

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1633
Committee Substitute Favorable 7/16/02

Short Title: Accelerate Local Option Sales Tax.

(Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO ACCELERATE THE ADDITIONAL ONE-HALF CENT LOCAL
OPTION SALES AND USE TAX, TO PROVIDE THAT LOCAL REVENUES
MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR, AND TO
MAKE CONFORMING AND TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-517(c) reads as rewritten:

"(c) Effective Date. – A tax levied under this Article may not become effective before ~~July 1, 2003.~~ September 1, 2002."

SECTION 2. G.S. 105-518(b) reads as rewritten:

"(b) Ballot Question. – The question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article must be in the following form:

"[] FOR [] AGAINST

one-half percent (½%) local sales and use taxes, ~~to replace the current one-half percent (½%) State sales and use taxes that end July 1, 2003.~~ in addition to all current State and local sales and use taxes." "

SECTION 3.(a) G.S. 105-520 reads as rewritten:

"§ 105-520. Distribution of taxes.

(a) Point of Origin. – The Secretary must, on a ~~monthly~~ quarterly basis, allocate to each taxing county one-half of the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a ~~month~~ quarter and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary must allocate one-half of the net proceeds of these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that ~~month~~ quarter.

(b) Per Capita. – The Secretary must, on a ~~monthly~~ quarterly basis, allocate the remaining net proceeds of the tax collected under this Article among the taxing counties on a per capita basis according to the most recent annual population estimates certified

1 to the Secretary by the State Budget Officer. The Secretary must then adjust the amount
2 allocated to each county as provided in G.S. 105-486(b).

3 (c) Distribution Between Counties and Cities. – The Secretary must divide and
4 distribute the funds allocated under this section each ~~month-quarter~~ between each taxing
5 county and the municipalities located in the county in accordance with the method by
6 which the one percent (1%) sales and use taxes levied in that county pursuant to Article
7 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. No
8 municipality may receive any funds under this subsection for a ~~month-quarter~~ if it is not
9 entitled to a distribution under G.S. 105-501 for the same ~~month-quarter~~."

10 **SECTION 3.(b)** This section is repealed effective July 1, 2003.

11 **SECTION 4.(a)** G.S. 105-521 reads as rewritten:

12 "**§ 105-521. Transitional local government hold harmless.**

13 (a) Definitions. – The following definitions apply in this section:

- 14 (1) Local government. – A county or municipality that received a
15 distribution of local sales taxes in the most recent fiscal year for which
16 a local sales tax share has been calculated.
- 17 (2) Local sales tax share. – A local government's percentage share of the
18 two-cent (2¢) sales taxes distributed during the most recent fiscal year
19 for which data are available.
- 20 (3) Repealed reimbursement amount. – The total amount a local
21 government would have been entitled to receive during the ~~2002-2003~~
22 2001-2002 fiscal year under G.S. 105-164.44C, 105-275.1, 105-275.2,
23 105-277.001, and 105-277.1A, if the Governor had not withheld any
24 distributions under those sections.
- 25 (4) Two-cent (2¢) sales taxes. – The first one-cent (1¢) sales and use tax
26 authorized in Article 39 of this Chapter and in Chapter 1096 of the
27 1967 Session Laws, the first one-half cent (½¢) local sales and use tax
28 authorized in Article 40 of this Chapter, and the second one-half cent
29 (½¢) local sales and use tax authorized in Article 42 of this Chapter.

30 (b) ~~Distributions.~~—2002-2003 Distribution. – On or before September 15, 2002,
31 the Secretary must multiply each local government's local sales tax share by the sum of
32 two hundred seventy-eight million seven hundred eighty-five thousand six hundred
33 dollars (\$278,785,600). If the resulting amount is less than one hundred percent (100%)
34 of the local government's repealed reimbursement amount, the Secretary must pay the
35 local government the difference, but not less than one hundred dollars (\$100.00).

36 (c) Subsequent Distributions. – On or before September 15, 2003, and each
37 September 15 thereafter, the Secretary must multiply each local government's local sales
38 tax share by the estimated amount that all local governments would be expected to
39 receive during the current fiscal year under G.S. 105-520 if every county levied the tax
40 under this Article for the year. If the resulting amount is less than one hundred percent
41 (100%) of the local government's repealed reimbursement amount, the Secretary must
42 pay the local government the difference, but not less than one hundred dollars
43 (\$100.00).

1 (d) Estimated Amounts. – On or before May 1, 2003, and each May 1 thereafter,
2 the Office of State Budget and Management and the Fiscal Research Division of the
3 General Assembly must each submit to the Secretary and to the General Assembly a
4 final projection of the estimated amount that all local governments would be expected to
5 receive during the upcoming fiscal year under G.S. 105-520 if every county levied the
6 tax under this Article for the fiscal year. If the Secretary does not use the lower of the
7 two final projections to make the calculation required by this subsection, the Secretary
8 must report the reasons for this decision to the Joint Legislative Commission on
9 Governmental Operations within 60 days after receiving the projections.

10 ~~(e)~~(e) Source of Funds. – The Secretary must draw the funds distributed under this
11 section from sales and use tax collections under Article 5 of this Chapter.

12 ~~(d)~~(f) Reports. – The Secretary must report to the Revenue Laws Study Committee
13 by January 31, ~~2004, 2003,~~ and each January 31 thereafter, the amount distributed under
14 this section for the current fiscal year."

15 **SECTION 4.(b)** G.S. 105-521 is repealed effective July 1, 2012.

16 **SECTION 5.** Effective for taxable years beginning on or after January 1,
17 2002, G.S. 105-269.14(b) reads as rewritten:

18 "(b) Distribution. – The Secretary must distribute ~~one-third~~ a portion of the net use
19 tax proceeds collected under this section to counties and ~~cities in proportion to their~~
20 ~~total distributions under Articles 39, 40, and 42 of this Chapter and Chapter 1096 of the~~
21 ~~1967 Session Laws for the most recent period for which data is available.~~ cities. The
22 portion to be distributed to all counties and cities shall be the total net use tax proceeds
23 collected under this section multiplied by a fraction. The numerator of the fraction is the
24 local use tax proceeds collected under this section. The denominator of the fraction is
25 the total use tax proceeds collected under this section. The Secretary shall then
26 distribute this portion to the counties and cities in proportion to their total distributions
27 under Articles 39, 40, 42, 43, and 44 of this Chapter and Chapter 1096 of the 1967
28 Session Laws for the most recent period for which data are available. The provisions of
29 G.S. 105-472, 105-486, and 105-501 do not apply to tax proceeds distributed under this
30 section."

31 **SECTION 6.** G.S. 159-15 reads as rewritten:

32 "**§ 159-15. Amendments to the budget ordinance.**

33 Except as otherwise restricted by law, the governing board may amend the budget
34 ordinance at any time after the ordinance's adoption in any manner, so long as the
35 ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13.
36 However, except as otherwise provided in this section, no amendment may increase or
37 reduce a property tax levy or in any manner alter a property taxpayer's liability, unless
38 the board is ordered to do so by a court of competent jurisdiction, or by a State agency
39 having the power to compel the levy of taxes by the board.

40 If after July 1 the local government receives additional and unanticipated revenues,
41 the governing body may, before January 1, amend the budget ordinance to reduce the
42 property tax levy to account for the unanticipated revenues.

43 The governing board by appropriate resolution or ordinance may authorize the
44 budget officer to transfer moneys from one appropriation to another within the same

1 fund subject to such limitations and procedures as it may prescribe. Any such transfers
2 shall be reported to the governing board at its next regular meeting and shall be entered
3 in the minutes."

4 **SECTION 7.** Section 34.14(b) of S.L. 2001-424 reads as rewritten:

5 "**SECTION 34.14.(b)** Notwithstanding the provisions of G.S. 105-466(c), a tax
6 levied during the ~~2003-2002~~ calendar year under Article 44 of Chapter 105 of the
7 General Statutes, as enacted by this act, may become effective on the first day of any
8 calendar month during 2002 beginning on or after ~~July 1, 2003~~September 1, 2002.
9 Notwithstanding the provisions of G.S. 105-466(c), if a county levies a tax during the
10 ~~2003-2002~~ calendar year under Article 44 of Chapter 105 of the General Statutes, as
11 enacted by this act, that is to become effective on or before January 1, 2003, the county
12 is required to give the Secretary of Revenue ~~only the following notice~~:

13 (1) If the tax is to become effective September 1, 2002, the county must
14 notify the Secretary on or before August 15, 2002.

15 (2) If the tax is to become effective on the first day of any other calendar
16 month beginning on or before January 1, 2003, the county must give
17 the Secretary 30 days" advance notice of the tax levy.

18 For taxes ~~levied on or~~that are to become effective after January 1, ~~2004,2003~~, the
19 provisions of G.S. 105-466(c) apply."

20 **SECTION 8.** Section 34.15(b) of S.L. 2001-424 reads as rewritten:

21 "**SECTION 34.15.(b)** This section becomes effective July 1, ~~2003,2002~~."

22 **SECTION 9.** Notwithstanding any other provision of law, for the month of
23 September 2002, the administration and distribution of taxes collected under Article 44
24 of Chapter 105 of the General Statutes shall be in accordance with this section. For that
25 month, the Secretary of Revenue shall create a separate account for the collection of
26 taxes under Article 44 of Chapter 105 of the General Statutes. In that month, retailers
27 shall report taxes collected under Article 44 of Chapter 105 of the General Statutes on a
28 form separate from that on which the retailer reports other sales and use taxes collected.
29 In that month, the Secretary shall allocate to each county that has imposed a tax under
30 Article 44 of Chapter 105 of the General Statutes a portion of the total amount of tax
31 collected under that Article. A county's allocation shall be determined by multiplying
32 the total amount of tax collected under Article 44 of Chapter 105 of the General Statutes
33 for that month by a fraction. The numerator of the fraction is the amount allocated
34 under G.S. 105-472, 105-486, and 105-501 for the first quarter of the 2002-2003 fiscal
35 year to the county. The denominator of the fraction is the total amount allocated under
36 G.S. 105-472, 105-486, and 105-501 for the first quarter of the 2002-2003 fiscal year to
37 all counties that have imposed a tax under Article 44 of Chapter 105 of the General
38 Statutes. The Secretary shall distribute these taxes at the end of the quarter in
39 accordance with G.S. 105-520(c).

40 **SECTION 10.** To the extent the Department of Revenue's nonrecurring costs
41 of implementing and administering Article 44 of Chapter 105 of the General Statutes, as
42 amended, exceed funds available in its budget for the 2002-2003 fiscal year, the
43 Department may pay the excess cost by withholding up to two hundred seventy-five

1 thousand dollars (\$275,000) from collections under Subchapter VIII of Chapter 105 of
2 the General Statutes.

3 **SECTION 11.** The Department of Revenue may contract for supplies,
4 materials, equipment, and contractual services related to the provision of notice, the
5 creation of tax forms and instructions, and the development of computer software
6 necessitated by the amendments in this act without being subject to the requirements of
7 Article 3 or Article 8 of Chapter 143 of the General Statutes.

8 **SECTION 12.(a)** The title of Article 39 of Chapter 105 of the General
9 Statutes reads as rewritten:

10 "Article 39.

11 First One-Cent (1¢) Local Government Sales and Use Tax."

12 **SECTION 12.(b)** G.S. 105-463 reads as rewritten:

13 "**§ 105-463. Short title.**

14 This Article shall be known as the "~~Local~~ First One-Cent (1¢) Local Government
15 Sales and Use Tax Act." Act."

16 **SECTION 13.(a)** The title of Article 40 of Chapter 105 of the General
17 Statutes reads as rewritten:

18 "Article 40.

19 ~~Supplemental~~ First One-Half Cent (1/2¢) Local Government Sales and Use Taxes. Tax."

20 **SECTION 13.(b)** G.S. 105-480 reads as rewritten:

21 "**§ 105-480. Short title.**

22 This Article shall be known as the ~~Supplemental~~ First One-Half Cent (1/2¢) Local
23 Government Sales and Use Tax Act."

24 **SECTION 14.(a)** The title of Article 42 of Chapter 105 of the General
25 Statutes reads as rewritten:

26 "Article 42.

27 ~~Additional Supplemental~~ Second One-Half Cent (1/2¢) Local Government Sales and
28 Use Taxes. Tax."

29 **SECTION 14.(b)** G.S. 105-495 reads as rewritten:

30 "**§ 105-495. Short title.**

31 This Article shall be known as the ~~Additional Supplemental~~ Second One-Half Cent
32 (1/2¢) Local Government Sales and Use Tax Act."

33 **SECTION 15.** Notwithstanding the provisions of G.S. 105-517(b), a county
34 may levy a tax by resolution that becomes effective on or before January 1, 2003, under
35 Article 44 of Chapter 105 of the General Statutes without giving at least 10 days" public
36 notice of its intent to adopt the resolution and without holding a public hearing on the
37 issue of adopting the resolution.

38 **SECTION 15.1.** G.S. 105-113.82(d) reads as rewritten:

39 "(d) Time. – The revenue shall be distributed to cities and counties within 60 days
40 after March 31 of each year. The General Assembly finds that the revenue distributed
41 under this section is local revenue, not a State expenditure, for the purpose of Section
42 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not
43 reduce or withhold the distribution."

44 **SECTION 15.2.** G.S. 105-116.1(b) reads as rewritten:

1 "(b) Distribution. – The Secretary must distribute to the cities part of the taxes
2 collected under this Article on electric power companies. Each city's share for a
3 calendar quarter is the percentage distribution amount for that city for that quarter minus
4 one-fourth of the city's hold-back amount and one-fourth of the city's proportionate
5 share of the annual cost to the Department of administering the distribution. The
6 Secretary must make the distribution within 75 days after the end of each calendar
7 quarter. The General Assembly finds that the revenue distributed under this section is
8 local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of
9 the North Carolina Constitution. Therefore, the Governor may not reduce or withhold
10 the distribution."

11 **SECTION 15.3.** G.S. 105-187.44(b) reads as rewritten:

12 "(b) Distribution. – Within 75 days after the end of each calendar quarter, the
13 Secretary must distribute to the cities part of the tax proceeds collected under this
14 Article during that quarter. The amount to be distributed to a city is one-half of the
15 amount of tax attributable to that city for that quarter under subsection (a) of this
16 section. The General Assembly finds that the revenue distributed under this section is
17 local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of
18 the North Carolina Constitution. Therefore, the Governor may not reduce or withhold
19 the distribution."

20 **SECTION 15.4.** G.S. 105-164.44F is amended by adding a new subsection
21 to read:

22 "(f) Nature. – The General Assembly finds that the revenue distributed under this
23 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of
24 Article III of the North Carolina Constitution. Therefore, the Governor may not reduce
25 or withhold the distribution."

26 **SECTION 15.5.** G.S. 136-41.1 is amended by adding a new subsection to
27 read:

28 "(d) Nature. – The General Assembly finds that the revenue distributed under this
29 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of
30 Article III of the North Carolina Constitution. Therefore, the Governor may not reduce
31 or withhold the distribution."

32 **SECTION 15.6.** G.S. 159B-27(d) reads as rewritten:

33 "(d) The State shall distribute to cities and towns which receive electric power and
34 energy from their ownership share of a project or to which electric power and energy is
35 sold by a joint agency an amount equal to a tax of three and nine hundredths percent
36 (3.09%) of all moneys expended by a municipality on account of its ownership share of
37 a project, including payment of principal and interest on bonds issued to finance such
38 ownership share, or an amount equal to a tax of three and nine hundredths percent
39 (3.09%) of the gross receipts from all sales of electric power and energy to such city or
40 town by a joint agency, as the case may be. The General Assembly finds that the
41 revenue distributed under this section is local revenue, not a State expenditure, for the
42 purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the
43 Governor may not reduce or withhold the distribution."

44 **SECTION 15.7.** G.S. 143-25 reads as rewritten:

1 **"§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to**
2 **support them.**

3 (a) All maintenance appropriations now or hereafter made are hereby declared to
4 be maximum, conditional and proportionate appropriations, the purpose being to make
5 the appropriations payable in full in the amounts named herein if necessary and then
6 only in the event the aggregate revenues collected and available during each fiscal year
7 of the biennium for which such appropriations are made, are sufficient to pay all of the
8 appropriations in full; otherwise, the said appropriations shall be deemed to be payable
9 in such proportion as the total sum of all appropriations bears to the total amount of
10 revenue available in each of said fiscal years. ~~The~~ Except as provided in subsection (b)
11 of this section, the Director of the Budget is hereby given full power and authority to
12 examine and survey the progress of the collection of the revenue out of which such
13 appropriations are to be made, and to declare and determine the amounts that can be,
14 during each quarter of each of the fiscal years of the biennium properly allocated to
15 each respective appropriation. In making such examination and survey, ~~he~~ the Director
16 of the Budget shall receive estimates of the prospective collection of revenues from the
17 Secretary of Revenue and every other revenue collecting agency of the State. The
18 Director of the Budget may reduce all of said appropriations pro rata when necessary to
19 prevent an overdraft or deficit to the fiscal period for which such appropriations are
20 made. The Governor may also reduce all of said appropriations pursuant to Article III,
21 Section 5(3) of the Constitution in accordance with subsection (b) of this section, after
22 consulting with the Joint Legislative Commission on Governmental Operations under
23 G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy
24 of this Article are to provide and insure that there shall be no overdraft or deficit in the
25 general fund of the State at the end of the fiscal period, growing out of appropriations
26 for maintenance and the Director of the Budget is directed and required to so administer
27 this Article as to prevent any such overdraft or deficit. Prior to taking any action under
28 this section to reduce appropriations pro rata, the Governor may consult with the
29 Advisory Budget Commission.

30 (b) The General Assembly recognizes that it has required units of local
31 government to adopt and maintain annual balanced budgets and take other steps to
32 assure financially sound operations under the Local Government Budget and Fiscal
33 Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly,
34 the General Assembly finds that in order to satisfy those statutory requirements and
35 provide adequate services to their citizens, units of local government must be able to
36 rely on the funds and local revenue sources the General Assembly has provided.

37 It is the intent of the General Assembly that funds that have been collected by the
38 State on behalf of local governments and funds that the General Assembly has
39 appropriated or otherwise committed to local governments shall not be reduced except
40 as provided in this section. In exercising the powers contained in Section 5(3) of Article
41 III of the Constitution, the Governor shall not withhold from distribution funds that have
42 been collected by the State on behalf of local governments or funds that the General
43 Assembly has appropriated or otherwise committed to local governments unless, after
44 making adequate provision for the prompt payment of principal of and interest on bonds

1 and notes of the State according to their terms, the Governor has exhausted all other
2 sources of revenue of the State including surplus remaining in the treasury at the
3 beginning of the fiscal period and has been authorized to withhold the funds by an act of
4 the General Assembly.

5 This subsection does not authorize the Governor to withhold revenues from taxes
6 levied by units of local governments and collected by the State. The General Assembly
7 recognizes that under Section 19 of Article I of the North Carolina Constitution and
8 under the Due Process Clause of the United States Constitution, the State is prohibited
9 from taking local tax revenue."

10 **SECTION 16.** Except as otherwise provided, this act is effective when it
11 becomes law.