

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2015

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HOUSE BILL 834\*

Short Title: NC/SC Original Border Confirmation. (Public)

Sponsors: Representative Davis (Primary Sponsor).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Rules, Calendar, and Operations of the House.

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE LEGISLATIVE CHANGES TO FACILITATE THE WORK OF THE BOUNDARY COMMISSION IN CONFIRMING AND REESTABLISHING THE ORIGINAL BOUNDARY EXISTING BETWEEN THE STATES OF NORTH AND SOUTH CAROLINA.

The General Assembly of North Carolina enacts:

**PART I. GENERAL PROVISIONS**

**SECTION 1.(a)** Findings. – The General Assembly finds that:

- (1) North Carolina and South Carolina were created as separate British colonies.
- (2) Surveys to determine the boundary between North Carolina and South Carolina began in 1735 and concluded in 1815.
- (3) Resurveys of three sections of the boundary between North Carolina and South Carolina were performed in 1813, 1905, and 1928.
- (4) The boundary between North Carolina and South Carolina has not changed; however, over the course of time from the original survey of the boundary, some of the markers denoting the boundary from the original surveys have been lost or destroyed by the elements.
- (5) The boundary commission authorized pursuant to Chapter 141 of the General Statutes has worked with commissioners appointed by South Carolina to reestablish the boundary between North and South Carolina.

**SECTION 1.(b)** Intent. – It is the intent of the General Assembly to address the effects on persons or land with a situs recognized, as a result of a border certification, to be in this State. This act does not apply to persons whose property, rights, and businesses are not affected by border certification. For purposes of this act, "border certification" means the certification by the General Assembly of the border between North Carolina and South Carolina, as provided for in Section 3 of this act.

**SECTION 1.(c)** Certification. – The General Assembly hereby certifies that, as of January 1, 2016, the boundary between North Carolina and South Carolina is the boundary that was established by the original survey and resurveys that were adopted through legislative and executive actions, and the reestablished boundary has been approved by the boundary commissions of North Carolina and South Carolina and proclaimed as the boundary by the Governor, pursuant to G.S. 141-5.

**PART II. TAX LIABILITY**



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1           **SECTION 2.(a)** Taxes. – The following provisions apply to taxes affected by  
2 border certification:

- 3           (1) Neither the State nor a subdivision of the State may assess a tax on a person  
4 for activities occurring prior to the date of certification where the basis of the  
5 assessment is the certification.
- 6           (2) The State and its subdivisions may assess a tax for activities occurring on or  
7 after the date of certification subject to the following conditions:
- 8           a. For taxes imposed for a taxable period, the tax may not be imposed  
9 for a period beginning prior to the date of certification.
- 10           b. For sales and use taxes for an item that is provided and billed on a  
11 monthly or other periodic basis, the tax may not be assessed for  
12 periods beginning prior to the date of certification.
- 13           c. For a person subject to taxes levied under Article 2A of Chapter 105  
14 of the General Statutes who, on the date of the certification, has on  
15 hand any tobacco products, the person must file a complete inventory  
16 of the tobacco products within 20 days after date of certification and  
17 must pay an additional tax to the Secretary of Revenue when filing  
18 the inventory. The amount of the tax due is the amount due based on  
19 the current tax rate less any tax paid on the inventory to another state.
- 20           d. For installments and carryforwards of tax benefits allowed by this  
21 State at the time of border certification for activities with a situs in  
22 South Carolina, a person may claim remaining installments and  
23 carryforwards against State tax liability.
- 24           e. For land that is classified under G.S. 105-277.3 at the time of border  
25 certification and that fails to meet the size requirements of  
26 G.S. 105-277.3 solely because of border certification, (i) no deferred  
27 taxes are due as a result of border certification, (ii) the deferred taxes  
28 remain a lien on the land located in this State, and (iii) the deferred  
29 taxes for the land in this State are otherwise payable in accordance  
30 with G.S. 105-277.3. The tax benefit provided in this sub-subdivision  
31 is forfeited if any portion of the land located in this State is sold.
- 32           f. For land receiving a property tax benefit other than classification  
33 under G.S. 105-277.3 at the time of border certification that fails to  
34 meet the requirements for the property tax benefit solely because of  
35 border certification, the land is not entitled to receive the property tax  
36 benefit after the time of border certification unless it meets the  
37 statutory requirements, but the lien on the land for the deferred taxes  
38 is extinguished as if it has been paid in full.
- 39           (3) A person may not seek a refund for activities occurring prior to the date of  
40 certification where the basis of the refund is the certification.

41           **SECTION 2.(b)** An establishment to which permits may be issued pursuant to  
42 G.S. 18B-1006(n1), as enacted by this act, is designated a special class of property under  
43 Section 2(2) of Article V of the North Carolina Constitution, and the motor fuel sold by that  
44 establishment is taxable in accordance with this section. Notwithstanding G.S. 105-449.80, the  
45 motor fuel excise tax rate for the 2016 calendar year for an establishment to which permits may  
46 be issued pursuant to G.S. 18B-1006(n1), as enacted by this act, is sixteen cents (16¢) a gallon.  
47 The Revenue Laws Study Committee shall annually compare the motor fuel excise tax rate  
48 imposed by this section with the rate levied by the State of South Carolina on motor fuels and  
49 may recommend a change in the rate imposed by this section to an amount no greater than the  
50 rate then in effect for the State of South Carolina. This subsection is effective until the

1 occurrence of a disqualifying event. A disqualifying event occurs when the establishment is  
2 transferred to a new owner.

3 **SECTION 2.(c)** This Part is effective for taxable periods beginning on or after  
4 January 1, 2016.

### 5 6 **PART III. INSTRUMENTS OF TITLE TO REAL PROPERTY**

7 **SECTION 3.** Title to real property previously treated as being subject to the  
8 jurisdiction of the State of South Carolina, but that is recognized as being within the boundaries  
9 of this State as a result of the certification of the boundary shall remain in full force, effect, and  
10 priority as if the title had been originally registered in this State.

11 Notwithstanding G.S. 161-14, for any portion of real property that is recognized as  
12 being within the boundaries of this State as a result of certification of the boundary, and that  
13 previously has not been registered and indexed in this State, the register of deeds shall register,  
14 index, and cross-index any instruments presented for registration retroactive to the effective  
15 registration date and time, as reflected by an original or certified copy of an instrument duly  
16 registered in South Carolina. In lieu of assigning a retroactive registration date and time in the  
17 index, the register of deeds may affix a statement, on a separate sheet of paper, immediately  
18 preceding the instrument presented for registration that cites this act and provides notice that  
19 the instrument shall have full force and effect as of the date of registration assigned by the  
20 South Carolina registry.

21 Notwithstanding any other provision of law, the register of deeds shall not collect  
22 any fees or taxes for instruments registered, indexed, or cross-indexed pursuant to this act.

### 23 24 **PART IV. FORECLOSURE OF DEEDS OF TRUST AND MORTGAGES**

25 **SECTION 4.** Foreclosure actions initiated on real property encumbered by a lien  
26 recorded in South Carolina wherein the real property is situated, in whole or in part, within the  
27 certified North Carolina boundaries shall be governed by the terms of the security instrument  
28 sought to be enforced. If the security instrument contains a power of sale clause, the party  
29 seeking to enforce the terms of the security instrument may initiate a foreclosure action in the  
30 county where the real property is situated pursuant to Chapter 45 of the General Statutes. A  
31 party seeking to enforce the terms of the security instrument may also resort to judicial  
32 foreclosure, pursuant to Article 29A of Chapter 1 of the General Statutes, in accordance with  
33 the terms within the security interest. Judgments or orders of foreclosure entered by courts of  
34 this State are binding and effective only with respect to the portion of real property situated  
35 within this State. Prior to initiating an action to enforce a security instrument, the security  
36 instrument shall be recorded in the office of the register of deeds for the county where the  
37 subject property is situated.

### 38 39 **PART V. PUBLIC SCHOOL STUDENT ENROLLMENT**

40 **SECTION 5.(a)** Notwithstanding any other provision of law, a student who (i) was  
41 eligible to enroll in a North Carolina local school administrative unit in accordance with  
42 G.S. 115C-366 prior to the date of the certification and (ii) loses the eligibility to enroll in a  
43 public school, including a charter school, as a result of certification may attend a North  
44 Carolina public school located within the local school administrative unit or attend a North  
45 Carolina charter school, without the payment of tuition, until that student:

- 46 (1) Reaches the age of 21.
- 47 (2) Obtains a high school diploma.
- 48 (3) No longer meets the requirements of G.S. 115C-366 that were the basis for  
49 the student's eligibility for enrollment prior to the date of certification.
- 50 (4) Loses eligibility pursuant to subsection (b) of this section.

1           **SECTION 5.(b)** A student who attends a North Carolina public school or charter  
2 school under subsection (a) of this section and the student's parent, legal guardian, or custodian  
3 shall be subject to the laws and rules governing North Carolina public schools and charter  
4 schools in accordance with Chapter 115C of the General Statutes, including meeting the  
5 requirements of the compulsory attendance law under Part I, Article 26 of Chapter 115C of the  
6 General Statutes.

7           Notwithstanding the enforcement provisions of G.S. 115C-378(f), 115C-380,  
8 115C-381, and 115C-382, a parent, guardian, or custodian of a student enrolled in a North  
9 Carolina public school or charter school under this section who is determined by the principal  
10 of the student's public school or the charter school to be in violation of the compulsory  
11 attendance laws shall no longer be eligible to enroll the student in a North Carolina public  
12 school or charter school pursuant to subsection (a) of this section in a subsequent semester of  
13 the school year. In addition, the local school administrative unit or charter school in which the  
14 student is enrolled shall notify, based on the student's place of residence in South Carolina, the  
15 juvenile court or such other court in the county that has jurisdiction of juveniles and, if  
16 applicable, the attendance supervisor for that county.

17           **SECTION 5.(c)** The State Board of Education shall provide that a student enrolled  
18 in a North Carolina public school or charter school in accordance with subsection (a) of this  
19 section be included in calculations for average daily membership, reporting for the Uniform  
20 Education Reporting System, and eligibility for State and federal funds.

21           **SECTION 5.(d)** Except as otherwise provided by this section or G.S. 115C-366, a  
22 student who is a legal resident of South Carolina shall not be entitled to enroll in a North  
23 Carolina public school.

## 24 25 **PART VI. DRIVER EDUCATION ELIGIBILITY/BEGINNER LICENSE**

26           **SECTION 6.(a)** Notwithstanding State Board of Education policy, GCS-R-004, or  
27 any other provision of law, if a student enrolled in a North Carolina public school or charter  
28 school under subsection (a) of Section 5(a) of this act obtains a beginner's permit in South  
29 Carolina, the student shall be eligible to participate in behind-the-wheel instruction as part of a  
30 driver education course offered by the local school administrative unit in which the student is  
31 enrolled.

32           **SECTION 6.(b)** Notwithstanding G.S. 20-11(b)(1), a student who (i) as a result of  
33 the certification, becomes a legal resident of North Carolina on the date of the certification and  
34 (ii) is enrolled in a South Carolina school district in which his or her residence was located  
35 prior to certification or in the South Carolina statewide public charter school district may meet  
36 the requirement in G.S. 20-11(b)(1) for obtaining a limited learner's permit if the student passes  
37 a course of driver education offered by the South Carolina high school in which the student is  
38 enrolled.

39           **SECTION 6.(c)** The Department of Transportation, Division of Motor Vehicles, in  
40 collaboration with the State Board of Education, shall develop a procedure for any North  
41 Carolina resident who is a student enrolled in a South Carolina school pursuant to the  
42 conditions described in subsection (b) of this section to satisfy the driver eligibility certificate  
43 requirements of G.S. 20-11 to obtain and continue to hold a limited or full provisional license  
44 under that section.

## 45 46 **PART VII. ELIGIBILITY FOR IN-STATE TUITION**

47           **SECTION 7.(a)** Notwithstanding any other provision of law, independent persons  
48 and their dependents formerly domiciled in North Carolina counties who are domiciled in  
49 South Carolina counties as a result of the North Carolina-South Carolina boundary certification  
50 may be considered eligible for in-State tuition rates for a period of up to 10 years from the  
51 effective date of the boundary change. To be eligible for in-State tuition rates, such persons

1 must have been domiciled and reside on property in North Carolina in accordance with  
2 G.S. 116-143.1 immediately prior to the effective date of North Carolina legislation approving  
3 the North Carolina-South Carolina boundary certification, and must maintain residence and  
4 domicile on that same property within South Carolina.

5 **SECTION 7.(b)** Notwithstanding any other provision of law, independent persons  
6 and their dependents previously domiciled on property in South Carolina which is located in  
7 North Carolina as a result of the North Carolina-South Carolina boundary certification may, for  
8 a period of two years from the effective date of the boundary certification, be eligible for  
9 in-State rates without the requirement of residency and domicile for 12 months in this State  
10 provided such independent persons have evidenced the intent to establish domicile in North  
11 Carolina in accordance with this G.S. 116-143.1. To be eligible under this provision, such  
12 persons must reside on the same property that was in South Carolina immediately prior to the  
13 effective date of North Carolina legislation approving the certified North Carolina-South  
14 Carolina boundary. To maintain eligibility for in-State tuition rates longer than the two years  
15 permitted under this paragraph, the independent persons and their dependents must satisfy the  
16 requirements of G.S. 116-143.1.

17 **SECTION 7.(c)** The provisions established under subsections (a) and (b) of this  
18 section are not transferable to persons other than those independent persons and their  
19 dependents falling within the scope of those provisions.

20 **SECTION 7.(d)** Should the domicile and residence of independent persons and  
21 their dependents change from the property affected by the boundary certification, maintenance  
22 of eligibility for in-State rates will be determined as provided in G.S. 116-143.1.

## 23 24 **PART VIII. ABC PERMITS**

25 **SECTION 8.** G.S. 18B-1006 is amended by adding a new subsection to read:

26 "(n1) State Border Certification. – The Commission may issue permits listed in  
27 G.S. 18B-1001(2) and (4), without approval at an election, to qualified establishments defined  
28 in G.S. 18B-1000(7) that meet all of the following requirements:

29 (1) The establishment is located in a county that borders on another state.

30 (2) The location of the establishment was reclassified from out-of-state to North  
31 Carolina as a result of a State border certification.

32 (3) The establishment was licensed or permitted by the previous state of record  
33 to sell malt beverages and unfortified wine."

## 34 35 **PART IX. TITLE, REGISTRATION, AND HIGHWAY USE TAX**

36 **SECTION 9.(a)** Definition. – For purposes of this section, "impacted person" shall  
37 mean any person who is the owner of a motor vehicle titled and registered in South Carolina  
38 and who has now been determined to be a resident of North Carolina as a result of a boundary  
39 certification agreed to by the states of North Carolina and South Carolina.

40 **SECTION 9.(b)** The Division of Motor Vehicles of the Department of  
41 Transportation shall require title, registration, and the payment of highway use tax from  
42 impacted persons in the same manner as it currently uses for persons moving to North Carolina  
43 from another state.

## 44 45 **PART X. ENVIRONMENTAL COMPLIANCE SCHEDULE**

46 **SECTION 10.(a)** Definition. – For purposes of this section, "impacted location"  
47 shall mean any facility or property that has now been determined to be located in North  
48 Carolina as a result of a boundary certification recognized by the states of North Carolina and  
49 South Carolina, and, as a result, either of the following applies to the facility or property:

50 (1) It is required to obtain a permit, license, or approval from the North Carolina  
51 Department of Environment and Natural Resources.

- 1 (2) It is subject to a permit, license, or approval program that is operated by a  
2 local government and is delegated from or approved by the North Carolina  
3 Department of Environment and Natural Resources.

4 **SECTION 10.(b)** Notwithstanding any other provision of law to the contrary, the  
5 Department of Environment and Natural Resources, the Environmental Management  
6 Commission, or any local program delegated or approved by the Department or the  
7 Commission (collectively, the "permitting authorities"), in issuing any environmental permit,  
8 license, or approval to an impacted location, shall provide a schedule of compliance that allows  
9 the recipient of the permit, license, or approval a period of no less than five years to come into  
10 compliance with any North Carolina environmental rule or standard established by the  
11 permitting authorities that (i) has no corresponding rule or standard under South Carolina law  
12 or regulation; or (ii) is more stringent than the corresponding rule or standard established under  
13 South Carolina law or regulations. The permitting authorities may include increments of  
14 progress applicable in each year of the schedule established under this subsection. The owner  
15 or operator of an impacted location may waive the schedule of compliance required by this  
16 subsection.

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18 **PART XI. UTILITIES/EXTENSION OF RURAL FIRE PROTECTION DISTRICTS,  
19 COUNTY SERVICE DISTRICTS, AND WATER AND SEWER DISTRICTS**

20 **SECTION 11.(a)** The owner or occupant of a dwelling unit or commercial  
21 establishment on improved property that shall be deemed located in whole or in part in the  
22 State of North Carolina as a result of the boundary certification described in this act may  
23 continue to receive utility services from the South Carolina utility or its successor that is  
24 providing service to the dwelling unit or commercial establishment on January 1, 2016.  
25 However, the owner or occupant may, within his or her discretion, elect to have one or more of  
26 the utility services being provided to the property by a South Carolina utility on January 1,  
27 2016, be provided by a North Carolina utility as long as the property is located within the North  
28 Carolina utility's service area. A North Carolina utility that is a city or county may require the  
29 owner of the property to pay a periodic availability fee authorized by law only if the owner  
30 elects to have utility service provided to the dwelling unit or commercial establishment by the  
31 North Carolina utility. A South Carolina utility that provides service to the property as  
32 authorized in this section is not a public utility under G.S. 62-3(23), and is not subject to  
33 regulation by the North Carolina Utilities Commission as it relates to providing the particular  
34 utility service involved. For purposes of this subsection only, the term "South Carolina utility"  
35 has the same meaning as the term "utility" or "utilities" in the Code of Laws of South Carolina,  
36 and the term "North Carolina utility" has the same meaning as the term "public utility" which is  
37 defined in G.S. 62-3(23), and also includes a city or county that provides any of the services  
38 listed in G.S. 160A-311 or G.S. 153A-274, an authority organized under the North Carolina  
39 Water and Sewer Authorities Act, or an electric or telephone membership corporation.

40 **SECTION 11.(b)** The governing body of a county that gains territory as a result of  
41 the boundary certification described in this act shall meet as soon as practicable after the date  
42 this act becomes law to determine whether the residents of the territory (i) require the services  
43 provided by an existing rural fire protection district established under Article 3A of Chapter 69  
44 of the General Statutes or a county service district established under Article 16 of Chapter  
45 153A of the General Statutes, or (ii) would benefit from the services provided by an existing  
46 county water and sewer district established under Article 6 of Chapter 162A of the General  
47 Statutes. If the governing body finds that the residents of the territory require or would benefit  
48 from the services of the district, the governing body shall annex the territory to the district as  
49 provided in G.S. 69-25.11(1), G.S. 153A-303, and G.S. 162A-87.1.

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51 **PART XII. SEVERABILITY AND EFFECTIVE DATE.**

1           **SECTION 12.** If any provision of this act or its application is held invalid, the  
2           invalidity does not affect other provisions or applications of this act that can be given effect  
3           without the invalid provisions or application, and to this end the provisions of this act are  
4           severable.

5           **SECTION 13.** Except as otherwise provided, this act is effective when it becomes  
6           law.