

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 1396

Short Title: Make Utility Taxes Local Option.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Finance.

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO CONVERT PART OF THE ELECTRIC POWER COMPANY GROSS RECEIPTS TAX TO A LOCAL OPTION GROSS RECEIPTS TAX AND TO CONVERT PART OF THE PIPED NATURAL GAS EXCISE TAX TO A LOCAL OPTION EXCISE TAX.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 3 of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-116.2. Local privilege tax on electric power companies.**

(a) Levy. – A city may, by ordinance, levy an annual privilege tax on an electric power company engaged in the business of furnishing electricity, electric lights, current, or power within the city. Before levying the tax, the governing body of the city must hold a public hearing on the question after giving at least 10 days' notice of the hearing.

A city may, by ordinance, repeal a tax levied under this section. Before repealing the tax, the governing body of the city must hold a public hearing on the question after giving at least 10 days' notice of the hearing.

(b) Rate and Base. – The tax must be at the rate of three and nine one-hundredths percent (3.09%) of the company's taxable gross receipts derived from sales of electricity, electric lights, current, or power within the city. A company's taxable gross receipts are its gross receipts from sales within the city less the amount of gross receipts from sales within the city reported under G.S. 105-116(b)(2).

(c) Effective Date. – The levy or repeal of a tax levied under this section may become effective only on the first day of January or the first day of July. After adopting an ordinance levying or repealing the tax, the city must give the Secretary written notice and a certified copy of the ordinance at least 60 days before the effective date of the ordinance. Repeal of a tax under this section does not affect the rights or liabilities of the State, the taxing city, a taxpayer, or another person arising under the tax before the effective date of its repeal; nor does it affect the right to any refund or credit of a tax

1 that would otherwise have been available under the tax before the effective date of its  
2 repeal.

3 (d) Administration. – The Secretary shall collect and administer a tax levied  
4 under this section on behalf of the taxing city in the same manner as the tax imposed on  
5 electric power companies by G.S. 105-116. Except as provided in this section, all the  
6 provisions of this Article and of Article 9 of this Chapter that apply to a tax imposed by  
7 G.S. 105-116 apply to the same extent to a tax levied under this section. The credits  
8 allowed against the tax imposed in G.S. 105-116 do not apply to a tax levied under this  
9 section.

10 (e) Report and Payment. – The tax levied under this section is payable at the  
11 same time as the tax imposed by G.S. 105-116, and a return is due at the same time as  
12 the return due under G.S. 105-116.

13 (f) Distribution. – The Secretary must quarterly distribute to each taxing city the  
14 net proceeds of the tax it levied under this section for the previous quarter. If a  
15 taxpayer's return does not state the taxpayer's taxable gross receipts derived within a  
16 city, the Secretary must determine a practical method of allocating part of the taxpayer's  
17 taxable gross receipts to the city.

18 The Secretary must make the distribution within 75 days after the end of each  
19 calendar quarter. To pay for the Department's costs of administering and collecting the  
20 taxes levied under this section, the Secretary may retain from each city's distribution the  
21 city's proportionate share of these costs.

22 (g) Other Local Taxes. – So long as a city is authorized to levy a tax under this  
23 section, no city shall impose or collect any greater franchise, privilege, or license taxes,  
24 in the aggregate, on the businesses taxed under this section, than was imposed and  
25 collected on or before January 1, 1947."

26 **SECTION 2.** G.S. 105-116 reads as rewritten:

27 **"§ 105-116. Franchise or privilege tax on electric power, water, and sewerage**  
28 **companies.**

29 (a) Tax. - An annual franchise or privilege tax is imposed on the following:

- 30 (1) An electric power company engaged in the business of furnishing  
31 electricity, electric lights, current, or power.
- 32 (2), (2a) Repealed by Session Laws 1998-22, s. 2, effective July 1, 1999.
- 33 (3) A water company engaged in owning or operating a water system  
34 subject to regulation by the North Carolina Utilities Commission.
- 35 (4) A public sewerage company engaged in owning or operating a public  
36 sewerage system.

37 The tax on an electric power company is three and twenty-two hundredths percent  
38 (3.22%) of the company's taxable gross receipts from the business of furnishing  
39 electricity, electric lights, current, or power. The tax on a water company is four percent  
40 (4%) of the company's taxable gross receipts from owning or operating a water system  
41 subject to regulation by the North Carolina Utilities Commission. The tax on a public  
42 sewerage company is six percent (6%) of the company's taxable gross receipts from  
43 owning or operating a public sewerage company. A company's taxable gross receipts  
44 are its gross receipts from business inside the State less the amount of gross receipts

1 from sales reported under subdivision (b)(2). A company that engages in more than one  
2 business taxed under this section shall pay tax on each business.

3 (a1) Credits. — A company is allowed a credit against the tax imposed by this  
4 section for the company's investments in certain entities in accordance with Part 5 of  
5 Article 4 of this Chapter. An electric power company is allowed a credit against the tax  
6 imposed by this section on its gross receipts from furnishing electricity, electric lights,  
7 current, and power equal to the amount of tax it paid on those gross receipts under G.S.  
8 105-116.2 for the same period.

9 (b) Report and Payment. - The tax imposed by this section is payable quarterly,  
10 semimonthly, or monthly as specified in this subsection. A return is due quarterly.

11 A water company or public sewerage company must pay tax quarterly when filing a  
12 return. An electric power company must pay tax in accordance with the schedule that  
13 applies to its payments of sales and use tax under G.S. 105-164.16 and must file a return  
14 quarterly. An electric power company is not subject to interest on or penalties for an  
15 underpayment for a semimonthly or monthly payment period if the electric power  
16 company timely pays at least ninety-five percent (95%) of the amount due for each  
17 semimonthly or monthly payment period and includes the underpayment with the  
18 quarterly return for those semimonthly or monthly payment periods.

19 A quarterly return covers a calendar quarter and is due by the last day of the month  
20 that follows the quarter covered by the return. A taxpayer must submit a return on a  
21 form provided by the Secretary. The return must include the taxpayer's gross receipts  
22 from all property it owned or operated during the reporting period in connection with its  
23 business taxed under this section. A taxpayer must report its gross receipts on an accrual  
24 basis. A return must contain the following information:

- 25 (1) The taxpayer's gross receipts for the reporting period from business  
26 inside and outside this State, stated separately.
- 27 (2) The taxpayer's gross receipts from commodities or services described  
28 in subsection (a) that are sold to a vendee subject to the tax levied by  
29 this section or to a joint agency established under Chapter 159B of the  
30 General Statutes or a city having an ownership share in a project  
31 established under that Chapter.
- 32 (3) The amount of and price paid by the taxpayer for commodities or  
33 services described in subsection (a) that are purchased from others  
34 engaged in business in this State and the name of each vendor.
- 35 (4) For an electric power company the entity's gross receipts from the sale  
36 within each city of the commodities and services described in  
37 subsection (a).

38 (c) Repealed by Session Laws 1998-22, s. 2, effective July 1, 1999.

39 (d) ~~Distribution.~~ — ~~Part of the taxes imposed by this section on electric power~~  
40 ~~companies is distributed to cities under G.S. 105-116.1. If a taxpayer's return does not~~  
41 ~~state the taxpayer's taxable gross receipts derived within a city, the Secretary must~~  
42 ~~determine a practical method of allocating part of the taxpayer's taxable gross receipts to~~  
43 ~~the city.~~

(e) ~~Recodified as G.S. 105-116.2(g). Local Tax.— So long as there is a distribution to cities from the tax imposed by this section, no city shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the businesses taxed under this section, than was imposed and collected on or before January 1, 1947.~~

(f) Repealed by Session Laws 1998-22, s. 2, effective July 1, 1999."

**SECTION 3.** G.S. 105-116.1 is repealed.

**SECTION 4.** G.S. 105-187.44 reads as rewritten:

**"§ 105-187.44. ~~Distribution of part of tax proceeds to cities.~~ Local tax on piped natural gas.**

(a) Levy. – A city may, by ordinance, levy an excise tax on piped natural gas received for consumption in the city. Before levying the tax, the governing body of the city must hold a public hearing on the question after giving at least 10 days' notice of the hearing. A tax levied under this section does not apply to piped natural gas that is exempt from the tax imposed in G.S. 105-187.41.

A city may, by ordinance, repeal a tax levied under this section. Before repealing the tax, the governing body of the city must hold a public hearing on the question after giving at least 10 days' notice of the hearing.

(b) Rate. – The tax rate is set in the table below. The tax rate is based on monthly therm volumes of piped natural gas received by the end-user of the gas. If an end-user receives piped natural gas that is metered through two or more separate measuring devices, the tax is calculated separately on the volume metered through each device rather than on the total volume metered through all measuring devices, unless the devices are located on the same premises and are part of the same billing account. In that circumstance, the tax is calculated on the total volume metered through the two or more separate measuring devices.

<u>Monthly Volume of Therms Received</u>	<u>Rate Per Therm</u>
<u>First 200</u>	<u>2.35¢</u>
<u>201 to 15,000</u>	<u>1.75¢</u>
<u>15,001 to 60,000</u>	<u>1.20¢</u>
<u>60,001 to 500,000</u>	<u>.75¢</u>
<u>Over 500,000</u>	<u>.15¢</u>

(c) Effective Date. – The levy or repeal of a tax levied under this section may become effective only on the first day of January or the first day of July. After adopting an ordinance levying or repealing the tax, the city must give the Secretary written notice and a certified copy of the ordinance at least 60 days before the effective date of the ordinance. Repeal of a tax under this section does not affect the rights or liabilities of the State, the taxing city, a taxpayer, or another person arising under the tax before the effective date of its repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the tax before the effective date of its repeal.

(d) Liability; Administration. – A tax levied under this section is payable in accordance with G.S. 105-187.42. The Secretary shall collect and administer a tax levied under this section on behalf of the taxing city in the same manner as the tax

1 imposed on piped natural gas by G.S. 105-187.41. Except as provided in this section, all  
 2 the provisions of this Article and of Article 9 of this Chapter that apply to the tax  
 3 imposed by G.S. 105-187.41 apply to the same extent to a tax levied under this section.  
 4 The credits allowed against the tax imposed in G.S. 105-187.41 do not apply to a tax  
 5 levied under this section.

6 (e) Report and Payment. – The tax levied under this section is payable at the  
 7 same time as the tax imposed by G.S. 105-187.41, and a return is due at the same time  
 8 as the return due under G.S. 105-187.41.

9 (f) City Information. – A quarterly return filed under this Article must indicate  
 10 the amount of tax attributable to the following:

- 11 (1) Piped natural gas delivered during the quarter to sales or transportation  
 12 customers in each city in the State.
- 13 (2) Piped natural gas received during the quarter in each city in the State  
 14 by persons who have direct access to an interstate gas pipeline and  
 15 who receive the gas for their own consumption.

16 If a tax return does not state this information, the Secretary must determine how much  
 17 of the tax proceeds are to be attributed to each city.

18 ~~(b)(g)~~ Distribution. – Within 75 days after the end of each calendar quarter, the  
 19 Secretary must distribute to each taxing city the net proceeds of the tax it levied under  
 20 this section for the previous quarter. To pay for the Department's costs of administering  
 21 and collecting the taxes levied under this section, the Secretary may retain from each  
 22 city's distribution the city's proportionate share of these costs. ~~the cities part of the tax~~  
 23 ~~proceeds collected under this Article during that quarter. The amount to be distributed to~~  
 24 ~~a city is one half of the amount of tax attributable to that city for that quarter under~~  
 25 ~~subsection (a) of this section."~~

26 **SECTION 5.** G.S. 105-187.41 reads as rewritten:

27 **"§ 105-187.41. Tax imposed on piped natural gas.**

28 (a) Scope. – An excise tax is imposed on piped natural gas received for  
 29 consumption in this State. This tax is imposed in lieu of a sales and use tax and a  
 30 percentage gross receipts tax on piped natural gas.

31 (b) Rate. – The tax rate is set in the table below. The tax rate is based on monthly  
 32 therm volumes of piped natural gas received by the end-user of the gas. If an end-user  
 33 receives piped natural gas that is metered through two or more separate measuring  
 34 devices, the tax is calculated separately on the volume metered through each device  
 35 rather than on the total volume metered through all measuring devices, unless the  
 36 devices are located on the same premises and are part of the same billing account. In  
 37 that circumstance, the tax is calculated on the total volume metered through the two or  
 38 more separate measuring devices.

Monthly Volume of Therms Received	Rate Per Therm
41 First 200	\$.047
42 201 to 15,000	.035
43 15,001 to 60,000	.024
44 60,001 to 500,000	.015

1 Over 500,000 .003

2 (c) Gas City Exemption. – The tax imposed by this section does not apply to  
3 piped natural gas received by a gas city for consumption by that city or to piped natural  
4 gas delivered by a gas city to a sales or transportation customer of the gas city.

5 (d) Credit. – A taxpayer is allowed a credit against the tax imposed by this  
6 section on piped natural gas received for consumption in this State equal to the amount  
7 of tax it paid on that piped natural gas under G.S. 105-187.44 for the same period."

8 **SECTION 6.** G.S. 105-164.44F reads as rewritten:

9 **"§ 105-164.44F. Distribution of part of telecommunications taxes to cities.**

10 (a) Amount. – The Secretary must distribute to the cities part of the taxes  
11 imposed by G.S. 105-164.4(a) (4c) on telecommunications service. The Secretary must  
12 make the distribution within 75 days after the end of each calendar quarter. The amount  
13 the Secretary must distribute is eighteen and twenty-six hundredths percent (18.26%) of  
14 the net proceeds of the taxes collected during the quarter, minus two million six hundred  
15 twenty thousand nine hundred forty-eight dollars (\$2,620,948). This deduction is  
16 one-fourth of the annual amount by which the distribution to cities of the gross receipts  
17 franchise tax on telephone companies, imposed by former G.S. 105-120, was required to  
18 be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." The  
19 Secretary must distribute the specified percentage of the proceeds, less the "freeze  
20 deduction" among the cities in accordance with this section.

21 (b) Share of Cities Incorporated on or After January 1, 2001. - The share of a city  
22 incorporated on or after January 1, 2001, is its per capita share of the amount to be  
23 distributed to all cities incorporated on or after this date. This amount is the proportion  
24 of the total to be distributed under this section that is the same as the proportion of the  
25 population of cities incorporated on or after January 1, 2001, compared to the  
26 population of all cities. In making the distribution under this subsection, the Secretary  
27 must use the most recent annual population estimates certified to the Secretary by the  
28 State Planning Officer.

29 (c) Share of Cities Incorporated Before January 1, 2001. - The share of a city  
30 incorporated before January 1, 2001, is its proportionate share of the amount to be  
31 distributed to all cities incorporated before this ~~date~~ date minus one-fourth of its electric  
32 power freeze deduction. A city's electric power freeze deduction is the amount by which  
33 the city's distribution amount of the gross receipts tax on electric power companies  
34 under G.S. 105-116 was required to be reduced in fiscal year 1995-96 in determining  
35 the amount to distribute to the city.

36 A city's proportionate share for a quarter is based on the amount of telephone gross  
37 receipts franchise taxes attributed to the city under G.S. 105-116.1 for the same quarter  
38 that was the last quarter in which taxes were imposed on telephone companies under  
39 repealed G.S. 105-120. The amount to be distributed to all cities incorporated before  
40 January 1, 2001, is the amount determined under subsection (a) of this section, minus  
41 the amount distributed under subsection (b) of this section.

42 The following changes apply when a city incorporated before January 1, 2001, alters  
43 its corporate structure. When a change described in subdivision (2) or (3) occurs, the  
44 resulting cities are considered to be cities incorporated before January 1, 2001, and the

1 distribution method set out in this subsection rather than the method set out in  
2 subsection (b) of this section applies:

3 (1) If a city dissolves and is no longer incorporated, the proportional  
4 shares of the remaining cities incorporated before January 1, 2001,  
5 must be recalculated to adjust for the dissolution of that city.

6 (2) If two or more cities merge or otherwise consolidate, their proportional  
7 shares are combined.

8 (3) If a city divides into two or more cities, the proportional share of the  
9 city that divides is allocated among the new cities on a per capita basis.

10 (d) Share of Cities Served by a Telephone Membership Corporation. - The share  
11 of a city served by a telephone membership corporation, as described in Chapter 117 of  
12 the General Statutes, is computed as if the city was incorporated on or after January 1,  
13 2001, under subsection (b) of this ~~section~~ section, except that one-fourth of its electric  
14 power freeze deduction is subtracted as provided in subsection (c) of this section. If a  
15 city is served by a telephone membership corporation and another provider, then its per  
16 capita share under this subsection applies only to the population of the area served by  
17 the telephone membership corporation.

18 (e) Ineligible Cities. - An ineligible city is disregarded for all purposes under this  
19 section. A city incorporated on or after January 1, 2000, is not eligible for a distribution  
20 under this section unless it meets both of the following requirements:

21 (1) It is eligible to receive funds under G.S. 136-41.2.

22 (2) A majority of the mileage of its streets are open to the public."

23 **SECTION 7.** This act becomes effective January 1, 2003.