

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2015

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SENATE BILL 575

State and Local Government Committee Substitute Adopted 7/21/15

Corrected Copy 7/22/15

Finance Committee Substitute Adopted 5/24/16

Short Title: NC/SC Original Boundary Confirmation.

(Public)

Sponsors:

Referred to:

March 30, 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 CAROLINA 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 Carolina 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 boundary certification, to be in this State and to avoid disputes with such persons or owners of such land. This act does not apply to persons whose property, rights, and businesses are not affected by boundary certification. For purposes of this act, "boundary certification" means the certification by the General Assembly of the boundary between North Carolina and South Carolina, as provided for in subsection (c) of this section.

SECTION 1.(c) Certification. – For purposes other than property tax, the General Assembly hereby certifies that, as of January 1, 2017, 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. For property tax purposes, the General



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1 Assembly hereby certifies that, as of January 1 of the year following the year this act becomes
2 effective or the year an executive order has been issued by the Governor proclaiming the boundary
3 between North Carolina and South Carolina, whichever is earlier, the boundary between North
4 Carolina and South Carolina is the boundary that was established by the original survey and
5 resurveys that were adopted through legislative and executive actions, and the reestablished
6 boundary has been approved by the boundary commissions of North Carolina and South Carolina
7 and proclaimed as the boundary by the Governor, pursuant to G.S. 141-5.
8

9 **PART II. TAX LIABILITY**

10 **SECTION 2.(a)** Taxes. – The following provisions apply to taxes affected by
11 boundary certification:

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

50 **SECTION 2.(b)** An establishment to which permits may be issued pursuant to
51 G.S. 18B-1006(n1), as enacted by this act, is designated a special class of property under Section

1 2(2) of Article V of the North Carolina Constitution, and the motor fuel sold by that establishment
2 is taxable in accordance with this section. Notwithstanding G.S. 105-449.80, the motor fuel excise
3 tax rate for an establishment to which permits may be issued pursuant to G.S. 18B-1006(n1), as
4 enacted by this act, is sixteen cents (16¢) per gallon. The Revenue Laws Study Committee shall
5 annually compare the motor fuel excise tax rate imposed by this section with the rate levied by the
6 State of South Carolina on motor fuels and may recommend a change in the rate imposed by this
7 section to an amount no greater than the rate then in effect for the State of South Carolina. An
8 establishment designated as a special class of property by this section may obtain monthly refunds
9 on the difference between the motor fuel excise tax imposed under G.S. 105-449.80 and the motor
10 fuel excise tax imposed by this section. The Department shall calculate for each calendar year the
11 difference between the motor fuel excise tax that would have been imposed under G.S. 105-449.80
12 on the motor fuel sold by an establishment classified by this section in the absence of this
13 classification and the motor fuel excise tax that was imposed on the motor fuel sold by the
14 establishment due to the classification. The difference in taxes, together with any interest,
15 penalties, or costs that may accrue thereon, are a lien on the real property underlying the
16 establishment as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in
17 the records of the Department as deferred taxes. The deferred taxes for the preceding three
18 calendar years are due and payable on the day this subsection becomes ineffective due to the
19 occurrence of a disqualifying event; provided, however, the amount collected for deferred taxes
20 pursuant to this subsection does not exceed the tax value of the property. A disqualifying event
21 occurs when the title to the real property underlying the establishment is transferred to a new
22 owner. A lien for deferred taxes is extinguished when the amount required by this subsection is
23 paid.

24 **SECTION 2.(c)** For property tax purposes, this Part is effective on the date of
25 certification applicable to property tax purposes provided in Section 1(c) of this act. For all other
26 purposes, this Part is effective for taxable periods beginning on or after January 1, 2017.

27 **PART III. INSTRUMENTS OF TITLE TO REAL PROPERTY**

28 **SECTION 3.(a)** The North Carolina Geodetic Survey shall record the final survey of
29 the confirmed boundary in the office of the register of deeds in every county in this State where
30 real property has been affected by the certification of the boundary. The applicable uniform fees
31 provided in G.S. 161-10 shall apply to the recordation of the final survey. The register of deeds
32 shall register and index the surveys in accordance with the provisions of Article 2 of Chapter 161
33 of the General Statutes.

34 **SECTION 3.(b)** For parcels of real property affected by the certification of the
35 boundary, situated in whole or in part within the boundaries of this State, the North Carolina
36 Geodetic Survey shall record a Notice of Affected Parcel in the office of the register of deeds in
37 the county or counties where each affected parcel is situated. The register of deeds shall register
38 and index the Notice in accordance with the provisions of Article 2 of Chapter 161 of the General
39 Statutes. Notwithstanding any other provision of law to the contrary, the register of deeds shall not
40 collect any fees or taxes for the Notice recorded pursuant to this subsection. The Notice shall
41 contain at least all of the following information:

- 42 (1) Reference to this act.
- 43 (2) The recording reference for the final survey of the confirmed boundary
44 recorded pursuant to subsection (a) of this section.
- 45 (3) The names of the record owners of the parcel.
- 46 (4) The property address of the parcel.
- 47 (5) A tax parcel identification number or other applicable identifier used by a
48 county tax office, if available.
- 49 (6) A brief description of the parcel, if available.
- 50 (7) A source deed reference for the parcel, if available.
- 51

1 **SECTION 3.(c)** Title to real property previously treated as being subject to the
2 jurisdiction of the State of South Carolina but that is recognized as being within the boundaries of
3 this State as a result of the certification of the boundary is not affected by the certification of the
4 boundary or the recognition of the real property as being within the boundaries of this State. All
5 conveyances and instruments of title, of any sort, made prior to the certification of the boundary
6 shall be recognized and given full faith and credit in this State according to the law, jurisdiction,
7 and terms in effect at the time of the conveyance in the jurisdiction the property was previously
8 treated as being subject to. For the purposes of this subsection, "instruments of title" means any
9 instrument that affects title or constitutes the chain of title to real property, including, but not
10 limited to, all deeds, wills, estate documents evidencing transfer of title, plats, surveys, easements,
11 rights-of-way, outstanding mortgages and deeds of trust, judicial orders or decrees, and documents
12 evidencing intestate succession.

13 **SECTION 3.(d)** Liens recorded prior to the boundary certification with the register of
14 deeds or docketed with the clerk of superior court in the county in this State where the affected
15 parcel is situated shall attach, as a class, to the affected parcel as of the effective date and time of
16 the boundary certification. This class of liens shall be assigned priority as of the date of border
17 certification but shall retain the same priority among themselves as if this subsection did not
18 apply.

19 **SECTION 3.(e)** The Commissioner of Insurance shall not take any of the following
20 actions with respect to a real estate title insurance company that previously operated only in South
21 Carolina and issued a policy of title insurance in compliance under South Carolina law for a parcel
22 of real estate now determined to be located wholly or partially in North Carolina:

- 23 (1) Require a certificate of authority to do business as a real estate title insurance
24 company under Article 26 of Chapter 58 of the General Statutes.
- 25 (2) Take enforcement action against any title insurance company for failure to
26 comply with the requirements of Article 26, 27, or 28 of Chapter 58 of the
27 General Statutes applicable to real estate title insurance companies in North
28 Carolina or any other statutory or regulatory requirements applicable to all
29 insurance companies in North Carolina.

30 Nothing in this section is intended to prevent the Commissioner of Insurance from
31 entering into a memorandum of agreement with the South Carolina Department of Insurance with
32 respect to enforcement of South Carolina law against real estate title insurance companies subject
33 to this section.

34 35 **PART IV. FORECLOSURE OF DEEDS OF TRUST AND MORTGAGES**

36 **SECTION 4.(a)** Foreclosure actions initiated on real property encumbered by a
37 security instrument recorded in South Carolina wherein the real property is situated, in whole or in
38 part, within the certified North Carolina boundaries shall be governed by the terms of the security
39 instrument sought to be enforced for that portion of real property recognized as being in a different
40 state. If the security instrument contains a power of sale clause, the party seeking to enforce the
41 terms of the security instrument may initiate a foreclosure action in the county where the real
42 property is situated pursuant to Chapter 45 of the General Statutes. A party seeking to enforce the
43 terms of the security instrument may also resort to judicial foreclosure, pursuant to Article 29A of
44 Chapter 1 of the General Statutes, in accordance with the terms within the security instrument.
45 Judgments or orders of foreclosure entered by courts of this State are binding and effective only
46 with respect to the portion of real property situated within this State. Prior to initiating an action to
47 enforce a security instrument, the security instrument or a certified copy shall be recorded in the
48 office of the register of deeds for the county where the subject property is situated. The provisions
49 of G.S. 45-10(a) shall apply with regard to the appointment or substitution of a trustee for any
50 mortgage or deed of trust foreclosed pursuant to this section.

1 **SECTION 4.(b)** Notwithstanding any other provision of law to the contrary, for
2 mortgages foreclosed pursuant to subsection (a) of this section, a mortgagee or its successors or
3 assigns shall be entitled to bid at a foreclosure sale conducted pursuant to a judgment or order of
4 foreclosure entered by the courts of this State.

5 6 **PART V. PUBLIC SCHOOL STUDENT ENROLLMENT**

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

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

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

23 Notwithstanding the enforcement provisions of G.S. 115C-378(f), 115C-380,
24 115C-381, and 115C-382, a parent, guardian, or custodian of a student enrolled in a North
25 Carolina public school or charter school under this section who is determined by the principal of
26 the student's public school or the charter school to be in violation of the compulsory attendance
27 laws shall no longer be eligible to enroll the student in a North Carolina public school or charter
28 school pursuant to subsection (a) of this section in a subsequent semester of the school year. In
29 addition, the local school administrative unit or charter school in which the student is enrolled
30 shall notify, based on the student's place of residence in South Carolina, the juvenile court or such
31 other court in the county that has jurisdiction of juveniles and, if applicable, the attendance
32 supervisor for that county.

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

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

40 41 **PART VI. DRIVER EDUCATION ELIGIBILITY/BEGINNER LICENSE**

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

47 **SECTION 6.(b)** Notwithstanding G.S. 20-11(b)(1), a student who (i) as a result of the
48 boundary certification becomes a legal resident of North Carolina on the date of the certification
49 and (ii) is enrolled in a South Carolina school district in which his or her residence was located
50 prior to certification or in the South Carolina statewide public charter school district may meet the
51 requirement in G.S. 20-11(b)(1) for obtaining a limited learner's permit if the student passes a

1 course of driver education offered by the South Carolina high school in which the student is
2 enrolled.

3 **SECTION 6.(c)** The Department of Transportation, Division of Motor Vehicles, in
4 collaboration with the State Board of Education, shall develop a procedure for any North Carolina
5 resident who is a student enrolled in a South Carolina school pursuant to the conditions described
6 in subsection (b) of this section to satisfy the driver eligibility certificate requirements of
7 G.S. 20-11 to obtain and continue to hold a limited or full provisional license under this section.
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9 **PART VII. ELIGIBILITY FOR IN-STATE TUITION**

10 **SECTION 7.(a)** Notwithstanding any other provision of law, independent persons and
11 their dependents formerly domiciled in North Carolina counties who are domiciled in South
12 Carolina counties as a result of the North Carolina-South Carolina boundary certification may be
13 considered eligible for in-State tuition rates for a period of up to 10 years from the effective date
14 of the boundary change. To be eligible for in-State tuition rates, such persons must have been
15 domiciled and reside on property in North Carolina in accordance with G.S. 116-143.1
16 immediately prior to the effective date of North Carolina legislation approving the North
17 Carolina-South Carolina boundary certification and must maintain residence and domicile on that
18 same property within South Carolina.

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

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

33 **SECTION 7.(d)** Should the domicile and residence of independent persons and their
34 dependents change from the property affected by the boundary certification, maintenance of
35 eligibility for in-State rates will be determined as provided in G.S. 116-143.1.
36

37 **PART VIII. ABC PERMITS**

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

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

- 42 (1) The establishment is located in a county that borders on another state.
- 43 (2) The location of the establishment was reclassified from out-of-state to North
44 Carolina as a result of a State boundary certification.
- 45 (3) The establishment was licensed or permitted by the previous state of record to
46 sell malt beverages and unfortified wine."

47 **PART IX. TITLE, REGISTRATION, AND HIGHWAY USE TAX**

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

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

6 7 **PART X. ENVIRONMENTAL COMPLIANCE SCHEDULE**

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

- 12 (1) It is required to obtain a permit, license, or approval from the North Carolina
13 Department of Environmental Quality.
- 14 (2) It is subject to a permit, license, or approval program that is operated by a local
15 government and is delegated from or approved by the North Carolina
16 Department of Environmental Quality.

17 **SECTION 10.(b)** Notwithstanding any other provision of law to the contrary, the
18 Department of Environmental Quality, the Environmental Management Commission, or any local
19 program delegated or approved by the Department or the Commission (collectively, the
20 "permitting authorities"), in issuing any environmental permit, license, or approval to an impacted
21 location, shall provide a schedule of compliance that allows the recipient of the permit, license, or
22 approval a period of no less than five years to come into compliance with any North Carolina
23 environmental rule or standard established by the permitting authorities that (i) has no
24 corresponding rule or standard under South Carolina law or regulation or (ii) is more stringent
25 than the corresponding rule or standard established under South Carolina law or regulations. The
26 permitting authorities may include increments of progress applicable in each year of the schedule
27 established under this subsection. The owner or operator of an impacted location may waive the
28 schedule of compliance required by this subsection. Nothing in this section is intended to limit the
29 applicability or employment of existing procedures under North Carolina statutes and regulations
30 granting waivers or variances from otherwise applicable environmental rules or standards.

31 32 **PART XI. UTILITIES/EXTENSION OF RURAL FIRE PROTECTION DISTRICTS, 33 COUNTY SERVICE DISTRICTS, AND WATER AND SEWER DISTRICTS**

34 **SECTION 11.(a)** The owner or occupant of a dwelling unit or commercial
35 establishment on improved property that shall be deemed located in whole or in part in the State of
36 North Carolina as a result of the boundary certification described in this act may continue to
37 receive utility services from the South Carolina utility or its successor that is providing service to
38 the dwelling unit or commercial establishment on January 1, 2017. However, the owner or
39 occupant may, within his or her discretion, elect to have one or more of the utility services being
40 provided to the property by a South Carolina utility on January 1, 2017, be provided by a North
41 Carolina utility as long as the property is located within the North Carolina utility's service area. A
42 North Carolina utility that is a city or county may require the owner of the property to pay a
43 periodic availability fee authorized by law only if the owner elects to have utility service provided
44 to the dwelling unit or commercial establishment by the North Carolina utility. A South Carolina
45 utility that provides service to the property as authorized in this section is not a public utility under
46 G.S. 62-3(23), and is not subject to regulation by the North Carolina Utilities Commission as it
47 relates to providing the particular utility service involved. For purposes of this subsection only, the
48 term "South Carolina utility" has the same meaning as the term "utility" or "utilities" in the Code
49 of Laws of South Carolina, and the term "North Carolina utility" has the same meaning as the term
50 "public utility" which is defined in G.S. 62-3(23), and also includes a city or county that provides
51 any of the services listed in G.S. 160A-311 or G.S. 153A-274, an authority organized under the

1 North Carolina Water and Sewer Authorities Act, or an electric or telephone membership
2 corporation.

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

13
14 **PART XII. SEVERABILITY AND EFFECTIVE DATE**

15 **SECTION 12.(a)** If any provision of this act or its application is held invalid, the
16 invalidity does not affect other provisions or applications of this act that can be given effect
17 without the invalid provisions or application, and to this end, the provisions of this act are
18 severable.

19 **SECTION 12.(b)** Except as otherwise provided, this act is effective when it becomes
20 law.