

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**HOUSE BILL 1707
RATIFIED BILL**

AN ACT TO PROVIDE TOURISM DEVELOPMENT FOR THE NEW HANOVER COUNTY BEACH TOWNS, TO PROVIDE FOR THE ESTABLISHMENT OF A TOURISM DEVELOPMENT AUTHORITY, TO CONFORM ADMINISTRATIVE PROVISIONS OF THE NEW HANOVER COUNTY LAW TO GENERAL LAW, AND TO PROHIBIT A CONVENTION CENTER IN NEW HANOVER COUNTY FROM ENTERING INTO A CONTRACT WITH A HOTEL REQUIRING THE HOTEL TO PAY FEES OR COMMISSIONS TO THE CONVENTION CENTER BASED ON ACCOMMODATIONS PROVIDED TO INDIVIDUALS ATTENDING CONVENTION CENTER FUNCTIONS.

The General Assembly of North Carolina enacts:

**NEW HANOVER COUNTY BEACH TOWNS TOURISM DEVELOPMENT
ACT**

SECTION 1.(a) This section applies only to the towns of Carolina Beach, Kure Beach, and Wrightsville Beach.

SECTION 1.(b) Authorization and Scope. – If New Hanover County has created a Tourism Development Authority pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended, the governing body of a beach town may, by resolution, levy a local occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(c) Administration. – New Hanover County shall collect and administer on behalf of each beach town the tax the town levies under this section. Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(d) Distribution and Use of Tax Revenue. – The county shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied by each beach town under this section to the Tourism Development Authority for deposit to a separate account for that beach town. The Authority shall use at least one-half of the funds in each beach town account to promote travel and tourism in that beach town and shall use the remainder in each beach town account for tourism-related expenditures in that beach town. Before spending any funds in a beach town account for promoting travel and tourism or for tourism-related expenditures, the Authority must consult with the affected beach town regarding its needs for promoting travel and tourism and for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Beach towns. – Carolina Beach, Kure Beach, and Wrightsville Beach.
- (2) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred

- thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (3) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
 - (4) Tourism Development Authority or Authority. – The Cape Fear Coast Convention and Visitors Bureau created by New Hanover County pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended.
 - (5) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2. G.S. 160A-215 reads as rewritten:

"§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or

reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, and Washington, to the Towns of Beech Mountain, Carolina Beach, Carrboro, Kure Beach, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, and Wilkesboro, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

MODIFY NEW HANOVER COUNTY ADMINISTRATIVE PROVISIONS

SECTION 3. Section 36.1 of Chapter 908 of the 1983 Session Laws is recodified as Section 32(b) of Chapter 908 of the 1983 Session Laws.

SECTION 4. Part VIII of Chapter 908 of the 1983 Session Laws, as amended by Chapter 987 of the 1983 Session Laws, Chapters 726 and 971 of the 1985 Session Laws, Chapter 540 of the 1995 Session Laws, and Section 3 of this act, reads as rewritten:

"Part VIII. New Hanover Occupancy Tax.

"Sec. 31. Levy of Tax. – (a) Two-Percent Tax. – The New Hanover County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax.

(b) ~~Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the New Hanover County Board of Commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

"Sec. 32. Occupancy Tax. ~~The county room occupancy tax that may be levied under this Part shall be~~ levy a room occupancy tax of two percent (2%) of the gross receipts derived from the rental of any accommodations within the county that are subject to room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the county that is subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(3). ~~G.S. 105-164.4(a)(3).~~ This tax is in addition to any local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations.

(b) Additional One-Percent Tax. – In addition to the tax authorized by ~~Sections 31 and 32 of this Part,~~ subsection (a) of this section, the New Hanover County Board of Commissioners may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under ~~those sections that~~ subsection. The levy, collection, administration, and repeal of the tax authorized by ~~this section, subsection,~~ and the use of tax revenue from a tax levied under this section, subsection, shall be in accordance with Sections 31 through ~~36~~ 35 of this Part. New Hanover County may not levy a tax under ~~this section-subsection~~ unless it also levies a tax under Sections 31 and 32 of this Part, subsection (a) of this section.

"Sec. 32. Definitions. – The following definitions apply in this Part:

- (1) Beach nourishment. – The placement of sand, from other sand sources, on a beach or dune by mechanical means and other associated activities that are in conformity with the North Carolina Coastal Management Program along the shorelines of the Atlantic Ocean of North Carolina and connecting inlets for the purpose of widening the beach to benefit public recreational use and mitigating damage and

erosion from storms to inland property. The term includes expenditures for any of the following:

- a. Costs directly associated with qualifying for projects either contracted through the U.S. Army Corps of Engineers or otherwise permitted by all appropriate federal and State agencies.
 - b. The nonfederal share of the cost required to construct these projects.
 - c. The costs associated with providing enhanced public beach access.
 - d. The costs of associated nonhardening activities such as the planting of vegetation, the building of dunes, and the placement of sand fences.
- (2) Beach towns. – Carolina Beach, Kure Beach, and Wrightsville Beach.
 - (3) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
 - (4) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
 - (5) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in an area by attracting tourists or business travelers to the area. The term includes tourism-related capital expenditures and beach nourishment.

"Sec. 33. Administration of Tax. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.(a) ~~Any tax levied under this Part is due and payable to the county in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this Part shall pay a penalty of ten dollars (\$10.00) for each day's omission.~~

~~(c) In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, in addition to the penalty prescribed in subsection (b), with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid.~~

~~(d) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this Part or to make a return and who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment not to exceed six months, or both.~~

~~(e) In the event that a penalty or additional tax as a penalty is imposed upon or added to the tax levied under this Part, as prescribed in subsections (b) and (c) above, the Board of Commissioners of New Hanover County, upon petition of the taxpayer or~~

~~his agent, may compromise, settle, or adjust the county's claim for the penalties imposed.~~

"Sec. 34. Establishment of the Cape Fear Coast Convention and Visitors Bureau as a Tourism Development Authority. – (a) Creation. – As soon as practicable before February 1, 2003, the board of commissioners shall adopt a resolution creating the Cape Fear Coast Convention and Visitors Bureau, a tourism development authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The county shall transfer to the Authority upon its creation all the assets of the county's convention and visitors bureau.

(b) Membership. – The Authority shall be composed of the following 15 voting members: five ex officio members or their designees and 10 additional members appointed by the board of commissioners.

(1) The ex officio members are listed below. Each ex officio member may designate to serve in the member's place an individual who is actively involved in promoting travel and tourism in the local community the member represents or who owns or manages a lodging facility in the local community the member represents.

a. The chair of the board of county commissioners.

b. The mayor of the City of Wilmington.

c. The mayors of the beach towns.

(2) The board of county commissioners shall appoint the members listed below. The resolution creating the Authority must provide for staggered terms for the appointed members.

a. The owner or manager of a hotel of 150 rooms or more in the town of Wrightsville Beach. This individual must have experience in promoting travel and tourism.

b. The owner or manager of a hotel in the town of Carolina Beach and the owner or manager of a hotel in the town of Kure Beach. These individuals must have experience in promoting travel and tourism.

c. The owner or manager of a hotel of 150 rooms or more in the City of Wilmington. This individual must have experience in promoting travel and tourism.

d. The owner or manager of a hotel of fewer than 150 rooms in the City of Wilmington. This individual must have experience in promoting travel and tourism.

e. The owner or manager of a bed and breakfast facility. This individual must have experience in promoting travel and tourism.

f. The owner or manager of a company that manages and rents more than 100 vacation rental properties. This individual must have experience in promoting travel and tourism.

g. A representative of a tourism attraction in the county who is actively involved in the promotion of travel and tourism in the county.

h. A representative of the Wilmington Chamber of Commerce who is actively involved in promoting travel and tourism in the county.

i. The owner or manager of a restaurant business in the county.

(c) Administration. – The board of commissioners shall determine the compensation, if any, to be paid to members of the Authority. The resolution creating the Authority must designate one member of the Authority to serve as the initial chair. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. During the first quarter of each calendar year beginning in 2004,

the Authority must meet to elect a chair from among its members. The Finance Officer for New Hanover County shall be the ex officio finance officer of the Authority.

(d) Duties. – The Authority shall expend the net proceeds of the taxes distributed to it for the purposes provided by law. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(e) Reports. – The Authority shall report quarterly and at the close of the fiscal year on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require. It shall file these reports with the board of commissioners and with the governing body of each municipality in the county.

~~Collection of Tax. Every operator of a business subject to the tax levied by this Part shall, on and after the effective date of the levy of the tax, collect the two percent (2%) room occupancy tax provided by this Part.~~

~~This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of New Hanover County. It is the intent of this Part that the room occupancy tax levied by New Hanover County shall be added to the sales price and that the tax shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~"Sec. 35. Disposition of Taxes Collected. (a) – New Hanover County shall distribute the net proceeds of the occupancy tax taxes levied under Section 31 of this Part as follows; provided in this section:~~

- ~~(1) Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30; and 159-30. These funds shall be used only for beach nourishment.~~
- ~~(2) Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the county and its municipalities in accordance with the method by which the one percent (1%) local sales and use taxes levied in the county pursuant to Article 39 of Chapter 105 of the General Statutes are distributed. Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.~~

~~'Net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax.~~

~~Unless a change in the use of occupancy tax revenue is authorized pursuant to subsection (b), the revenue deposited in a special fund in accordance with subdivision (1) shall be used by the county to control beach erosion, and the revenue distributed between the county and its municipalities in accordance with subdivision (2) shall be used to promote travel and tourism. No revenue distributed under subdivision (2), however, may be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.~~

~~(b) The purposes for which revenue from the room occupancy tax may be used by the county and its municipalities may be changed only by resolution of the New Hanover Board of County Commissioners after being approved by a majority of the votes cast in an election held in New Hanover County on the question of how revenue from the room occupancy tax should be used. The ballot presented to the qualified voters of the county in an election concerning the use of revenue from the room occupancy tax shall state all the proposed uses of this revenue and the percentage of the revenue to be used for each purpose. Any change in use of revenue from the room~~

~~occupancy tax made by the county commissioners after voter approval may likewise be changed only by resolution of the county commissioners after being approved by the voters in another election.~~

~~The question of how revenue from the room occupancy tax should be spent may be submitted to the qualified voters of the county only at the time of a statewide general election. All elections under this section shall be conducted in accordance with the laws then governing elections in this State.~~

~~"Sec. 36. Repeal of Levy. (a) The board of commissioners may by resolution repeal the levy of the room occupancy tax in new Hanover County, but no repeal of taxes levied under this Part shall be effective until the end of the fiscal year in which the repeal resolution was adopted.~~

~~(b) No liability for any tax levied under this Part that attached prior to the date on which a levy is repealed is discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed may be denied as a result of the repeal."~~

SECTION 5. G.S. 153A-155 reads as rewritten:

"§ 153A-155. Uniform provisions for room occupancy taxes.

(a) Scope. – This section applies only to counties the General Assembly has authorized to levy room occupancy taxes.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing county has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a county may be repealed or reduced by a resolution adopted by the governing body of the county. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the

resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averagesboro in Harnett County."

LIMITATION ON NEW HANOVER COUNTY CONVENTION CENTERS

SECTION 6. G.S. 160A-489 reads as rewritten:

"§ 160A-489. Auditoriums, coliseums, and convention centers.

(a) Any city is authorized to establish and support public auditoriums, coliseums, and convention centers. As used in this section, "support" includes but is not limited to: acquisition, construction, and renovation of buildings and acquisition of the necessary land and other property therefor; purchase of equipment; compensation of personnel; and all operating and maintenance expenses of the facility. For the purposes set forth in this section, a city may appropriate funds not otherwise limited as to use by law.

(b) A convention center, or its agents, that is funded in whole or in part by occupancy tax proceeds may not enter into a contract with a hotel or lodging facility that requires the hotel or lodging facility to pay a fee, penalty, commission, or other charge to the convention center based on accommodations provided to individuals attending convention center functions. A convention center may not discriminate against a hotel or lodging facility that provides accommodations to individuals attending convention center functions based on the payment or nonpayment of fees, penalties, commissions, or other charges to the convention center."

SECTION 7. Section 6 of this act applies only to New Hanover County and the municipalities in New Hanover County.

EFFECTIVE DATE

SECTION 8. Sections 6, 7, and 8, and the amendments made by this act to Section 34 of Chapter 908 of the 1983 Session Laws, as amended, are effective when this act becomes law. The remainder of this act becomes effective February 1, 2003.

In the General Assembly read three times and ratified this the 3rd day of October, 2002.

Marc Basnight
President Pro Tempore of the Senate

James B. Black
Speaker of the House of Representatives