

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2015

SESSION LAW 2016-23

SENATE BILL 575

1 AN ACT TO MAKE LEGISLATIVE CHANGES TO FACILITATE THE WORK OF THE
2 BOUNDARY COMMISSION IN CONFIRMING AND REESTABLISHING THE
3 ORIGINAL BOUNDARY EXISTING BETWEEN THE STATES OF NORTH CAROLINA
4 AND SOUTH CAROLINA.
5

6 The General Assembly of North Carolina enacts:
7

8 **PART I. GENERAL PROVISIONS**

9 **SECTION 1.(a)** Findings. – The General Assembly finds that:

- 10 (1) North Carolina and South Carolina were created as separate British colonies.
11 (2) Surveys to determine the boundary between North Carolina and South Carolina
12 began in 1735 and concluded in 1815.
13 (3) Resurveys of three sections of the boundary between North Carolina and South
14 Carolina were performed in 1813, 1905, and 1928.
15 (4) The boundary between North Carolina and South Carolina has not changed;
16 however, over the course of time from the original survey of the boundary,
17 some of the markers denoting the boundary from the original surveys have been
18 lost or destroyed by the elements.
19 (5) The boundary commission authorized pursuant to Chapter 141 of the General
20 Statutes has worked with commissioners appointed by South Carolina to
21 reestablish the boundary between North Carolina and South Carolina.

22 **SECTION 1.(b)** Intent. – It is the intent of the General Assembly to address the
23 effects on persons or land with a situs recognized, as a result of a boundary certification, to be in
24 this State and to avoid disputes with such persons or owners of such land. This act does not apply
25 to persons whose property, rights, and businesses are not affected by boundary certification. For
26 purposes of this act, "boundary certification" means the certification by the General Assembly of
27 the boundary between North Carolina and South Carolina, as provided for in subsection (c) of this
28 section.

29 **SECTION 1.(c)** Certification. – For purposes other than property tax, the General
30 Assembly hereby certifies that, as of January 1, 2017, the boundary between North Carolina and
31 South Carolina is the boundary that was established by the original survey and resurveys that were
32 adopted through legislative and executive actions, and the reestablished boundary has been
33 approved by the boundary commissions of North Carolina and South Carolina and proclaimed as
34 the boundary by the Governor, pursuant to G.S. 141-5. For property tax purposes, the General
35 Assembly hereby certifies that, as of January 1 of the year following the year this act becomes
36 effective or the year an executive order has been issued by the Governor proclaiming the boundary
37 between North Carolina and South Carolina, whichever is earlier, the boundary between North
38 Carolina and South Carolina is the boundary that was established by the original survey and
39 resurveys that were adopted through legislative and executive actions, and the reestablished
40 boundary has been approved by the boundary commissions of North Carolina and South Carolina
41 and proclaimed as the boundary by the Governor, pursuant to G.S. 141-5.
42

43 **PART II. TAX LIABILITY**

44 **SECTION 2.(a)** Taxes. – The following provisions apply to taxes affected by
45 boundary certification:

- 46 (1) Neither the State nor a subdivision of the State may assess a tax on a person for
47 activities occurring prior to the date of certification where the basis of the
48 assessment is the certification.



- 1 (2) The State and its subdivisions may assess a tax for activities occurring on or
2 after the date of certification subject to the following conditions:
3 a. For taxes imposed for a taxable period, the tax may not be imposed for a
4 period beginning prior to the date of certification.
5 b. For sales and use taxes for an item that is provided and billed on a
6 monthly or other periodic basis, the tax may not be assessed for periods
7 beginning prior to the date of certification.
8 c. For a person subject to taxes levied under Article 2A of Chapter 105 of
9 the General Statutes who, on the date of the certification, has on hand
10 any tobacco products, the person must file a complete inventory of the
11 tobacco products within 20 days after date of certification and must pay
12 an additional tax to the Secretary of Revenue when filing the inventory.
13 The amount of the tax due is the amount due based on the current tax
14 rate less any tax paid on the inventory to another state.
15 d. For installments and carryforwards of tax benefits allowed by this State
16 at the time of boundary certification for activities with a situs in South
17 Carolina, a person may claim remaining installments and carryforwards
18 against State tax liability.
19 e. For land that is classified under G.S. 105-277.3 at the time of boundary
20 certification and that fails to meet the size requirements of
21 G.S. 105-277.3 solely because of boundary certification, (i) no deferred
22 taxes are due as a result of boundary certification, (ii) the deferred taxes
23 remain a lien on the land located in this State, and (iii) the deferred taxes
24 for the land in this State are otherwise payable in accordance with
25 G.S. 105-277.3. The tax benefit provided in this sub-subdivision is
26 forfeited if any portion of the land located in this State is sold.
27 f. For land receiving a property tax benefit other than classification under
28 G.S. 105-277.3 at the time of boundary certification that fails to meet
29 the requirements for the property tax benefit solely because of boundary
30 certification, the land is not entitled to receive the property tax benefit
31 after the time of boundary certification unless it meets the statutory
32 requirements, but the lien on the land for the deferred taxes is
33 extinguished as if it has been paid in full.
34 (3) A person may not seek a refund for activities occurring prior to the date of
35 certification where the basis of the refund is the certification.

36 **SECTION 2.(b)** An establishment to which permits may be issued pursuant to
37 G.S. 18B-1006(n1), as enacted by this act, is designated a special class of property under Section
38 2(2) of Article V of the North Carolina Constitution, and the motor fuel sold by that establishment
39 is taxable in accordance with this section. Notwithstanding G.S. 105-449.80, the motor fuel excise
40 tax rate for an establishment to which permits may be issued pursuant to G.S. 18B-1006(n1), as
41 enacted by this act, is sixteen cents (16¢) per gallon. The Revenue Laws Study Committee shall
42 annually compare the motor fuel excise tax rate imposed by this section with the rate levied by the
43 State of South Carolina on motor fuels and may recommend a change in the rate imposed by this
44 section to an amount no greater than the rate then in effect for the State of South Carolina. An
45 establishment designated as a special class of property by this section may obtain monthly refunds
46 on the difference between the motor fuel excise tax imposed under G.S. 105-449.80 and the motor
47 fuel excise tax imposed by this section. The Department shall calculate for each calendar year the
48 difference between the motor fuel excise tax that would have been imposed under G.S. 105-449.80
49 on the motor fuel sold by an establishment classified by this section in the absence of this
50 classification and the motor fuel excise tax that was imposed on the motor fuel sold by the
51 establishment due to the classification. The difference in taxes, together with any interest,
52 penalties, or costs that may accrue thereon, are a lien on the real property underlying the
53 establishment as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in
54 the records of the Department as deferred taxes. The deferred taxes for the preceding three
55 calendar years are due and payable on the day this subsection becomes ineffective due to the
56 occurrence of a disqualifying event; provided, however, the amount collected for deferred taxes
57 pursuant to this subsection does not exceed the tax value of the property. A disqualifying event
58 occurs when the title to the real property underlying the establishment is transferred to a new

1 owner. A lien for deferred taxes is extinguished when the amount required by this subsection is
2 paid.

3 **SECTION 2.(c)** For property tax purposes, this Part is effective on the date of
4 certification applicable to property tax purposes provided in Section 1(c) of this act. For all other
5 purposes, this Part is effective for taxable periods beginning on or after January 1, 2017.
6

7 **PART III. INSTRUMENTS OF TITLE TO REAL PROPERTY**

8 **SECTION 3.(a)** The North Carolina Geodetic Survey shall record the final survey of
9 the confirmed boundary in the office of the register of deeds in every county in this State where
10 real property has been affected by the certification of the boundary. The applicable uniform fees
11 provided in G.S. 161-10 shall apply to the recordation of the final survey. The register of deeds
12 shall register and index the surveys in accordance with the provisions of Article 2 of Chapter 161
13 of the General Statutes.

14 **SECTION 3.(b)** For parcels of real property affected by the certification of the
15 boundary, situated in whole or in part within the boundaries of this State, the North Carolina
16 Geodetic Survey shall record a Notice of Affected Parcel in the office of the register of deeds in
17 the county or counties where each affected parcel is situated. The register of deeds shall register
18 and index the Notice in accordance with the provisions of Article 2 of Chapter 161 of the General
19 Statutes. Notwithstanding any other provision of law to the contrary, the register of deeds shall not
20 collect any fees or taxes for the Notice recorded pursuant to this subsection. The Notice shall
21 contain at least all of the following information:

- 22 (1) Reference to this act.
- 23 (2) The recording reference for the final survey of the confirmed boundary
24 recorded pursuant to subsection (a) of this section.
- 25 (3) The names of the record owners of the parcel.
- 26 (4) The property address of the parcel.
- 27 (5) A tax parcel identification number or other applicable identifier used by a
28 county tax office, if available.
- 29 (6) A brief description of the parcel, if available.
- 30 (7) A source deed reference for the parcel, if available.

31 **SECTION 3.(c)** Title to real property previously treated as being subject to the
32 jurisdiction of the State of South Carolina but that is recognized as being within the boundaries of
33 this State as a result of the certification of the boundary is not affected by the certification of the
34 boundary or the recognition of the real property as being within the boundaries of this State. All
35 conveyances and instruments of title, of any sort, made prior to the certification of the boundary
36 shall be recognized and given full faith and credit in this State according to the law, jurisdiction,
37 and terms in effect at the time of the conveyance in the jurisdiction the property was previously
38 treated as being subject to. For the purposes of this subsection, "instruments of title" means any
39 instrument that affects title or constitutes the chain of title to real property, including, but not
40 limited to, all deeds, wills, estate documents evidencing transfer of title, plats, surveys, easements,
41 rights-of-way, outstanding mortgages and deeds of trust, judicial orders or decrees, and documents
42 evidencing intestate succession.

43 **SECTION 3.(d)** Liens recorded prior to the date of boundary certification with the
44 register of deeds or docketed with the clerk of superior court in the county in this State where the
45 affected parcel is situated shall attach, as a class, to the affected parcel as of the effective date and
46 time of the boundary certification. This class of liens shall be assigned priority as of the date of
47 boundary certification but shall retain the same priority among themselves as if this subsection did
48 not apply.

49 **SECTION 3.(e)** The Commissioner of Insurance shall not take any of the following
50 actions with respect to a real estate title insurance company that previously operated only in South
51 Carolina and issued a policy of title insurance in compliance under South Carolina law for a parcel
52 of real estate now determined to be located wholly or partially in North Carolina:

- 53 (1) Require a certificate of authority to do business as a real estate title insurance
54 company under Article 26 of Chapter 58 of the General Statutes.
- 55 (2) Take enforcement action against any title insurance company for failure to
56 comply with the requirements of Article 26, 27, or 28 of Chapter 58 of the
57 General Statutes applicable to real estate title insurance companies in North
58 Carolina or any other statutory or regulatory requirements applicable to all
59 insurance companies in North Carolina.

1 Nothing in this section is intended to prevent the Commissioner of Insurance from
2 entering into a memorandum of agreement with the South Carolina Department of Insurance with
3 respect to enforcement of South Carolina law against real estate title insurance companies subject
4 to this section.
5

6 **PART IV. FORECLOSURE OF DEEDS OF TRUST AND MORTGAGES**

7 **SECTION 4.(a)** Foreclosure actions initiated on real property encumbered by a
8 security instrument recorded in South Carolina wherein the real property is situated, in whole or in
9 part, within the certified North Carolina boundaries shall be governed by the terms of the security
10 instrument sought to be enforced for that portion of real property recognized as being in a different
11 state. If the security instrument contains a power of sale clause, the party seeking to enforce the
12 terms of the security instrument may initiate a foreclosure action in the county where the real
13 property is situated pursuant to Chapter 45 of the General Statutes. A party seeking to enforce the
14 terms of the security instrument may also resort to judicial foreclosure, pursuant to Article 29A of
15 Chapter 1 of the General Statutes, in accordance with the terms within the security instrument.
16 Judgments or orders of foreclosure entered by courts of this State are binding and effective only
17 with respect to the portion of real property situated within this State. Prior to initiating an action to
18 enforce a security instrument, the security instrument or a certified copy shall be recorded in the
19 office of the register of deeds for the county where the subject property is situated. The provisions
20 of G.S. 45-10(a) shall apply with regard to the appointment or substitution of a trustee for any
21 mortgage or deed of trust foreclosed pursuant to this section.

22 **SECTION 4.(b)** Notwithstanding any other provision of law to the contrary, for
23 mortgages foreclosed pursuant to subsection (a) of this section, a mortgagee or its successors or
24 assigns shall be entitled to bid at a foreclosure sale conducted pursuant to a judgment or order of
25 foreclosure entered by the courts of this State.
26

27 **PART V. PUBLIC SCHOOL STUDENT ENROLLMENT**

28 **SECTION 5.(a)** Notwithstanding any other provision of law, a student who (i) was
29 eligible to enroll in a North Carolina local school administrative unit in accordance with
30 G.S. 115C-366 prior to the date of the certification and (ii) loses the eligibility to enroll in a public
31 school, including a charter school, as a result of certification may attend a North Carolina public
32 school located within the local school administrative unit or attend a North Carolina charter
33 school, without the payment of tuition, until that student:

- 34 (1) Reaches the age of 21.
- 35 (2) Obtains a high school diploma.
- 36 (3) No longer meets the requirements of G.S. 115C-366 that were the basis for the
37 student's eligibility for enrollment prior to the date of certification.
- 38 (4) Loses eligibility pursuant to subsection (b) of this section.

39 **SECTION 5.(b)** A student who attends a North Carolina public school or charter
40 school under subsection (a) of this section and the student's parent, legal guardian, or custodian
41 shall be subject to the laws and rules governing North Carolina public schools and charter schools
42 in accordance with Chapter 115C of the General Statutes, including meeting the requirements of
43 the compulsory attendance law under Part 1 of Article 26 of Chapter 115C of the General Statutes.

44 Notwithstanding the enforcement provisions of G.S. 115C-378(f), 115C-380,
45 115C-381, and 115C-382, a parent, guardian, or custodian of a student enrolled in a North
46 Carolina public school or charter school under this section who is determined by the principal of
47 the student's public school or the charter school to be in violation of the compulsory attendance
48 laws shall no longer be eligible to enroll the student in a North Carolina public school or charter
49 school pursuant to subsection (a) of this section in a subsequent semester of the school year. In
50 addition, the local school administrative unit or charter school in which the student is enrolled
51 shall notify, based on the student's place of residence in South Carolina, the juvenile court or such
52 other court in the county that has jurisdiction of juveniles and, if applicable, the attendance
53 supervisor for that county.

54 **SECTION 5.(c)** The State Board of Education shall provide that a student enrolled in
55 a North Carolina public school or charter school in accordance with subsection (a) of this section
56 be included in calculations for average daily membership, reporting for the Uniform Education
57 Reporting System, and eligibility for State and federal funds.

1 **SECTION 5.(d)** Except as otherwise provided by this section or G.S. 115C-366, a
2 student who is a legal resident of South Carolina shall not be entitled to enroll in a North Carolina
3 public school.
4

5 **PART VI. DRIVER EDUCATION ELIGIBILITY/BEGINNER LICENSE**

6 **SECTION 6.(a)** Notwithstanding State Board of Education policy, GCS-R-004, or
7 any other provision of law, if a student enrolled in a North Carolina public school or charter
8 school under subsection (a) of Section 5 of this act obtains a beginner's permit in South Carolina,
9 the student shall be eligible to participate in behind-the-wheel instruction as part of a driver
10 education course offered by the local school administrative unit in which the student is enrolled.

11 **SECTION 6.(b)** Notwithstanding G.S. 20-11(b)(1), a student who (i) as a result of the
12 boundary certification becomes a legal resident of North Carolina on the date of the certification
13 and (ii) is enrolled in a South Carolina school district in which his or her residence was located
14 prior to certification or in the South Carolina statewide public charter school district may meet the
15 requirement in G.S. 20-11(b)(1) for obtaining a limited learner's permit if the student passes a
16 course of driver education offered by the South Carolina high school in which the student is
17 enrolled.

18 **SECTION 6.(c)** The Department of Transportation, Division of Motor Vehicles, in
19 collaboration with the State Board of Education, shall develop a procedure for any North Carolina
20 resident who is a student enrolled in a South Carolina school pursuant to the conditions described
21 in subsection (b) of this section to satisfy the driver eligibility certificate requirements of
22 G.S. 20-11 to obtain and continue to hold a limited or full provisional license under this section.
23

24 **PART VII. ELIGIBILITY FOR IN-STATE TUITION**

25 **SECTION 7.(a)** Notwithstanding any other provision of law, independent persons and
26 their dependents formerly domiciled in North Carolina counties who are domiciled in South
27 Carolina counties as a result of the North Carolina-South Carolina boundary certification may be
28 considered eligible for in-State tuition rates for a period of up to 10 years from the effective date
29 of the boundary change. To be eligible for in-State tuition rates, such persons must have been
30 domiciled and reside on property in North Carolina in accordance with G.S. 116-143.1
31 immediately prior to the effective date of North Carolina legislation approving the North
32 Carolina-South Carolina boundary certification and must maintain residence and domicile on that
33 same property within South Carolina.

34 **SECTION 7.(b)** Notwithstanding any other provision of law, independent persons and
35 their dependents previously domiciled on property in South Carolina which is located in North
36 Carolina as a result of the North Carolina-South Carolina boundary certification may, for a period
37 of two years from the effective date of the boundary certification, be eligible for in-State rates
38 without the requirement of residency and domicile for 12 months in this State provided such
39 independent persons have evidenced the intent to establish domicile in North Carolina in
40 accordance with G.S. 116-143.1. To be eligible under this provision, such persons must reside on
41 the same property that was in South Carolina immediately prior to the effective date of North
42 Carolina legislation approving the certified North Carolina-South Carolina boundary. To maintain
43 eligibility for in-State tuition rates longer than the two years permitted under this paragraph, the
44 independent persons and their dependents must satisfy the requirements of G.S. 116-143.1.

45 **SECTION 7.(c)** The provisions established under subsections (a) and (b) of this
46 section are not transferable to persons other than those independent persons and their dependents
47 falling within the scope of those provisions.

48 **SECTION 7.(d)** Should the domicile and residence of independent persons and their
49 dependents change from the property affected by the boundary certification, maintenance of
50 eligibility for in-State rates will be determined as provided in G.S. 116-143.1.
51

52 **PART VIII. ABC PERMITS**

53 **SECTION 8.** G.S. 18B-1006 is amended by adding a new subsection to read:
54 "(n1) State Boundary Certification. – The Commission may issue permits listed in
55 G.S. 18B-1001(2) and (4), without approval at an election, to qualified establishments defined in
56 G.S. 18B-1000(7) that meet all of the following requirements:

- 57 (1) The establishment is located in a county that borders on another state.
58 (2) The location of the establishment was reclassified from out-of-state to North
59 Carolina as a result of a State boundary certification.

1 (3) The establishment was licensed or permitted by the previous state of record to
2 sell malt beverages and unfortified wine."
3

4 **PART IX. TITLE, REGISTRATION, AND HIGHWAY USE TAX**

5 **SECTION 9.(a)** Definition. – For purposes of this section, "impacted person" shall
6 mean any person who is the owner of a motor vehicle titled and registered in South Carolina and
7 who has now been determined to be a resident of North Carolina as a result of a boundary
8 certification agreed to by the states of North Carolina and South Carolina.

9 **SECTION 9.(b)** The Division of Motor Vehicles of the Department of Transportation
10 shall require title, registration, and the payment of highway use tax from impacted persons in the
11 same manner as it currently uses for persons moving to North Carolina from another state.
12

13 **PART X. ENVIRONMENTAL COMPLIANCE SCHEDULE**

14 **SECTION 10.(a)** Definition. – For purposes of this section, "impacted location" shall
15 mean any facility or property that has now been determined to be located in North Carolina as a
16 result of a boundary certification recognized by the states of North Carolina and South Carolina,
17 and, as a result, either of the following applies to the facility or property:

- 18 (1) It is required to obtain a permit, license, or approval from the North Carolina
19 Department of Environmental Quality.
20 (2) It is subject to a permit, license, or approval program that is operated by a local
21 government and is delegated from or approved by the North Carolina
22 Department of Environmental Quality.

23 **SECTION 10.(b)** Notwithstanding any other provision of law to the contrary, the
24 Department of Environmental Quality, the Environmental Management Commission, or any local
25 program delegated or approved by the Department or the Commission (collectively, the
26 "permitting authorities"), in issuing any environmental permit, license, or approval to an impacted
27 location, shall provide a schedule of compliance that allows the recipient of the permit, license, or
28 approval a period of no less than five years to come into compliance with any North Carolina
29 environmental rule or standard established by the permitting authorities that (i) has no
30 corresponding rule or standard under South Carolina law or regulation or (ii) is more stringent
31 than the corresponding rule or standard established under South Carolina law or regulations. The
32 permitting authorities may include increments of progress applicable in each year of the schedule
33 established under this subsection. The owner or operator of an impacted location may waive the
34 schedule of compliance required by this subsection. Nothing in this section is intended to limit the
35 applicability or employment of existing procedures under North Carolina statutes and regulations
36 granting waivers or variances from otherwise applicable environmental rules or standards.
37

38 **PART XI. UTILITIES/EXTENSION OF RURAL FIRE PROTECTION DISTRICTS,**
39 **COUNTY SERVICE DISTRICTS, AND WATER AND SEWER DISTRICTS**

40 **SECTION 11.(a)** The owner or occupant of a dwelling unit or commercial
41 establishment on improved property that shall be deemed located in whole or in part in the State of
42 North Carolina as a result of the boundary certification described in this act may continue to
43 receive utility services from the South Carolina utility or its successor that is providing service to
44 the dwelling unit or commercial establishment on January 1, 2017. However, the owner or
45 occupant may, within his or her discretion, elect to have one or more of the utility services being
46 provided to the property by a South Carolina utility on January 1, 2017, be provided by a North
47 Carolina utility as long as the property is located within the North Carolina utility's service area. A
48 North Carolina utility that is a city or county may require the owner of the property to pay a
49 periodic availability fee authorized by law only if the owner elects to have utility service provided
50 to the dwelling unit or commercial establishment by the North Carolina utility. A South Carolina
51 utility that provides service to the property as authorized in this section is not a public utility under
52 G.S. 62-3(23), and is not subject to regulation by the North Carolina Utilities Commission as it
53 relates to providing the particular utility service involved. For purposes of this subsection only, the
54 term "South Carolina utility" has the same meaning as the term "utility" or "utilities" in the Code
55 of Laws of South Carolina, and the term "North Carolina utility" has the same meaning as the term
56 "public utility" which is defined in G.S. 62-3(23), and also includes a city or county that provides
57 any of the services listed in G.S. 160A-311 or G.S. 153A-274, an authority organized under the
58 North Carolina Water and Sewer Authorities Act, or an electric or telephone membership
59 corporation.

1 **SECTION 11.(b)** The governing body of a county that gains territory as a result of the
2 boundary certification described in this act shall meet as soon as practicable after the date this act
3 becomes law to determine whether the residents of the territory (i) require the services provided by
4 an existing rural fire protection district established under Article 3A of Chapter 69 of the General
5 Statutes or a county service district established under Article 16 of Chapter 153A of the General
6 Statutes or (ii) would benefit from the services provided by an existing county water and sewer
7 district established under Article 6 of Chapter 162A of the General Statutes. If the governing body
8 finds that the residents of the territory require or would benefit from the services of the district, the
9 governing body shall annex the territory to the district as provided in G.S. 69-25.11(1), 153A-303,
10 and 162A-87.1.

11
12 **PART XII. SEVERABILITY AND EFFECTIVE DATE**

13 **SECTION 12.(a)** If any provision of this act or its application is held invalid, the
14 invalidity does not affect other provisions or applications of this act that can be given effect
15 without the invalid provisions or application, and to this end, the provisions of this act are
16 severable.

17 **SECTION 12.(b)** Except as otherwise provided, this act is effective when it becomes
18 law.

19 In the General Assembly read three times and ratified this the 20th day of June, 2016.
20
21

22 s/ Robert A. Rucho
23 Presiding Officer of the Senate
24

25
26 s/ Tim Moore
27 Speaker of the House of Representatives
28

29
30 s/ Pat McCrory
31 Governor
32

33
34 Approved 4:03 p.m. this 22nd day of June, 2016