

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 348
Finance Committee Substitute Adopted 8/29/01
House Committee Substitute Favorable 10/23/01
Fourth Edition Engrossed 11/14/01

Short Title: Increase Cumberland Occupancy Tax.

(Local)

Sponsors:

Referred to:

March 6, 2001

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE CUMBERLAND COUNTY TO INCREASE ITS
2 OCCUPANCY TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES
3 TO ITS OCCUPANCY TAX.
4

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter 983 of the 1983 Session Laws reads as rewritten:

7 "Section 1. It is the purpose and intent of this act to provide Cumberland County the
8 authority to levy a transient occupancy tax as hereinafter set forth.

9 Sec. 2.

10 (a) Authorization and Scope. – Cumberland County is hereby authorized to
11 impose and levy a tax not to exceed three percent (3%) of the gross receipts of any
12 person, firm, corporation or association derived from the rental of any sleeping room or
13 lodging furnished in any hotel, motel, or inn located in Cumberland County and subject
14 to the ~~three percent (3%) sales tax levied imposed by the State of North Carolina.~~ under
15 G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. The tax shall
16 not apply, however, to any room or rooms, lodging or accommodations supplied to the
17 same person for a period of 90 continuous days or more. The tax shall also not apply to
18 sleeping rooms or lodgings furnished by charitable, educational, benevolent or religious
19 institutions or organizations not operated for profit.

20 (a1) Additional Tax. – In addition to the tax authorized by subsection (a) of this
21 section, the Cumberland County Board of Commissioners may levy a room occupancy
22 tax of up to three percent (3%) of the gross receipts derived from the rental of
23 accommodations taxable under that subsection. The tax authorized by this subsection
24 may not be levied earlier than January 1, 2002, and the county's authority to levy this
25 tax is repealed on December 31, 2006. The levy, collections, administration, use, and
26 repeal of the tax authorized by this subsection shall be in accordance with this act.
27 Cumberland County may not levy a tax under this subsection unless it also levies a tax

1 under subsection (a) of this section. The rate of tax levied under this subsection may not
 2 exceed the applicable maximum provided in the chart below based on the period for
 3 which it is in effect:

<u>Period</u>	<u>Maximum</u>
<u>After 1/1/2002</u>	<u>1%</u>
<u>After 1/1/2004</u>	<u>2%</u>
<u>After 1/1/2005</u>	<u>3%</u>

8 (b) Administration. – A tax levied under this act shall be levied, administered,
 9 collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S.
 10 153A-155 apply to a tax levied under this act. ~~Before adopting or amending an ordinance~~
 11 ~~imposing and levying such a tax, the Board of Commissioners shall hold a public~~
 12 ~~hearing on the ordinance or amendment. The Board shall cause notice of the hearing to~~
 13 ~~be published not less than 10 days nor more than 25 days before the date fixed for the~~
 14 ~~hearing.~~

15 ~~Sec. 3.~~

16 (a) ~~Such tax, if levied, shall be due and payable to the county in monthly~~
 17 ~~installments on or before the 15th of the month next succeeding the month in which the~~
 18 ~~tax accrues. Every person, firm, corporation or association liable for the tax imposed~~
 19 ~~pursuant to this act shall, on or before the 15th day of each month, prepare and render a~~
 20 ~~return on a form prescribed by the county, a true and correct statement showing the total~~
 21 ~~gross receipts derived in the preceding month from rentals upon which the tax is levied.~~
 22 ~~Collection of the tax, and liability therefor, shall begin and continue only on and after~~
 23 ~~the first day of the calendar month set by the board of commissioners in the ordinance~~
 24 ~~levying the tax.~~

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

28 (c) ~~Any person, firm, corporation or association who willfully attempts in any~~
 29 ~~manner to evade the occupancy tax, if levied on any person required to pay the~~
 30 ~~occupancy tax, or to make a return and who willfully fails to pay such tax or make and~~
 31 ~~file such return, shall, in addition to the penalties provided by law, be guilty of a~~
 32 ~~misdemeanor and shall be punished by a fine not to exceed one thousand dollars~~
 33 ~~(\$1,000) or by imprisonment not to exceed six months, or by both such fine and~~
 34 ~~imprisonment.~~

35 ~~Sec. 4. Distribution and use of the first three cents (3¢). Cumberland County shall~~
 36 ~~allocate the net proceeds collected as follows:~~

37 (a) ~~Cumberland County shall retain three percent (3%) of the gross proceeds of~~
 38 ~~the tax collected to compensate it for any administrative or collection expenses incurred~~
 39 ~~in implementing this program. "Net Proceeds" shall mean gross taxes collected less any~~
 40 ~~monies retained by the county for administrative and collection expenses.~~

41 ~~(b)(a) Fifty The first fifty percent (50%) of the net proceeds from the tax in a fiscal~~
 42 ~~year of the occupancy tax levied under subsection (a) of Section 2 of this act shall be~~
 43 ~~retained by the county and shall be allocated for the benefit of the Cumberland County~~

1 Auditorium Commission to help finance major repairs, renovation, rehabilitation, or
2 other capital improvements to its existing facilities and any new additions. These funds
3 may also be utilized by the Commission as approved by the county board of
4 commissioners for financing construction of new convention oriented or multipurpose
5 facilities. These funds will not be used for the acquisition, construction, renovation, or
6 operation of any sleeping room or overnight lodging. These funds shall be budgeted,
7 appropriated, and expended under the auditorium budget through regular county
8 budgeting appropriation and expenditure methods.

9 ~~(e)(b) Fifty~~ The remaining fifty percent (50%) of the net proceeds from the tax in a
10 fiscal year shall be designated, within the auditorium commission budget of the
11 occupancy tax levied under subsection (a) of Section 2 of this act collected through June
12 30, 2002, shall, on a quarterly basis, be remitted to the Fayetteville Area Convention
13 and Visitors Bureau specifically for advertising the auditorium and promoting travel and
14 tourism within the County of Cumberland. Beginning on and after July 1, 2002, the
15 remaining fifty percent (50%) of the net proceeds of the occupancy tax levied under
16 subsection (a) of Section 2 of this act shall, on a quarterly basis, be remitted to the
17 Cumberland Tourism Development Authority. The Authority shall use the net proceeds
18 remitted to it under this subsection specifically for advertising the auditorium and
19 promoting travel and tourism within the County of Cumberland. These funds shall be
20 budgeted, appropriated, and expended under the auditorium budget through regular
21 county budgeting, appropriation and expenditure methods, however, 180 days prior to
22 the adoption of the annual county budget, in which this tax is first budgeted, an advisory
23 committee, the constitution of which is described herein below, shall be formed to plan
24 and propose areas and items of expenditure for the funds designated under this
25 subsection.

26 Sec. 4.1. Distribution and use of additional tax. – Cumberland County shall, on a
27 quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a1)
28 of Section 2 of this act to the Cumberland Tourism Development Authority. The
29 Authority shall use fifty percent (50%) of these net proceeds to promote travel and
30 tourism in Cumberland County and for tourism-related expenditures in Cumberland
31 County. The remaining fifty percent (50%) shall be distributed to the Arts Council of
32 Fayetteville/Cumberland County for arts festivals and other arts events that will draw
33 tourists or other business travelers to the area. The Authority and the Arts Council are
34 encouraged to give favorable consideration to tourism-related expenditures of the
35 Seniors Call to Action Team, Inc. (SCAT) and the Martin Luther King, Jr. Committee.

36 The following definitions apply in this act:

- 37 (1) Net Proceeds. – Gross proceeds less the cost to the county of
38 administering and collecting the tax, as determined by the finance
39 officer, not to exceed three percent (3%) of the first five hundred
40 thousand dollars (\$500,000) of gross proceeds collected each year and
41 one percent (1%) of the remaining gross receipts collected each year.
42 (2) Promote Travel and Tourism. – To advertise or market an area or
43 activity, publish and distribute pamphlets and other materials, conduct

1 market research, or engage in similar promotional activities that attract
2 tourists or business travelers to the area; the term includes
3 administrative expenses incurred in engaging in these activities.

4 (3) Tourism-Related Expenditures. – Expenditures that, in the judgment of
5 the Tourism Development Authority, are designed to increase the use
6 of lodging facilities, meeting facilities, and convention facilities in a
7 county by attracting tourists or business travelers to the county. The
8 term includes tourism-related capital expenditures.

9 ~~Sec. 5. This advisory committee shall be constituted of: (a) two representatives~~
10 ~~nominated by hotels and motels within the county which have in excess of 100 rooms~~
11 ~~subject to this occupancy tax and appointed by the county board of commissioners; (b)~~
12 ~~two representatives nominated by hotels and motels within the county which have fewer~~
13 ~~than 100 rooms subject to this occupancy tax and appointed by the county board of~~
14 ~~commissioners; (c) the chairman of the Travel and Tourism Committee of the~~
15 ~~Fayetteville Area Chamber of Commerce, in an ex officio capacity; (d) the County~~
16 ~~Manager of Cumberland County in an ex officio capacity; and (e) the Auditorium~~
17 ~~Manager of the Cumberland County Memorial Auditorium, in an ex officio capacity.~~
18 ~~All members to this advisory committee, whether in an appointed or ex officio capacity,~~
19 ~~shall have equal rights and privileges. This advisory committee will remain intact from~~
20 ~~term to term to provide information and advice to the Auditorium Commission for the~~
21 ~~expenditure of these funds on a continuing basis as the need arises.~~

22 ~~The budget process for these funds shall be as follows: Promotion Plan formulated~~
23 ~~by the advisory committee and submitted, through the Auditorium Manager, as part of~~
24 ~~the Auditorium's overall budget to the Auditorium Commission for its review and~~
25 ~~approval, then to the Cumberland County Board of Commissioners, through the County~~
26 ~~Manager for its review and adoption.~~

27 (a) Appointment and Membership of Tourism Development Authority. – When
28 the Cumberland County Board of Commissioners adopts a resolution levying a room
29 occupancy tax under this act, it shall adopt a resolution creating a county Tourism
30 Development Authority, which shall be a public authority under the Local Government
31 Budget and Fiscal Control Act. The resolution shall provide for the membership of the
32 Authority including the members' terms of office and for the filling of vacancies on the
33 Authority. The county board of commissioners shall designate one member of the
34 Authority as chair and shall determine the compensation, if any, to be paid to members
35 of the Authority. All members to the Authority, whether in an appointed or ex officio
36 capacity, shall have equal rights and privileges. The Authority shall be composed of the
37 following members:

38 (1) Two representatives nominated by hotels and motels within the county
39 which have in excess of 100 rooms subject to this occupancy tax and
40 appointed by the county board of commissioners.

41 (2) Two representatives nominated by hotels and motels within the county
42 which have fewer than 100 rooms subject to this occupancy tax and
43 appointed by the county board of commissioners.

1 (3) The President of the Fayetteville Area Chamber of Commerce, in an
2 ex officio capacity.

3 (4) The County Manager of Cumberland County, in an ex officio capacity.

4 (5) The Chief Executive Officer of the Cumberland County Civic Center
5 Commission, in an ex officio capacity.

6 (6) Two members of the public who are not affiliated with travel and
7 tourism and who reflect the cultural diversity of the county.

8 (b) Duties. – The Authority shall expend the net proceeds of the tax levied under
9 this act for the purposes provided in this act. The Authority shall promote travel,
10 tourism, and conventions in the county, sponsor tourist-related events and activities in
11 the county, and finance tourist-related capital projects in the county.

12 (c) Reports. – The Authority shall report quarterly and at the close of the fiscal
13 year to the county board of commissioners on its receipts and expenditures for the
14 preceding quarter and for the year in such detail as the board may require.

15 Sec. 6. Chapter 360 of the 1965 Session Laws is amended as follows:

16 (1) by deleting the word "Treasurer" in the third sentence of Section 1(b)(3) of
17 that act and substituting the words "County Manager"; and

18 (2) by adding a new sentence at the end of Section 3 of that act to read:
19 "Occupancy tax revenues as authorized in AN ACT TO AUTHORIZE AND
20 IMPLEMENT AN OCCUPANCY TAX IN CUMBERLAND COUNTY may be
21 utilized by the Auditorium Commission, as approved by the board of county
22 commissioners, in aiding and encouraging convention and visitor promotion in
23 Cumberland County.

24 Sec. 7. This act is effective upon ratification."

25 **SECTION 2.** G.S. 153A-155 reads as rewritten:

26 **"§ 153A-155. Uniform provisions for room occupancy taxes.**

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

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

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

1 remitted to the taxing county a discount equal to the discount the State allows the
2 operator for State sales and use tax.

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

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

18 (f) Repeal or Reduction. – A room occupancy tax levied by a county may be
19 repealed or reduced by a resolution adopted by the governing body of the county.
20 Repeal or reduction of a room occupancy tax shall become effective on the first day of a
21 month and may not become effective until the end of the fiscal year in which the
22 resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a
23 liability for a tax that was attached before the effective date of the repeal or reduction,
24 nor does it affect a right to a refund of a tax that accrued before the effective date of the
25 repeal or reduction.

26 (g) This section applies only to ~~Avery~~, Brunswick, Craven, Cumberland,
27 Currituck, Davie, Granville, Madison, Nash, Person, Randolph, Scotland, and
28 Transylvania Counties."

29 **SECTION 3.** This act is effective when it becomes law.