

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 926

Short Title: Modify New Hanover Room Tax Use.

(Local)

Sponsors: Representative McComas.

Referred to: Local Government II.

March 29, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO MODIFY THE PURPOSES FOR WHICH THE NEW HANOVER
3 COUNTY ROOM OCCUPANCY TAX MAY BE USED AND TO MAKE
4 CONFORMING CHANGES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** The General Assembly finds that the beaches of New Hanover
7 County are an important part of North Carolina's common natural heritage. Public
8 access to these beaches should be available to all citizens, especially residents of that
9 county, for the use and enjoyment of these public resources. The primary purpose of the
10 New Hanover County room occupancy tax is to fund the local share of renourishment
11 and maintenance of those beaches under contracts with the United States Army Corps of
12 Engineers. The remaining proceeds of the tax are for the purpose of promoting travel
13 and tourism. It is the intent of the General Assembly that the State shall continue to fund
14 its share of renourishment and maintenance of the New Hanover County beaches at the
15 rate provided in the 1999-2000 fiscal year.

16 **SECTION 2.** Part VIII of Chapter 908 of the 1983 Session Laws, as
17 amended by Chapter 987 of the 1983 Session Laws, Chapters 726 and 971 of the 1985
18 Session Laws, and Chapter 540 of the 1995 Session Laws, reads as rewritten:

19 "Part VIII. New Hanover Occupancy Tax.

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

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

1 ~~"Sec. 32. Occupancy Tax. The county room occupancy tax that may be levied~~
2 ~~under this Part shall be levy a room occupancy tax of two percent (2%) of the gross~~
3 ~~receipts derived from the rental of any accommodations within the county that are~~
4 ~~subject to room, lodging, or similar accommodation furnished by any hotel, motel, inn,~~
5 ~~tourist camp, or other similar place within the county that is subject to the three percent~~
6 ~~(3%) sales tax imposed by the State under G.S. 105-164.4(3). G.S. 105-164.4(a)(3).~~
7 This tax is in addition to any local sales tax. This tax does not apply to accommodations
8 furnished by nonprofit charitable, educational, benevolent, or religious organizations.

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

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

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

26 ~~(d) Any person who willfully attempts in any manner to evade the occupancy tax~~
27 ~~imposed by this Part or to make a return and who willfully fails to pay the tax or make~~
28 ~~and file a return shall, in addition to all other penalties provided by law, be guilty of a~~
29 ~~misdemeanor and shall be punished by a fine not to exceed one thousand dollars~~
30 ~~(\$1,000) or by imprisonment not to exceed six months, or both.~~

31 ~~(e) In the event that a penalty or additional tax as a penalty is imposed upon or~~
32 ~~added to the tax levied under this Part, as prescribed in subsections (b) and (c) above,~~
33 ~~the Board of Commissioners of New Hanover County, upon petition of the taxpayer or~~
34 ~~his agent, may compromise, settle, or adjust the county's claim for the penalties~~
35 ~~imposed.~~

36 ~~"Sec. 34. Collection of Tax. Every operator of a business subject to the tax levied~~
37 ~~by this Part shall, on and after the effective date of the levy of the tax, collect the two~~
38 ~~percent (2%) room occupancy tax provided by this Part.~~

39 ~~This tax shall be collected as part of the charge for the furnishing of any taxable~~
40 ~~accommodations. The tax shall be stated and charged separately from the sales records,~~
41 ~~and shall be paid by the purchaser to the operator of the business as trustee for and on~~
42 ~~account of New Hanover County. It is the intent of this Part that the room occupancy~~
43 ~~tax levied by New Hanover County shall be added to the sales price and that the tax~~
44 ~~shall be passed on to the purchaser instead of being borne by the operator of the~~

1 business. The county shall design, print, and furnish to all appropriate businesses in the
 2 county the necessary forms for filing returns and instructions to ensure the full
 3 collection of the tax.

4 "Sec. 35. Disposition of Taxes Collected. (a) New Hanover County shall
 5 distribute the net proceeds of the occupancy tax as follows: provided in this section.

6 (1) Sixty percent (60%) of the net proceeds shall be deposited in a special
 7 fund, the cash balance of which shall be deposited at interest or
 8 invested in accordance with G.S. ~~159-30~~; and 159-30. The county shall
 9 use these funds only for the following purposes:

10 a. Beach nourishment projects only in those areas of Kure Beach,
 11 Wrightsville Beach, and Carolina Beach that undergo regular
 12 nourishment pursuant to an agreement with the United States
 13 Army Corps of Engineers.

14 b. Loans to local government entities for beach nourishment in
 15 any other areas approved both by resolution of the New
 16 Hanover Board of Commissioners and by resolutions of all the
 17 beach towns in New Hanover County. A loan made under this
 18 subdivision must bear interest at a rate no less than the rate set
 19 under G.S. 105-241.1(i) as of the date the loan is made and
 20 must be for a term not to exceed five years.

21 (2) ~~Forty percent (40%)~~ The applicable percentage provided in the table
 22 below of the net proceeds shall be distributed on a quarterly basis to
 23 the county and its municipalities in accordance with the method by
 24 which the one percent (1%) local sales and use taxes levied in the
 25 county pursuant to Article 39 of Chapter 105 of the General Statutes
 26 are distributed. These funds shall be used only to promote travel and
 27 tourism.

<u>Date Proceeds Received</u>	<u>Percentage</u>
<u>Before July 1, 2002</u>	<u>40%</u>
<u>Fiscal Year 2002-2003</u>	<u>39%</u>
<u>Fiscal Year 2003-2004</u>	<u>38%</u>
<u>Fiscal Year 2004-2005</u>	<u>37%</u>
<u>Fiscal Year 2005-2006</u>	<u>36%</u>
<u>On or after July 1, 2006</u>	<u>35%</u>

35 (3) The applicable percentage provided in the table below of the net
 36 proceeds shall be allocated among the beach towns on a pro rata basis.
 37 The beach towns may use these funds only for tourism-related
 38 expenditures such as public beach access expenditures.

<u>Date Proceeds Received</u>	<u>Percentage</u>
<u>Fiscal Year 2002-2003</u>	<u>1%</u>
<u>Fiscal Year 2003-2004</u>	<u>2%</u>
<u>Fiscal Year 2004-2005</u>	<u>3%</u>
<u>Fiscal Year 2005-2006</u>	<u>4%</u>
<u>On or after July 1, 2006</u>	<u>5%</u>

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

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

11 (b) The purposes for which revenue from the room occupancy tax may be used
12 by the county and its municipalities may be changed only by resolution of the New
13 Hanover Board of County Commissioners after being approved by a majority of the
14 votes cast in an election held in New Hanover County on the question of how revenue
15 from the room occupancy tax should be used. The ballot presented to the qualified
16 voters of the county in an election concerning the use of revenue from the room
17 occupancy tax shall state all the proposed uses of this revenue and the percentage of the
18 revenue to be used for each purpose. Any change in use of revenue from the room
19 occupancy tax made by the county commissioners after voter approval may likewise be
20 changed only by resolution of the county commissioners after being approved by the
21 voters in another election.

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

26 (c) The following definitions apply in this section:

27 (1) Beach towns. – Carolina Beach, Kure Beach, and Wrightsville Beach.

28 (2) Net proceeds. – Gross proceeds less the cost to the county of
29 administering and collecting the tax.

30 (3) Public beach access expenditures. – Any expenditures to make beaches
31 accessible to the public, including capital and operating expenditures
32 for handicapped access structures, walk-overs to the beach, visitor
33 facilities, restroom and shower facilities, public safety, and parking,
34 including off-site parking with public transportation from the off-site
35 parking location to the beach.

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

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

1 "Sec. 36.1. Additional Tax. In addition to the tax authorized by ~~Sections 31 and 32~~
2 Section 31 of this Part, the New Hanover County Board of Commissioners may levy a
3 room occupancy and tourism development tax of one percent (1%) of the gross receipts
4 derived from the rental of accommodations taxable under ~~those sections~~that section.
5 The levy, collection, administration, and repeal of the tax authorized by this section, and
6 the use of tax revenue from a tax levied under this section, shall be in accordance with
7 Sections 31 through ~~36~~35 of this Part. New Hanover County may not levy a tax under
8 this section unless it also levies a tax under ~~Sections 31 and 32~~ Section 31 of this Part."

9 **SECTION 3.** G.S. 153A-155 reads as rewritten:

10 **"§ 153A-155. Uniform provisions for room occupancy taxes.**

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

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

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

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

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

1 (f) Repeal or Reduction. – A room occupancy tax levied by a county may be
2 repealed or reduced by a resolution adopted by the governing body of the county.
3 Repeal or reduction of a room occupancy tax shall become effective on the first day of a
4 month and may not become effective until the end of the fiscal year in which the
5 resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a
6 liability for a tax that was attached before the effective date of the repeal or reduction,
7 nor does it affect a right to a refund of a tax that accrued before the effective date of the
8 repeal or reduction.

9 (g) This section applies only to Avery, Brunswick, Craven, Currituck, Davie,
10 Granville, Madison, New Hanover, Nash, Person, Randolph, Scotland, and Transylvania
11 Counties."

12 **SECTION 4.** This act becomes effective January 1, 2002, and applies to
13 taxes collected on or after that date.