this Article does not affect a liability for a tax that attached
40 before the effective date of the repeal or reduction, nor does it affect a right to a refund
41 of a tax that accrued before the effective date of the repeal or reduction.

42 **"§ 105-605. Effect on local acts.**

43 If a county levies a land transfer tax under this Article, that county may not also levy
44 a land transfer tax under a local act. This section does not repeal any local act

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

6 **SECTION 4.** The General Statutes are amended by adding a new Chapter to
7 read:

8 **"Chapter 159J.**
9 **"County Impact Fees.**

10 **"§ 159J-1. Purpose.**

11 It is the purpose of this Chapter to place an equitable share of the cost of providing
12 new community service facilities upon all new inhabitants and upon those associated
13 with the development process.

14 **"§ 159J-2. Definitions.**

15 The following definitions apply in this Chapter:

- 16 (1) Capital costs. – Costs spent for developing community service
17 facilities. Capital costs are limited to capital outlay items listed in the
18 'Uniform Local Government Accounting Systems' procedural manual
19 prepared by the North Carolina Local Government Commission.
- 20 (2) Community services facilities. – The following public facilities or
21 improvements provided or established by the county or in conjunction
22 with other units of government:
 - 23 a. Water, sewer, and drainage projects.
 - 24 b. Parks, open spaces, and recreational facilities.
 - 25 c. Streets, sidewalks, thoroughfare rights-of-way, and public
26 transit stations and capital equipment.
 - 27 d. Emergency medical services facilities.
 - 28 e. Fire stations.
 - 29 f. Schools.
 - 30 g. Cultural facilities, including libraries.
 - 31 h. Solid waste collection, handling, disposal, and recycling.
- 32 (3) Developer. – An individual, corporation, partnership, organization,
33 association, firm, political subdivision, or other legal entity
34 constructing or creating new construction.
- 35 (4) Impact fee. – The charge imposed upon new construction under this
36 Chapter.
- 37 (5) New construction. – Any new development, construction, or
38 installation for which a building or zoning permit, a certification, or
39 any other type of governmental approval is required. New construction
40 includes the installation of a mobile home, factory-built housing, or
41 modular housing. New construction does not include: (i) renovation
42 and repair of existing structures, structures incidental to accessory
43 uses, or additions, unless the renovation, repairs, or additions will
44 cause an increase in off-street parking requirements or a change in

1 occupancy as occupancy is defined by the North Carolina State
2 Building Code; (ii) fences, billboards, poles, pipelines, transmission
3 lines, advertising signs, or similar structures that do not generate a
4 need for community service facilities.

5 **"§ 159J-3. Imposition of impact fee.**

6 (a) Vote. – The board of county commissioners may direct the county board of
7 elections to conduct a special election on the question of whether to impose an impact
8 fee in the county as provided in this Article. The election shall be held on a date jointly
9 agreed upon by the board of county commissioners and the board of elections and shall
10 be held in accordance with the procedures of G.S. 163-287.

11 (b) Ballot Question. – The question to be presented on a ballot for a special
12 election in a county concerning the imposition of an impact fee authorized by this
13 Article must be in the following form:

14 FOR AGAINST

15 County impact fees to be used only for the provision of new community
16 service facilities.'

17 (c) Imposition. – If a majority of those voting in an election held pursuant to this
18 Article vote for the imposition of an impact fee, a county may, for the purpose of
19 placing an equitable share of the cost of providing new community service facilities
20 upon developers and inhabitants of newly developed areas, impose an impact fee upon
21 all new construction within the county for the purpose of placing an equitable share of
22 the cost of providing community service facilities upon developers and inhabitants of
23 newly developed areas.

24 **"§ 159J-4. Amount of fee.**

25 (a) The amount of each impact fee imposed shall be uniform and based upon the
26 capital costs to be incurred by the county as a result of the new construction. In
27 establishing the impact fee, the county may establish zones within which the costs of
28 providing community service facilities are estimated. Zones may have different impact
29 fees, depending upon the community service facilities available and the extent to which
30 capital costs have been paid in each zone. Facilities upon which fees are based must
31 directly result in additional capital costs, and fees must be expended within the same
32 zone as, or otherwise benefit, the new construction upon which the fee is imposed. The
33 board of county commissioners must hold a public hearing before it may establish the
34 zones authorized in this section.

35 (b) The amount of each impact fee shall be based upon documented needs and
36 upon specific classifications and rates that shall be uniformly applied. Classifications
37 upon which fees are based must account for the costs and extent of the additional
38 burden placed upon community service facilities by different types and sizes of new
39 construction.

40 (c) Before imposing an impact fee, the county shall prepare, or have prepared, a
41 report containing each of the following:

- 42 (1) A description of the anticipated capital cost to the county of each
43 additional or expanded community service facility necessitated by the
44 new construction.

1 (2) A description of the characteristics of the new construction that
2 necessitate the additional or expanded community service facility, such
3 as population, trip generation, stormwater runoff, and flow
4 characteristics.

5 (3) A plan for providing the community service facilities necessitated by
6 the new construction.

7 **"§ 159J-5. Enactment of ordinances.**

8 A county may enact ordinances to exercise the authority granted by this Chapter.
9 Before enacting any ordinance to exercise the authority granted by this Chapter, a
10 county must hold a public hearing on the ordinance. Notice of the public hearing shall
11 be given in accordance with G.S. 153A-323.

12 **"§ 159J-6. Funds.**

13 Funds for each community service facility for which an impact fee is collected shall
14 be placed in a separate capital reserve fund under Part 2 of Article 3 of Chapter 159 of
15 the General Statutes. Separate capital reserve funds shall be established for separate
16 zones. All funds shall be expended for the facility for which they were collected.
17 Payment of impact fees does not entitle the payer to any greater right to use or
18 ownership in the facility for which the fee is collected than is shared by the general
19 public.

20 **"§ 159J-7. Credits for improvements.**

21 An ordinance adopted under this Chapter shall provide for credits against required
22 impact fees when a developer installs improvements of a type that generally would be
23 paid for by the county out of a capital reserve account funded by impact fees. The
24 ordinance may specify the circumstances under which a developer will be allowed to
25 install improvements and receive credits.

26 **"§ 159J-8. Effect on local acts.**

27 If a county levies an impact fee under this Article, that county may not also levy an
28 impact fee under a local act. This section does not repeal any local act authorizing a
29 county to levy an impact fee. However, a county's levy of an impact fee under this
30 Article automatically removes the county's authority to levy an impact fee under a local
31 act. Repeal of a county's impact fee levied under this Article does not revive the
32 county's authority to levy an impact fee under a local act.

33 **"§ 159J-9. Challenge to impact fee.**

34 To challenge an impact fee, a developer shall pay the amount charged by the county,
35 clearly identify that payment is made under protest, and give notice of appeal within 30
36 days after the date that payment under protest is made. The notice required by this
37 section shall be delivered by personal service or by registered or certified mail, return
38 receipt requested, to the county manager or the chair of the county board of
39 commissioners if the county does not have a county manager.

40 The board of county commissioners shall hold a public hearing to review the appeal
41 within 30 days after receiving the notice of appeal. The decision of the board of county
42 commissioners on the appeal is subject to review by the superior court of the county
43 where the new construction is to occur, in the nature of certiorari. A petition for review
44 by the superior court shall be filed with the Clerk of Superior Court within 30 days after

1 the date that the board of county commissioners delivers its decision in writing, either
2 by personal service, or by registered or certified mail, return receipt requested, to the
3 appealing party."

4 **SECTION 5.** Notwithstanding any other provision of law, if Wake County
5 holds an advisory referendum on any of the ballot questions authorized by this act, the
6 County shall hold, at the same time, advisory referenda on all of the ballot questions
7 authorized by this act.

8 **SECTION 6.** This act is effective when it becomes law.