

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 695*

Short Title: Johnston School Revenue Options.

(Local)

Sponsors: Representatives Daughtry and Creech.

Referred to: Finance.

March 30, 1995

A BILL TO BE ENTITLED

1
2 AN ACT TO AUTHORIZE JOHNSTON COUNTY TO LEVY FACILITY FEES, AN
3 ADDITIONAL SALES AND USE TAX OF ONE PERCENT, AND A TWO
4 PERCENT REAL ESTATE TRANSFER TAX, SUBJECT TO APPROVAL BY THE
5 VOTERS OF THE COUNTY, TO GENERATE FUNDS FOR PUBLIC SCHOOL
6 CAPITAL NEEDS.

Whereas, Johnston County has immediate and urgent needs for public school capital improvements; and

Whereas, the school-age population in Johnston County continues to grow at a rapid rate;

Now, therefore,

7 The General Assembly of North Carolina enacts:

8 Section 1. This act applies only to Johnston County.

PART I

REFERENDUM

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11 Sec. 1.1. The Johnston County Board of Commissioners may direct the county
12 board of elections to conduct an advisory referendum on the question of whether the
13 county may (i) by ordinance impose facility fees for public school capital improvements
14 at the rate of seven hundred fifty dollars (\$750.00), (ii) levy a local sales and use tax at
15 the rate of one percent (1%) in accordance with this act for public school capital
16 improvements, and (iii) levy an excise tax on instruments conveying interests in real

1 property at a rate not to exceed two dollars (\$2.00) on each one hundred dollars (\$100.00)
2 of value in accordance with this act to provide funds for public school capital
3 improvements. The election shall be held on a date jointly agreed by the two boards and
4 shall be conducted in accordance with the procedures of G.S. 163-287.

5 The form of the question to be presented on a ballot for a special election
6 concerning the facility fees authorized by this Part shall be:

7 [] **FOR** [] **AGAINST**

8 Facility fees on new construction within the county at the rate of seven
9 hundred fifty dollars (\$750.00), one percent (1%) local sales and use tax in addition to the
10 current two percent (2%) local sales and use taxes, and local real property conveyance tax
11 at a rate not to exceed two dollars (\$2.00) on each one hundred dollars (\$100.00) of value
12 or consideration, these fees and taxes to be used only for the purpose of paying the cost of
13 public school capital improvements.

14 **PART II**
15 **FACILITY FEES**

16 Sec. 2.1. Imposition of facility fees.

17 If the majority of those voting in a referendum held pursuant to this act vote for
18 the imposition of facility fees, the board of commissioners of Johnston County may adopt
19 an ordinance, pursuant to this Part, to impose upon each unit of new construction within
20 the county a facility fee in the amount of seven hundred fifty dollars (\$750.00) per unit of
21 new construction for public school capital improvements.

22 Sec. 2.2. Scope of facility fees ordinance.

23 (a) For the purposes of this Part, "new construction" means any new development,
24 construction, or installation that requires any building or zoning permit, certification, or
25 other action permitting real property improvements. "New construction" includes the
26 installation of a mobile home or factory-built or modular housing.

27 (b) Subject to the conditions set forth in this Part, Johnston County may by
28 ordinance impose and collect a facility fee on all new construction within the county in
29 the amount of seven hundred fifty dollars (\$750.00).

30 (c) No facility fee shall be imposed unless the county has met the following
31 procedural requirements:

32 (1) Before adopting or amending a facility fee ordinance authorized by the
33 voters in accordance with this Part, the county board of commissioners
34 shall hold a public hearing on the proposed ordinance or amendment. A
35 notice of the public hearing shall be given so as to conform with G.S.
36 153A-21.

37 (2) The county planning board shall be afforded a reasonable opportunity to
38 make comments or recommendations to the county board of
39 commissioners on the appropriateness of the facility fee ordinance or an
40 amendment to the facility fee ordinance.

41 (d) The following shall be the procedure for hearing appeals concerning the
42 amount, propriety, or legality of any facility fee: Any person aggrieved by any action by
43 the county board of commissioners pursuant to this Part shall first pay the amount of the

1 facility fee so charged to the person, with the amount clearly marked as paid under
2 protest, and thereafter give notice of appeal within a period of 30 days after payment.
3 The notice of appeal shall be delivered by personal service or registered or certified mail,
4 return receipt requested, directed to the county manager. The county board of
5 commissioners shall hold a public hearing to review the matter within a period of 45 days
6 following receipt of the appeal. The decision by the county board of commissioners upon
7 said appeal shall then be subject to review by the superior court by proceedings in nature
8 of certiorari. A petition for review by the superior court shall be filed with the clerk of
9 superior court of the county within a period of 30 days following the date the decision of
10 the county board of commissioners is delivered in writing to the appealing party, said
11 delivery to be either by personal service or by registered mail or certified mail, return
12 receipt requested.

13 **PART III**
14 **ONE CENT SALES TAX**

15 Sec. 3.1. Levy and collection of tax.

16 If the majority of those voting in a referendum held pursuant to this act vote for
17 the levy of the sales and use tax, the board of commissioners of Johnston County may
18 levy a one percent (1%) local sales and use tax in addition to any other State and local
19 sales and use taxes levied pursuant to law. Except as provided in this Part, the adoption,
20 levy, collection, distribution, administration, and repeal of the tax shall be in accordance
21 with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter
22 to this Part, references to "this Article" mean this Part.

23 Sec. 3.2. Distribution and use of tax.

24 The Secretary of Revenue shall, on a quarterly basis, distribute to Johnston
25 County the net proceeds of the tax levied under this Part by the County. Johnston County
26 may use the proceeds of a tax levied under this Part only for public school capital outlay
27 purposes and to retire debt incurred for these purposes.

28 Sec. 3.3. Pending construction contracts.

29 A tax levied under this Part does not apply to construction materials purchased
30 to fulfill a lump sum or unit price contract entered into or awarded before the effective
31 date of the levy or entered into or awarded pursuant to a bid made before the effective
32 date of the levy when the construction materials would otherwise be subject to the tax
33 levied under this Part.

34 **PART IV**
35 **LAND TRANSFER TAX**

36 Sec. 4.1. Levy of county conveyance tax.

37 If the majority of those voting in a referendum held pursuant to this Part vote
38 for the levy of the real property conveyance tax, the board of commissioners of Johnston
39 County may levy an excise tax on instruments conveying interests in real property
40 located in the County at a rate not to exceed two dollars (\$2.00) on each one hundred
41 dollars (\$100.00) of the consideration or value, whichever is greater, of the interest
42 conveyed, including the value of any lien or encumbrance remaining on the property at
43 the time of sale. This tax is in addition to the tax levied by Article 8E of this Chapter.

1 Upon adoption of the resolution, the board of commissioners shall send a certified copy
2 to the register of deeds of the County.

3 Collection of the tax, and liability therefor, shall begin and continue only on
4 and after the first day of a calendar month set by the board of county commissioners in
5 the resolution levying the tax, which may not be earlier than the first day of the second
6 succeeding calendar month after the date the resolution is adopted. The tax shall apply to
7 instruments executed on or after the effective date of the tax except instruments that
8 convey an interest in real property pursuant to a recorded written contract entered into
9 before the effective date of the tax.

10 Sec. 4.2. Scope and administration of tax.

11 (a) Scope. – A tax levied under this Part applies to leases to the extent provided in
12 subsection (b) of this section; the tax does not apply to other transfers exempt pursuant to
13 G.S. 105-228.28 or G.S. 105-228.29 from the tax levied by Article 8E of this Chapter. A
14 tax levied under this Part applies to transfers of interests in real property located within
15 the taxing county, except that if the property is located in two or more counties, a transfer
16 of an interest in the property is taxable only by the county in which the greater part of the
17 property, with respect to value, lies. A tax levied under this Part applies to transfers of
18 interests in manufactured homes that, at the time of the transfer, are taxed as real property
19 for ad valorem tax purposes.

20 (b) Leases. – A tax levied under this Part applies to leases for a term of more than
21 10 years. The tax applies to leases of a shorter term if one of the following conditions is
22 met:

- 23 (1) The lease gives the lessee an option to renew the lease for a period that,
24 when added to the term of the lease, exceeds 10 years.
- 25 (2) The lease is for substantially the same property and is between the same
26 parties as a lease previously recorded, and the term of the new lease,
27 when added to the term of the previous lease, exceeds 10 years.
- 28 (3) The lease requires or permits the property to be transferred to the lessee
29 for less than the fair market value of the property.

30 The value of a lease subject to the tax shall be the present value of the fixed
31 lease payments plus, if the lease payments are based in whole or in part on the lessee's
32 receipts, the estimated amount of the lessee's receipts.

33 (c) Administration. – The tax collector shall administer a tax levied under this
34 Part. A tax levied under this Part is payable by the transferor of the interest to the tax
35 collector before the instrument conveying the interest is recorded. The tax collector shall
36 stamp or otherwise mark each instrument subject to tax to indicate that the tax has been
37 paid. The register of deeds may not accept for recordation an instrument subject to tax
38 unless it bears the tax collector's mark indicating that the tax has been paid.

39 The provisions of G.S. 105-228.33 through G.S. 105-228.35 apply to a tax
40 levied under this Part, except that the collection fee under G.S. 105-228.33 shall be fifty
41 dollars (\$50.00). A taxpayer who contests a tax levied under this Part has the same rights
42 of appeal as provided for property taxes in the Machinery Act, Subchapter II of this
43 Chapter.

