

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 222
Judiciary I Committee Substitute Adopted 5/12/09
House Committee Substitute Favorable 6/17/09

Short Title: Wilmington Local Option Sales Tax/Congestion.

(Local)

Sponsors:

Referred to:

February 19, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE CITY OF WILMINGTON TO LEVY ONE-HALF CENT
3 LOCAL SALES AND USE TAX FOR CONGESTION RELIEF, IF APPROVED BY THE
4 VOTERS OF THE CITY OF WILMINGTON.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. This act applies to the City of Wilmington only.

7 SECTION 2. Subchapter VIII of Chapter 105 of the General Statutes is amended
8 by adding a new Article to read:

9 "Article 47.

10 "One-Half Cent (1/2¢) Municipality Sales and Use Tax.

11 "**§ 105-539. Short title.**

12 This Article is the One-Half Cent (1/2¢) Municipality Sales and Use Tax Act.

13 "**§ 105-540. Levy of tax.**

14 (a) Authority. – If the majority of those voting in a referendum held pursuant to this
15 Article vote for the levy of the taxes, the city council of a municipality may, by resolution, levy
16 one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales
17 and use taxes levied pursuant to law.

18 (b) Vote. – The city council of a municipality may, by resolution, direct the county
19 board or boards of elections conducting elections for that municipality to conduct an advisory
20 referendum on the question of whether to levy local one-half percent (1/2%) sales and use taxes
21 in the county as provided in this Article. The election shall be held on a date jointly agreed
22 upon by the board and council and shall be held in accordance with the procedures of
23 G.S. 163-287.

24 (c) Ballot Question. – The form of the question to be presented on a ballot for a special
25 election concerning the levy of the taxes authorized by this Article shall be:

26 [] FOR [] AGAINST

27 One-half percent (1/2%) local sales and use taxes, in addition to the current local
28 sales and use taxes, to be used only for automotive congestion mitigation purposes.'

29 "**§ 105-541. Administration.**

30 Except as provided in this Article, the adoption, levy, collection, administration, and repeal
31 of the additional taxes authorized by this Article shall be in accordance with Article 39 of this
32 Chapter. A tax levied under this Article does not apply to the sales price of food that is exempt
33 from tax pursuant to G.S. 105-164.13B. The Secretary shall not divide the amount allocated to
34 a municipality between the municipality and the county in which it is located. Notwithstanding
35 the provisions of G.S. 105-467(c), a tax levied under this Article may become effective on the
36 first day of any calendar quarter so long as the municipality gives the Secretary at least 60 days'



1 advance notice of the new tax levy. References to 'county' or 'counties' within Article 39 shall
2 be interpreted as referring to 'municipality' or 'municipalities,' respectively, for purposes of the
3 tax authorized by this Article.

4 **"§ 105-542. Distribution and use of taxes.**

5 (a) Distribution. – The Secretary shall, on a monthly basis, distribute to each taxing
6 municipality the net proceeds of the tax collected in that municipality under this Article. If the
7 Secretary collects taxes under this Article in a month and the taxes cannot be identified as being
8 attributable to a particular taxing municipality, the Secretary shall allocate these taxes among
9 the taxing municipalities in proportion to the amount of taxes collected in each municipality
10 under this Article during that month and shall include them in the monthly distribution.

11 (b) Use. – A municipality may use the net proceeds of a tax levied under this Article
12 only (i) for congestion mitigation programs that have been identified and for which cost
13 analyses have been performed prior to the special election concerning the levy of the taxes
14 pursuant to G.S. 105-540 and (ii) to retire indebtedness incurred by the municipality for those
15 programs. For purposes of this Article, congestion mitigation includes any expenditure for
16 programs that increase the capacity of public rights-of-way or that manage travel demand to
17 improve transportation efficiency.

18 **"§ 105-543. Expiration.**

19 A tax levied under this Article expires upon the earlier of seven years after the effective
20 date of its levy or the first day of the calendar quarter following the month in which the
21 indebtedness for each program identified pursuant G.S. 105-542(b) has been retired, provided
22 the municipality has given the Secretary at least 60 days' advance notice of the expiration. A
23 municipality's authorization to levy a tax under this Article expires seven years after the
24 effective date of the first tax the municipality levies under this Article, even if the tax has not
25 remained in effect for the entire seven-year period. The expiration of a tax pursuant to this
26 Article does not affect the rights or liabilities of a municipality, a taxpayer, or another person
27 arising under the expired tax; nor does it affect the right to any refund or credit of a tax that
28 would otherwise have been available under the expired tax before its expiration.

29 If the Secretary receives a valid request for a refund of a tax levied under this Article after
30 the tax has expired and the net proceeds have been distributed, the Secretary shall draw the
31 refund from the taxing municipality's share of the net proceeds of the tax it levies under Article
32 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, as applicable."

33 **SECTION 3.** A tax levied under Article 47 of Chapter 105 of the General Statutes,
34 as enacted by this act, does not apply to construction materials purchased to fulfill a lump-sum
35 or unit-price contract entered into or awarded before the effective date of the levy or entered
36 into or awarded pursuant to a bid made before the effective date of the levy when the
37 construction materials would otherwise be subject to the tax levied under Article 46 of Chapter
38 105 of the General Statutes.

39 **SECTION 4.** This act is effective when it becomes law.