

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-480
HOUSE BILL 917**

AN ACT TO REPEAL OBSOLETE OR REDUNDANT SECTIONS OF THE CHARTER OF THE CITY OF DURHAM, TO CONSOLIDATE DURHAM COUNTY'S OCCUPANCY TAX PROVISIONS, AND TO AUTHORIZE DURHAM COUNTY TO INCREASE ITS OCCUPANCY TAX FROM 5% TO 6%.

The General Assembly of North Carolina enacts:

PART I. DURHAM CHARTER CLEANUP

SECTION 1. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended, is further amended by repealing the following sections:

Section 2.5, entitled "Use of property lines as annexation boundaries", as added by Chapter 342 of the 1993 Session Laws;

Section 13.1, entitled "Council to judge elections", as added by Chapter 852 of the 1979 Session Laws;

Section 23, entitled "Authority of city manager";

Section 24, entitled "Special police";

Section 28, entitled "Political campaign activity prohibited";

Section 29, entitled "Director of public safety";

Section 33, entitled "Protection of the public water supply";

Section 41, entitled "Fiscal year and annual estimate";

Section 42, entitled "Revenue";

Section 46, entitled "Authority to impose";

Section 48, entitled "License transfer";

Section 50, entitled "Investigation of city affairs";

Section 53, entitled "Opening under the streets; obstructions";

Section 58, entitled "Regulation of the use of public property";

Section 59, entitled "Suppression of nuisances";

Section 61, entitled "Sunday observance";

Section 62, entitled "Regulation of Amusements";

Section 64, entitled "Regulation of bondsmen";

Section 65, entitled "Protection of businesses from fraud";

Section 66, entitled "Licensing of plumbers and electricians";

Section 83, entitled "Public buildings";

Section 84, entitled "Public contracts";

Section 98, entitled "Dedication or reservation of recreation areas";

Section 99, entitled "Building inspections";

Section 103, entitled "Regulation of parks and squares";

Section 104, entitled "Public concerts";

Section 106, entitled "Appropriations for recreational, scientific and cultural activities";

Section 107, entitled "Advertisement of the city";

Section 108, entitled "Encouraging location of industry";

Section 109, entitled "City ice plant";

Section 110, entitled "City rock quarry";

Section 113, entitled "Authority to waive governmental immunity"; and
Section 117, entitled "Penalty for failure to turn over city property".

SECTION 2. Section 7 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, reads as rewritten:

"Sec. 7. Oaths of Office. – The Mayor and each Council member, before entering upon the duties of the office to which they have been elected, shall take before some officer authorized to administer oaths an oath that they will fairly and impartially perform the duties of their office. ~~The Mayor and Council members shall hold their respective offices until their respective successors have been duly qualified.~~"

SECTION 3. Section 8 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended by Chapter 370 of the 1983 Session Laws and Chapter 169 of the 1985 Session Laws, reads as rewritten:

"Sec. 8. Powers of the City Council. – The City Council shall have full power and authority, except as otherwise provided for in this Charter, to exercise all of the powers conferred upon and delegated to the City of Durham by this Charter and by the laws of North Carolina. The City Council shall have power to make such ordinances, rules and regulations as it may deem necessary for the proper government of the City and to promote and safeguard the health, morals, safety and general welfare and convenience of the public. The City Council may provide for the proper enforcement of such ordinances, in such manner as it may think best, by fine, imprisonment or otherwise. The City Council may provide for the organization of the offices, departments and divisions of City government, not inconsistent with this Charter: By way of example and not limitation, the City Council, in performing the duties and responsibilities set forth in G.S. 160A-412, may assign all or part of the duties of an inspection department to an existing or newly created department, division or office of the City, may assign all or some of the personnel appointed pursuant to G.S. 160A-411 to an existing or newly created department, division or office of the City and may designate the job titles and duties of the personnel so assigned.

~~Pursuant to Article V, Section 2(7) of the Constitution of North Carolina, the City Council may contract with and appropriate money to any person, association, or corporation for the accomplishment of any public purpose."~~

SECTION 4. Section 30 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, reads as rewritten:

"Sec. 30. Authority to Operate Waterworks. ~~(1) The City Council is authorized to conduct and operate the municipally owned waterworks of the City for the purpose of supplying the purchasers of water of the system with a good and wholesome supply thereof. Persons employed by the City in connection with said system shall be appointed by the City Manager and shall be under his supervision and control.~~

~~(2) For the purpose of properly operating and maintaining the system and for making additions and improvements thereto as may be necessary at all times to properly operate the system, the City Council shall have power to acquire by purchase or by condemnation additional property or rights within or without the City.~~

(3) The City Council, and all persons acting under their authority, shall have the right to use the ground or soil, in, or upon, or under any road, railroad, highway, lane or alley for the purpose of enlarging or improving or maintaining the plant or system of waterworks owned by the City, upon the condition that they shall not permanently injure any such property, and that the same shall be restored to its original condition, or damages done thereto shall be repaired by the City Council.

SECTION 5. In order to recodify a local modification to G.S. 160A-314 applicable to the City of Durham as a part of the Charter, S.L. 1998-50 is repealed and the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, is amended by adding a new section to read:

"Sec. 38. Stationary container collection service.

(a) Where housing units qualify under city ordinances for roll-out cart solid waste collection service, and the housing units instead choose to be served by stationary containers in accordance with city ordinances, a city may provide stationary container collection service without charging fees for such service other than the fees applicable to roll-out cart service.

(b) Nothing in this section shall be construed to impair the authority of a city to charge customers who do not qualify for service under subsection (a) of this section the fees established by city ordinances for stationary container collection service."

PART II. DURHAM OCCUPANCY TAX LEVY

SECTION 6.(a) Durham Occupancy Tax. (a) Authorization and Scope. – The Durham County Board of Commissioners may levy a room occupancy tax of 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 county 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 6.(b) Authorization of Additional Two Percent (2%) Tax. – In addition to the tax authorized by subsection (a) of this section, the Durham County Board of Commissioners may levy a room occupancy tax of two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this act shall be in accordance with the provisions of this section. Durham County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

SECTION 6.(c) Authorization of Additional One Percent (1%) Tax. – In addition to the tax authorized by subsections (a) and (b) of this section, the Durham County Board of Commissioners may levy a room occupancy tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsections (a) and (b) of this section. The levy, collection, administration, and repeal of the tax authorized by this act shall be in accordance with the provisions of this section. Durham County may not levy a tax under this subsection unless it also levies the tax authorized under subsections (a) and (b) of this section.

SECTION 6.(d) G.S. 153A-155(a) and G.S. 153A-155(b) apply to Durham County.

SECTION 6.(e) Part III of this act is effective only if Durham County has, prior to February 1, 2002, levied all of the taxes authorized by subsection (a), subsection (b), and subsection (c) of this section.

SECTION 6.(f) The levy of a tax under subsection (a), subsection (b), or subsection (c) of this section applies only if all three such taxes are levied prior to February 1, 2002. Otherwise, the provisions of Chapter 969 of the 1985 Session Laws and Chapter 665 of the 1991 Session Laws (the current three percent (3%) and the current two percent (2%) occupancy taxes) are not affected by this act.

PART III. DURHAM OCCUPANCY TAX PROVISIONS

SECTION 7.(a) If a plan for financing a Performing Arts Theater has not been approved by the Durham City Council and has been disapproved by the Durham County Commissioners within 42 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described under Section 6(c) of this act and the levy of the one percent (1%) tax described in this subsection are repealed on the first day of the second month following the 42-month period.

If construction on the Performing Arts Theater has not begun within 42 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described in Section 6(c) of

this act and the levy of the one percent (1%) tax described in Section 6(c) of this act are repealed on the first day of the second month following the 42-month period.

It is the goal of the General Assembly that a plan for financing the Performing Arts Theater shall be adopted within 12 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, and construction of the Performing Arts Theater shall begin within 24 months of the levy of the one percent (1%) tax described in Section 6(c) of this act.

Any funds collected but not spent before the repeal date shall be redistributed to the Durham Tourism Development Authority to promote travel and tourism.

SECTION 7.(b) This section does not affect the rights or liabilities of the county, a taxpayer, or another person arising under a law amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed law before the effective date of its amendment or repeal.

SECTION 8. Administration. – A tax levied under Section 6 of 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 that section.

SECTION 9.(a) Distribution and Use of Tax Revenue. – Durham County shall distribute and use the net proceeds of the tax collected under this act as provided in this section. As used in this section, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, but 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. For the purpose of calculating the threshold in the previous section, all three taxes levied under Section 6 of this act shall be considered together.

SECTION 9.(b) Use of Proceeds From First Three Percent (3%) Tax. – Durham County shall retain fifty-seven and one-half percent (57½%) of the net proceeds collected from the tax levied under Section 6(a) of this act and shall distribute the remaining forty-two and one-half percent (42½%) of the net proceeds collected from the tax levied under Section 6(a) of this act to the City of Durham. Funds retained by the county or distributed to the City of Durham pursuant to this subsection may be used for any purpose authorized by law.

SECTION 9.(c) Use of Proceeds From Additional Two Percent (2%) Tax. – Durham County shall, on a monthly basis, remit the net proceeds of the tax levied under Section 6(b) of this act to the Durham Tourism Development Authority created by Section 10 of this act.

The Authority may use the funds remitted to it under this subsection only to promote travel, tourism, and conventions in Durham County.

SECTION 9.(d) Use of Proceeds From Additional One Percent (1%) Tax During First 24 Months. – Durham County shall, on a monthly basis, remit the net proceeds of the occupancy tax levied under Section 6(c) of this act to the Durham Tourism Development Authority created by Section 10 of this act. During the first 24 months that the tax is levied under Section 6(c) of this act, the Authority shall distribute and use these net proceeds in the following priority order:

- (1) To Durham County, up to the first two hundred thousand dollars (\$200,000) collected to fund the development of a Cultural Arts Master Plan.
- (2) The Authority shall use the next seven hundred thousand dollars (\$700,000) collected to promote travel, tourism, and conventions in Durham County.
- (3) To the City of Durham, the next two hundred forty-eight thousand dollars (\$248,000) collected. The city shall use these funds for the design and engineering costs associated with the construction of a Performing Arts Theater.

- (4) To Durham County, the next four hundred thousand dollars (\$400,000) collected for improvements to the Museum of Life and Science. This may include the financing of debt service.
- (5) To Durham County, the next five hundred thousand dollars (\$500,000) collected. These funds shall be credited into an Arts Reserve Fund and used to implement the Cultural Arts Master Plan developed under subdivision (1) of this subsection.
- (6) The Authority shall use any net proceeds collected in excess of two million forty-eight thousand dollars (\$2,048,000) to promote travel, tourism, and conventions in Durham County.

SECTION 9.(e) Use of Proceeds From Additional One Percent (1%) Tax After First 24 Months. – The net proceeds of the tax collected under Section 6(c) of this act after the first 24 months that the tax is levied shall be remitted monthly to the Durham Tourism Development Authority created by Section 10 of this act. The Authority shall use and distribute these net proceeds in the following priority order:

- (1) To the City of Durham, the first one million four hundred thousand dollars (\$1,400,000) collected annually to finance the debt service associated with the construction of the Performing Arts Theater. Until those funds are distributed to the City of Durham for that purpose, they shall be held by the Durham Tourism Development Authority in a capital reserve fund as provided by Part 2 of Article 3 of Chapter 159 of the General Statutes except they may be expended as provided by the last sentence of Section 7(a) of this act if the tax is repealed as provided by Section 7(a) of this act. Any interest earned by that fund shall be credited to the fund.
- (2) Thirty-two years after the levy of the tax authorized under Section 6(c) of this act, instead of the allocation under subdivision (1) of this subsection, the first one million four hundred thousand dollars (\$1,400,000) collected annually shall be used by the Authority to promote travel and tourism or for tourism related expenditures.
- (3) To Durham County, the next five hundred thousand dollars (\$500,000) collected annually to be used for improvements to the Museum of Life and Science. This may include the financing of debt service. Any of these funds that are not needed for this purpose shall be returned to the Authority and used to promote travel and tourism.
- (4) The Authority shall use any net proceeds in excess of that provided by subdivisions (1), (2), and (3) of this subsection to promote travel, tourism, and conventions in Durham County.

As used in this subsection, "annually" means the 12-month period beginning after the first 24 months that the tax authorized under Section 6(c) of this act is levied.

SECTION 9.(f) Definitions. – For the purpose of this Part:

- (1) "Promote travel and tourism" means to advertise or market an area or activity, to publish and distribute pamphlets and other materials, to conduct market research, and to engage in similar promotional activities that attract tourists or business travelers to the area, and also includes administrative expenses incurred in engaging in these activities.
- (2) "Promote travel, tourism, and conventions" means to advertise or market an area or activity, to publish and distribute pamphlets and other materials, to conduct market research, and to engage in similar promotional activities that attract tourists, business travelers, or conventioners to the area, and also includes administrative expenses incurred in engaging in these activities.
- (3) "Tourism related expenditures" are those that, in the judgment of the Durham Tourism Development Authority, are designed to increase the

use of lodging facilities, meeting facilities, and convention facilities in the county by attracting tourists or business travelers to the county, and includes capital expenditures related to that purpose.

SECTION 10.(a) Establishment and Membership of Durham Tourism Development Authority. – There is created the Durham Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act.

SECTION 10.(b) From March 1, 2002, through June 30, 2004, the members of the board of directors of the Durham Convention and Visitors Bureau and the members of the advisory board of the Durham Convention and Visitors Bureau shall together be ex officio the board of directors of the Authority.

SECTION 10.(c) Beginning July 1, 2004, the membership of the Durham Tourism Development Authority shall be as specified in an interlocal cooperation agreement between Durham County and the City of Durham. The agreement shall provide for the number of members, terms of office, who shall appoint the membership, and such other provisions as may reasonably be necessary. The interlocal agreement must be entered into prior to May 1, 2002, but may thereafter be amended as provided by its terms.

At least three-fourths of the membership of the Durham Tourism Development Authority must be, at the time of appointment, active in the promotion of travel, tourism, or conventions in Durham County. One-third of the membership must be affiliated with organizations that collect the tax imposed by Section 6 of this act.

SECTION 10.(d) Duties. – The Authority shall expend the net proceeds of the taxes levied under Section 6 of this act only for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county.

SECTION 10.(e) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the county board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

SECTION 11. Section 3 of Chapter 969 of the 1985 Session Laws reads as rewritten:

"Sec. 3. This act applies only to the following counties: Graham, Clay, Jackson, ~~Durham~~, Macon, Polk, and Transylvania."

SECTION 12. Chapter 665 of the 1991 Session Laws is repealed.

SECTION 13. The purpose of Parts II and III of this act is to consolidate the acts relating to Durham County's authority to levy an occupancy tax and to authorize Durham County to levy an additional one percent (1%) occupancy tax. It is intended that those provisions of prior acts that are expressly consolidated into this act continue without interruption so that all rights and liabilities that have accrued are preserved and may be enforced.

SECTION 14. G.S. 153A-155(g), as amended by S.L. 2001-162, S.L. 2001-305, S.L. 2001-321, S.L. 2001-381, S.L. 2001-434, S.L. 2001-439, and S.L. 2001-468, reads as rewritten:

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

PART IV. EFFECTIVE DATE

SECTION 15. Part II of this act is effective when it becomes law, except that any taxes levied under that Part become effective March 1, 2002. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 5th day of December, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives