

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

1

HOUSE BILL 861

Short Title: Union County Schools Referenda. (Local)

Sponsors: Representative Shubert (By Request).

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

March 29, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE UNION COUNTY TO HOLD A REFERENDUM ON
3 LEVYING TAXES FOR SCHOOL CONSTRUCTION.

4 The General Assembly of North Carolina enacts:

5 **PART 1. GENERAL PROVISION.**

6 SECTION 1. This act applies only to Union County.

7 **PART 2. LOCAL SALES AND USE TAX.**

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

10 "Article 44.

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

12 "**§ 105-515. Short title.**

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

14 "**§ 105-516. Purpose.**

15 This Article gives the counties of this State an opportunity to obtain a source of
16 revenue with which to meet their public school construction needs. It provides all
17 counties of the State that are subject to this Article with authority to levy one percent
18 (1%) sales and use taxes.

19 "**§ 105-517. Limitations.**

20 This Article applies only to counties that levy the first one-cent (1¢) sales and use
21 tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws,
22 the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, and
23 the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter.

24 "**§ 105-518. Levy.**

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

1 draw the refund from the taxing county's share of the net proceeds of the tax it levies
2 under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, as
3 applicable."

4 **SECTION 3.** A tax levied under Article 44 of Chapter 105 of the General
5 Statutes, as enacted by this act, does not apply to construction materials purchased to
6 fulfill a lump-sum or unit-price contract entered into or awarded before the effective
7 date of the levy or entered into or awarded pursuant to a bid made before the effective
8 date of the levy when the construction materials would otherwise be subject to the tax
9 levied under Article 44 of Chapter 105 of the General Statutes.

10 **PART 3. IMPACT TAX.**

11 **SECTION 4.(a) Imposition of Tax.** If the majority of those voting in a
12 referendum in Union County held pursuant to this act vote for the imposition of the
13 impact tax, the board of commissioners of the county may, by resolution, impose and
14 collect impact taxes to be paid for each new dwelling to help defray the costs to the
15 county of public school capital needs, including the construction, equipment, expansion,
16 improvement, and renovation of public schools, the need for which is created in
17 substantial part by the new residential development that takes place within the county.
18 A "dwelling" includes any permanent structure having sleeping accommodations that is
19 used as a residence, including apartment houses and manufactured housing, but
20 excluding nonprofit institutions, nursing homes, and hospitals.

21 **SECTION 4.(b)** The board of commissioners of the county may direct the
22 county board of elections to conduct an advisory referendum on the question of whether
23 to impose the impact tax in the county as provided in this act. The election shall be held
24 on a date jointly agreed upon by the two boards and shall be held in accordance with the
25 procedures of G.S. 163-287.

26 **SECTION 4.(c)** The form of the question to be presented on a ballot for a
27 special election concerning the imposition of the impact tax authorized by this act shall
28 be:

29 FOR AGAINST

30 the imposition of impact tax on new dwellings with the proceeds to be used only for
31 public school capital projects.'

32 **SECTION 5.(a) Scope of Impact Tax Ordinance.** No impact tax shall be
33 imposed unless the county has met the following procedural requirements:

- 34 (1) Before adopting or amending an impact tax ordinance, the county
35 board of commissioners shall hold a public hearing on the proposed
36 ordinance or amendment. A notice of the public hearing shall be given
37 so as to conform to G.S. 153A-21.
- 38 (2) The county planning board shall be afforded a reasonable opportunity
39 to make comments or recommendations to the county board of
40 commissioners on the appropriateness of the impact tax ordinance or
41 an amendment to the impact tax ordinance.

42 **SECTION 5.(b)** An ordinance authorized by this act shall apply everywhere
43 within the county, including within the corporate limits and extraterritorial planning
44 jurisdiction of any city, town, or municipal corporation within the county.

1 **SECTION 6. Amount of Impact Tax.** In no case shall an impact tax
2 imposed under this act exceed two thousand five hundred dollars (\$2,500) per new
3 dwelling. The tax shall be levied on the square footage of the dwelling. In establishing
4 the rate of the impact tax to be imposed, the county shall endeavor to approach the
5 objective of having each new dwelling contribute to a public school capital costs reserve
6 fund an amount of revenue that bears a reasonable relationship to that dwelling's fair
7 share of the costs to the county of public school capital needs that are needed in part
8 because of that dwelling. In fulfilling this objective, the board of county commissioners
9 shall, among other steps and actions, estimate the total costs of public school capital
10 needs required during a reasonable planning period not to exceed 20 years.

11 **SECTION 7. Payment of Impact Tax.** An ordinance adopted under this
12 act shall provide for payment of the impact tax at the time a certificate of occupancy is
13 issued for the subject property.

14 **SECTION 8.(a) Public School Capital Costs Reserve Fund.** Impact tax
15 collected by the county shall be deposited in a Public School Capital Costs Reserve
16 Fund established pursuant to Part 2 of Article 3 of Chapter 159 of the General Statutes.
17 The funds may be expended only on the costs to the county of public school capital
18 needs.

19 **SECTION 8.(b)** In order to provide that impact tax paid by a particular
20 dwelling is expended on public school capital needs related to that dwelling, the county
21 may establish within the county two or more districts or zones, and impact tax generated
22 by dwellings within those districts or zones shall be spent on the public school capital
23 needs within those districts or zones.

24 **SECTION 9.(a) Appeals Process.** An ordinance adopted under this act may
25 provide that any person aggrieved by a decision regarding an impact tax may appeal to
26 the county board of adjustment. If the ordinance establishes an appeal procedure, it
27 shall state the time within which the appeal must be taken to the board of adjustment,
28 the possible grounds for an appeal, the board's authority in the matter, whether the tax
29 must be paid prior to resolution of the appeal, and other procedural or substantive
30 matters related to appeals.

31 **SECTION 9.(b)** Any decision of the board of adjustment shall be subject to
32 review by the superior court within the county by proceedings in the nature of certiorari
33 in the same manner as provided in G.S. 153A-345(e).

34 **SECTION 10. Refunds.** If an ordinance adopted under this act is declared to
35 be invalid by any court of competent jurisdiction, then any impact tax collected under
36 the ordinance shall be refunded to the person paying it together with interest at the rate
37 established under G.S. 105-241.1, being the same rate paid by the Secretary of Revenue
38 on refunds for tax overpayments.

39 **SECTION 11.(a) Limitation on Actions.** Any action contesting the
40 validity of an ordinance adopted pursuant to this act shall be commenced not later than
41 nine months after the impact tax is paid.

42 **SECTION 11.(b)** Any action seeking to recover an impact tax shall be
43 commenced not later than nine months after the impact tax is paid.

1 **SECTION 12. Expiration.** An ordinance that imposes an impact tax under
2 this act expires five years after it is adopted. A county's authorization to impose an
3 impact tax under this act expires five years after the effective date of the first ordinance
4 imposing an impact tax under this act, regardless of whether the impact tax has
5 remained in effect for the entire five-year period. The expiration of an ordinance
6 imposing an impact tax adopted pursuant to this act does not affect the rights or
7 liabilities of a county or any person arising under the expired ordinance; nor does it
8 affect the right to a refund of the impact tax that would otherwise be available.

9 **PART 4. EFFECTIVE DATE.**

10 **SECTION 13.** This act is effective when it becomes law.