

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 99

Short Title: Local Tax Menu With Voter Approval. (Public)

Sponsors: Representatives Michaux; and Haire.

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

February 13, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE COUNTIES AND CITIES TO LEVY A MENU OF
3 LOCAL OPTION TAXES IF APPROVED BY THE VOTERS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** Subchapter VIII of Chapter 105 of the General Statutes is
6 amended by adding a new Article to read:

7 "Article 44.

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

9 **"§ 105-515. Short title.**

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

11 **"§ 105-516. Definitions.**

12 The following definitions apply in this Article:

13 (1) City. – Defined in G.S. 153A-1.

14 (2) Taxing unit. – A city or a county.

15 **"§ 105-517. Levy.**

16 (a) Authority. – If the majority of those voting in a referendum held pursuant to
17 this Article vote for the levy of the taxes, the governing body of a taxing unit may, by
18 resolution, levy local sales and use taxes up to the rate approved in the referendum, in
19 addition to any other State and local sales and use taxes levied pursuant to law.

20 (b) Vote. – The governing body of a taxing unit may direct the county board of
21 elections to conduct an advisory referendum on the question of whether to levy local
22 sales and use taxes in the taxing unit as provided in this Article. The election shall be
23 held on a date jointly agreed upon by the governing body and the board of elections and
24 shall be held in accordance with the procedures of G.S. 163-287.

25 (c) Ballot Question. – The form of the question to be presented on a ballot for a
26 special election concerning the levy of the taxes authorized by this Article shall be:

27 ' [] FOR [] AGAINST

1 [X] percent (X%) local sales and use taxes, in addition to the current local sales and use
2 taxes.'

3 (d) Effect on Local Act. – If a taxing unit levies sales and use taxes under this
4 Article, that taxing unit may not also levy sales and use taxes under a local act. This
5 section does not repeal any local act authorizing a taxing unit to levy local sales and use
6 taxes. However, a taxing unit's levy of sales and use taxes under this Article
7 automatically removes the taxing unit's authority to levy sales and use taxes under a
8 local act. Repeal of a taxing unit's sales and use taxes levied under this Article does not
9 revive the taxing unit's authority to levy sales and use taxes under a local act.

10 **"§ 105-518. Administration.**

11 Except as provided in this Article, the adoption, levy, collection, administration, and
12 repeal of the additional taxes authorized by this Article shall be in accordance with
13 Article 39 of this Chapter.

14 A tax levied under this Article does not apply to the sales price of food that is
15 exempt from tax pursuant to G.S. 105-164.13B.

16 **"§ 105-519. Distribution.**

17 The Secretary shall, on a quarterly basis, allocate to each taxing unit the net proceeds
18 of the tax collected in that unit under this Article. If the Secretary collects taxes under
19 this Article in a month and the taxes cannot be identified as being attributable to a
20 particular taxing unit, the Secretary shall allocate these taxes among the taxing units in
21 proportion to the amount of taxes collected in each unit under this Article in that month
22 and shall include them in the quarterly distribution.

23 If the taxing unit is a county, the Secretary shall divide the tax proceeds between the
24 county and its municipalities in the same manner as the tax proceeds distributed under
25 G.S. 105-472."

26 **SECTION 1.(b)** A tax levied under Article 44 of Chapter 105 of the General
27 Statutes, as enacted by this act, does not apply to construction materials purchased to
28 fulfill a lump-sum or unit-price contract entered into or awarded before the effective
29 date of the levy or entered into or awarded pursuant to a bid made before the effective
30 date of the levy when the construction materials would otherwise be subject to the tax
31 levied under Article 44 of Chapter 105 of the General Statutes.

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

34 "Article 45.

35 "Local Government Impact Tax.

36 **"§ 105-525. Short title.**

37 This Article is the Local Government Impact Tax Act.

38 **"§ 105-526. Definitions.**

39 The following definitions apply in this Article:

40 (1) City. – Defined in G.S. 153A-1.

41 (2) Commercial building enclosed floor space. – All enclosed floor space
42 used for any purpose except:

43 a. Dwelling units and accessory structures to dwelling units.

- 1 b. Recreational facilities constructed as part of a residential
2 development and used primarily by residents of the
3 development.
- 4 c. Buildings owned by the United States, the State of North
5 Carolina, any county, or any municipal corporation.
- 6 d. Buildings owned and operated by nonprofit entities for
7 noncommercial and nonresidential purposes.
- 8 e. Schools or day care centers.
- 9 (3) Dwelling unit. – An enclosure containing sleeping, kitchen, and
10 bathroom facilities designed for and used or held ready for use as a
11 permanent residence by one family.
- 12 (4) Land development. –
- 13 a. Land development includes any of the following:
- 14 1. Construction of any dwelling unit, other than one
15 excluded under sub-subdivision b. of this subdivision,
16 for which a building permit was issued or should have
17 been issued after the effective date of a tax adopted
18 under this Article.
- 19 2. Construction of any commercial building enclosed floor
20 space for which a building permit was issued or should
21 have been issued after the effective date of a tax adopted
22 under this Article.
- 23 3. Conversion of a building that adds one or more new
24 dwelling units or that creates new commercial building
25 enclosed floor space.
- 26 4. The initial location of a manufactured home or other
27 dwelling or commercial structure within the taxing unit.
- 28 b. For purposes of determining the impact of land development for
29 this Article, land development does not include:
- 30 1. Construction of an addition to a dwelling unit.
- 31 2. The relocation within a taxing unit of any structure
32 located within the taxing unit on the effective date of a
33 tax adopted pursuant to this Article or of any structure
34 with respect to which an impact tax pursuant to this
35 Article has been paid.
- 36 3. Within the taxing unit, the reconstruction or replacement
37 of one dwelling unit by another or the replacement or
38 reconstruction of commercial building enclosed floor
39 space that was in existence on the effective date of a tax
40 adopted pursuant to this Article or of any such floor
41 space with respect to which an impact tax adopted
42 pursuant to this Article has been paid.
- 43 (5) Net proceeds. – The gross proceeds of the tax less the cost to the
44 taxing unit of collecting and administering the tax.

1 (2) The tax is due on or before the date an occupancy permit is initially
2 issued for the dwelling unit or commercial building enclosed floor
3 space in question or, if no occupancy permit is issued, the date the
4 dwelling unit or commercial floor space is initially occupied.
5 However, no tax due is considered delinquent until 60 days after it
6 becomes due. Interest is due on delinquent taxes at the legal rate.

7 (3) Taxes authorized by this Article may be collected pursuant to G.S.
8 153A-147 or G.S. 160A-207. In addition, taxes authorized by this
9 Article may be recovered in a civil action in the nature of debt
10 including an award of reasonable attorneys' fees as part of costs.

11 **"§ 105-530. Disclosure requirements.**

12 Whenever the sale of real property located in a taxing unit involves new
13 construction, the seller must prepare and sign, and the buyer must receive and sign, a
14 disclosure statement. The disclosure statement must either be included in a contract or
15 sale or contained in a separate document executed before the execution of a sales
16 contract. This disclosure statement must completely disclose that the owner of the
17 property at the time an occupancy permit issued for the new construction or, if no
18 occupancy permit is issued, the date the new construction is occupied, may be subject to
19 a tax levied by the taxing unit on the impact of land development. If a seller fails to
20 make this disclosure and the buyer suffers injury as a result of the seller's failure to
21 disclose, the seller is liable to the buyer to the extent of the buyer's injury."

22 **SECTION 3.** Subchapter VIII of Chapter 105 of the General Statutes is
23 amended by adding a new Article to read:

24 "Article 46.

25 "Local Government Meals Tax.

26 **"§ 105-535. Short title.**

27 This Article is the Local Government Meals Tax Act.

28 **"§ 105-536. Definitions.**

29 The definitions in G.S. 105-164.3 apply to this Article. In addition, the following
30 definitions apply in this Article:

31 (1) City. – Defined in G.S. 153A-1.

32 (2) Person. – Defined in G.S. 105-228.90.

33 (3) Taxing unit. – A city or a county.

34 **"§ 105-537. Levy.**

35 (a) Authority. – If the majority of those voting in a referendum held pursuant to
36 this Article vote for the levy of the tax, the governing body of a taxing unit may, by
37 resolution, levy a local meals tax up to the rate approved in the referendum, in addition
38 to any other State and local sales and use taxes levied pursuant to law. The tax applies to
39 the sales price of prepared food and drink sold within the taxing unit at retail, for
40 consumption on or off the premises, by a retailer within the county that is subject to
41 sales tax under G.S. 105-164.4(a)(1). A meals tax must become effective on the date
42 specified in the resolution levying the tax. That date must be the first day of a calendar
43 month, however, and may not be earlier than the first day of the second month after the
44 date the resolution is adopted.

1 (b) Vote. – The governing body of a taxing unit may direct the county board of
2 elections to conduct an advisory referendum on the question of whether to levy a local
3 meals tax in the taxing unit as provided in this Article. The election shall be held on a
4 date jointly agreed upon by the governing body and the board of elections and shall be
5 held in accordance with the procedures of G.S. 163-287.

6 (c) Ballot Question. – The form of the question to be presented on a ballot for a
7 special election concerning the levy of the tax authorized by this Article shall be:

8 [] FOR [] AGAINST

9 [X] percent (X%) local meals tax, in addition to the current local sales and use taxes.'

10 (d) Effect on Local Act. – If a taxing unit levies a meals tax under this Article,
11 that taxing unit may not also levy a meals tax under a local act. This section does not
12 repeal any local act authorizing a taxing unit to levy a meals tax. However, a taxing
13 unit's levy of a meals tax under this Article automatically removes the taxing unit's
14 authority to levy a meals tax under a local act. Repeal of a taxing unit's meals tax levied
15 under this Article does not revive the taxing unit's authority to levy a meals tax under a
16 local act.

17 **"§ 105-538. Exemptions.**

18 A meals tax levied under this Article does not apply to the following sales of
19 prepared food and drink:

- 20 (1) Prepared food and drink served to residents in boarding houses and
21 sold together on a periodic basis with rental of a sleeping room or
22 lodging.
- 23 (2) Retail sales exempt from taxation under G.S. 105-164.13.
- 24 (3) Retail sales through or by means of vending machines.
- 25 (4) Prepared food and drink served by a retailer subject to the local
26 occupancy tax if the charge for the prepared food and drink is included
27 in a single, nonitemized sales price together with the charge for rental
28 of a room, lodging, or accommodation furnished by the retailer.
- 29 (5) Prepared food and drink furnished without charge by an employer to
30 an employee.
- 31 (6) Retail sales by grocers or by grocery sections of supermarkets or other
32 diversified retail establishments, other than sales of prepared food and
33 drink in the delicatessen or similar department of the grocer or grocery
34 section.

35 **"§ 105-539. Collection.**

36 Every retailer subject to a tax levied under this Article must, on and after the
37 effective date of the levy of the tax, collect the tax. This tax must be collected as part of
38 the charge for furnishing prepared food and drink. The tax must be stated and charged
39 separately from the sales records, and must be paid by the purchaser to the retailer as
40 trustee for and on account of the taxing unit. The tax must be added to the sales price
41 and passed on to the purchaser instead of being borne by the retailer. The taxing unit
42 must design, print, and furnish to all appropriate businesses and persons in the taxing
43 unit the necessary forms for filing returns and instructions to ensure the full collection
44 of the tax.

1 **"§ 105-540. Administration.**

2 The taxing unit must administer a tax levied under this Article. A tax levied under
3 this Article is due and payable to the local finance officer in monthly installments on or
4 before the 15th day of the month following the month in which the tax accrues. Every
5 retailer liable for the tax must, on or before the 15th day of each month, prepare and file
6 a return on a form prescribed by the taxing unit. The return must show the total gross
7 receipts derived in the preceding month from sales to which the tax applies.

8 A return filed with the local finance officer under this Article is not a public record
9 and may not be disclosed except as provided in G.S. 153A-148.1 or G.S. 160A-208.1.

10 **"§ 105-541. Refunds.**

11 The taxing unit must refund to a nonprofit or governmental entity the meals tax paid
12 by the entity on eligible purchases of prepared food and drink. A nonprofit or
13 governmental entity's purchase of prepared food and drink is eligible for a refund under
14 this section if the entity is entitled to a refund under G.S. 105-164.14(b) or (c) of local
15 sales and use tax paid on the purchase. The time limitations, application requirements,
16 penalties, and restrictions provided in G.S. 105-164.14(b) and (d) apply to refunds to
17 nonprofit entities; the time, limitations, application requirements, penalties, and
18 restrictions provided in G.S. 105-164.14(c) and (d) apply to refunds to governmental
19 entities. When an entity applies for a refund of the meals tax paid by it on purchases, it
20 must attach to its application a copy of the application submitted to the Department of
21 Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same
22 purchases. An applicant for a refund under this subsection must provide any information
23 required by the taxing unit to substantiate the claim.

24 **"§ 105-542. Penalties.**

25 A person that fails or refuses to file the return or pay a tax levied under this Article is
26 subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a
27 return for State sales and use taxes. The governing body of the taxing unit has the same
28 authority to waive the penalties for a tax levied under this Article that the Secretary of
29 Revenue has to waive the penalties for State sales and use taxes.

30 **"§ 105-543. Repeal or reduction.**

31 A meals tax levied under this Article may be repealed or reduced by a resolution
32 adopted by the governing body of the taxing unit. Repeal or reduction of a meals tax
33 must become effective on the first day of a month and may not become effective until
34 the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a
35 meals tax does not affect a liability for a tax that was attached before the effective date
36 of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued
37 before the effective date of the repeal or reduction."

38 **SECTION 4.** Subchapter VIII of Chapter 105 of the General Statutes is
39 amended by adding a new Article to read:

40 "Article 47.

41 "Local Government Occupancy Tax.

42 **"§ 105-545. Short title.**

43 This Article is the Local Government Occupancy Tax Act.

44 **"§ 105-546. Definitions.**

1 resolution is adopted before September 1, the repeal becomes effective for taxable years
2 beginning on or after the following January 1. If the resolution is adopted on or after
3 September 1, the repeal becomes effective for taxable years beginning on or after
4 January 1 of the second calendar year following adoption of the resolution. Repeal or
5 reduction of a local income tax does not affect a liability for a tax that was attached
6 before the effective date of the repeal or reduction, nor does it affect a right to a refund
7 of a tax that accrued before the effective date of the repeal or reduction."

8 **SECTION 6.** Subchapter VIII of Chapter 105 of the General Statutes is
9 amended by adding a new Article to read:

10 "Article 49.

11 "Local Government Land Transfer Tax.

12 **"§ 105-555. Short title.**

13 This Article is the Local Government Land Transfer Tax Act.

14 **"§ 105-556. Definitions.**

15 The following definitions apply in this Article:

16 (1) City. – Defined in G.S. 153A-1.

17 (2) Taxing unit. – A city or a county.

18 **"§ 105-557. Levy.**

19 (a) Authority. – If the majority of those voting in a referendum held pursuant to
20 this Article vote for the levy of the tax, the governing body of a taxing unit may, by
21 resolution, levy a local land transfer tax on instruments conveying interests in real
22 property located in the taxing unit, up to the rate approved in the referendum. The tax
23 applies to the consideration or value, whichever is greater, of the interest conveyed,
24 including the value of any lien or encumbrance remaining on the property at the time of
25 sale. The levy of the tax may become effective only on the first day of a calendar month
26 set in the resolution levying the tax, which may not be earlier than the first day of the
27 second succeeding calendar month after the date the resolution is adopted.

28 (b) Vote. – The governing body of a taxing unit may direct the county board of
29 elections to conduct an advisory referendum on the question of whether to levy a local
30 land transfer tax in the taxing unit as provided in this Article. The election shall be held
31 on a date jointly agreed upon by the governing body and the board of elections and shall
32 be held in accordance with the procedures of G.S. 163-287.

33 (c) Ballot Question. – The form of the question to be presented on a ballot for a
34 special election concerning the levy of the tax authorized by this Article shall be:

35 '[] FOR [] AGAINST

36 real property transfer tax at the rate of [X] on each one hundred dollars (\$100.00) of
37 value or consideration.'

38 (d) Effect on Local Act. – If a taxing unit levies a land transfer tax under this
39 Article, that taxing unit may not also levy a land transfer tax under a local act. This
40 section does not repeal any local act authorizing a taxing unit to levy a land transfer tax.
41 However, a taxing unit's levy of a land transfer tax under this Article automatically
42 removes the taxing unit's authority to levy a land transfer tax under a local act. Repeal
43 of a taxing unit's land transfer tax levied under this Article does not revive the taxing
44 unit's authority to levy a land transfer tax under a local act.

1 **"§ 105-558. Administration.**

2 (a) Resolution. – The governing body of the taxing unit must, upon adoption of a
3 resolution levying a tax under this Article, immediately deliver a certified copy of the
4 resolution to the register of deeds of the county, accompanied by a certified statement
5 from the county board of elections setting forth the results of the special election
6 approving the tax in the taxing unit. Upon receipt of these documents, the register of
7 deeds shall administer the tax in the taxing unit as provided in this Article.

8 (b) Scope. – A tax levied under this Article does not apply to transfers exempt
9 pursuant to G.S. 105-228.28 or G.S. 105-228.29 from the tax levied by Article 8E of
10 this Chapter.

11 The tax is in addition to the tax levied by Article 8E of this Chapter. A tax levied
12 under this Article applies to transfers of interests in real property located within the
13 taxing unit. If the property is located in two or more taxing units, a transfer of an
14 interest in the property is taxable only by the taxing unit in which the greater part of the
15 property, with respect to value, lies.

16 (c) Administration. – A tax levied under this Article is payable by the transferor
17 of the interest. Except as otherwise provided in this Article, the provisions of G.S.
18 105-228.31 through G.S. 105-228.36 apply to a tax levied under this Article. The taxing
19 unit must provide metering or similar equipment for the collection of the tax in lieu of
20 the use of tax stamps.

21 (d) Repeal or Reduction. – A taxing unit may, by resolution, repeal or reduce the
22 rate of a tax levied under this Article. Repeal or reduction of the tax must become
23 effective on the first day of a month and may not become effective until the end of the
24 fiscal year in which the repeal or reduction resolution was adopted. Repeal of a land
25 transfer tax, or reduction of its rate, under this Article does not affect a liability for a tax
26 that attached before the effective date of the repeal or reduction, nor does it affect a
27 right to a refund of a tax that accrued before the effective date of the repeal or
28 reduction."

29 **SECTION 7.** This act is effective when it becomes law.