

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-233
SENATE BILL 369**

AN ACT TO AUTHORIZE FRANKLIN COUNTY AND THE CITIES OF EDEN AND REIDSVILLE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO AMEND THE DURHAM AND ROCKINGHAM OCCUPANCY TAXES.

The General Assembly of North Carolina enacts:

PART I. FRANKLIN COUNTY OCCUPANCY TAX.

SECTION 1.1. Occupancy Tax. – (a) Authorization and Scope. – The Franklin County Board of Commissioners may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

SECTION 1.1.(c) Distribution and Use of Tax Revenue. – Franklin County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Franklin County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Franklin County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this Part:

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

SECTION 1.2. Franklin County Tourism Development Authority. – (a) Appointment and Membership. – When the Franklin County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution

shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Franklin County shall be the ex officio finance officer of the Authority.

SECTION 1.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

SECTION 1.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Franklin County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

PART II. EDEN OCCUPANCY TAX.

SECTION 2. Occupancy Tax. – (a) Authorization and Scope. – The Eden City Council may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.(c) Distribution and Use of Tax Revenue. – The City of Eden shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under this Part to the Rockingham County Tourism Development Authority. The net proceeds under this Part shall be deposited into a separate Eden Account. Based on recommendations from and in consultation with the Eden City Council, the Authority shall use at least two-thirds of the funds in the Eden Account for tourism promotion and the remainder for tourism-related expenditures. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the City of Eden. None of the proceeds may be used to promote travel and tourism or for tourism-related expenditures in areas within Rockingham County that are outside of the City of Eden.

The following definitions apply in this Part:

- (1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that are designed to increase the use of lodging facilities, meeting facilities, or convention

facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

PART III. REIDSVILLE OCCUPANCY TAX.

SECTION 3. Occupancy Tax. – (a) Authorization and Scope. – The Reidsville City Council may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 3.(c) Distribution and Use of Tax Revenue. – The City of Reidsville shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under this Part to the Rockingham County Tourism Development Authority. The net proceeds under this Part shall be deposited into a separate Reidsville Account. Based on recommendations from and in consultation with the Reidsville City Council, the Authority shall use at least two-thirds of the funds in the Reidsville Account for tourism promotion and the remainder for tourism-related expenditures. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the City of Reidsville. None of the proceeds may be used to promote travel and tourism or for tourism-related expenditures in areas within Rockingham County that are outside of the City of Reidsville.

The following definitions apply in this Part:

- (1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

PART IV. DURHAM OCCUPANCY TAX.

SECTION 4.1. Section 7(a) of S.L. 2001-480, as amended by Section 1 of S.L. 2002-36, reads as rewritten:

"SECTION 7.(a) If a plan for financing a Performing Arts Theater has not been approved by the Durham City Council and has been disapproved by the Durham County Commissioners within ~~42~~⁵⁴ months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described under Section 6(c) of this act and the levy of the one percent (1%) tax described in this subsection are repealed on the first day of the second month following the ~~42-month~~^{54-month} period.

If construction on the Performing Arts Theater has not begun within ~~42~~⁵⁴ months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described in Section 6(c) of this act

and the levy of the one percent (1%) tax described in Section 6(c) of this act are repealed on the first day of the second month following the ~~42-month~~54-month period.

It is the goal of the General Assembly that a plan for financing the Performing Arts Theater shall be adopted within ~~12~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, and construction of the Performing Arts Theater shall begin within ~~24~~54 months of the levy of the one percent (1%) tax described in Section 6(c) of this act.

Any funds collected but not spent before the repeal date shall be redistributed to the Durham Convention and Visitors Bureau to promote travel and tourism."

SECTION 4.2. Section 9(e) of S.L. 2001-480, as amended by Section 4 of S.L. 2002-36, reads as rewritten:

"SECTION 9.(e) Use of Proceeds From Additional One Percent (1%) Tax After First 24 Months. – The net proceeds of the tax collected under Section 6(c) of this act after the first 24 months that the tax is levied shall be remitted monthly to the Durham Convention and Visitors Bureau as set out in Section 10 of this act. The Bureau shall use and distribute these net proceeds in the following priority order:

- (1) To the City of Durham, the first one million four hundred thousand dollars (\$1,400,000) collected annually to finance the debt service associated with the construction of the Performing Arts Theater. Theater and for the design and engineering costs associated with the construction of the Theater. But no more than two million seven hundred fifty-two thousand dollars (\$2,752,000) of those proceeds may be used for design and engineering costs associated with the construction of the Theater. Until those funds are distributed to the City of Durham for that purpose, they shall be held by the Durham Convention and Visitors Bureau in a capital reserve fund as provided by Part 2 of Article 3 of Chapter 159 of the General Statutes except they may be expended as provided by the last sentence of Section 7(a) of this act if the tax is repealed as provided by Section 7(a) of this act. Any interest earned by that fund shall be credited to the fund.
- (2) Thirty-two years after the levy of the tax authorized under Section 6(c) of this act, instead of the allocation under subdivision (1) of this subsection, the first one million four hundred thousand dollars (\$1,400,000) collected annually shall be used by the Bureau to promote travel and tourism or for tourism related expenditures.
- (3) To Durham County, the next five hundred thousand dollars (\$500,000) collected annually to be used for improvements to the Museum of Life and Science. This may include the financing of debt service. Any of these funds that are not needed for this purpose shall be returned to the Bureau and used to promote travel and tourism.
- (4) The Bureau shall use any net proceeds in excess of that provided by subdivisions (1), (2), and (3) of this subsection to promote travel, tourism, and conventions in Durham County.

As used in this subsection, "annually" means the 12-month period beginning after the first 24 months that the tax authorized under Section 6(c) of this act is levied."

PART V. ROCKINGHAM COUNTY OCCUPANCY TAX.

SECTION 5. Chapter 322 of the 1991 Session Laws, as amended by Chapter 52 of the 1995 Session Laws, reads as rewritten:

"Section 1. Occupancy Tax. =

(a) Authorization and Scope. = The Rockingham County Board of Commissioners ~~may, by resolution, after not less than 10 days public notice and after a public hearing held pursuant thereto,~~ may levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that

is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by educational organizations, religious organizations, or summer camps, nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

~~(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.~~

~~(e) Distribution and Use of Tax Revenue. – Rockingham County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Rockingham County Tourism Development Authority. The Authority may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions in the county through State, national, and international advertising and promotion. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Rockingham County and shall use the remainder for tourism-related expenditures.~~

The following definitions apply in this Part:

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct

market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, may not be earlier than July 1, 1991, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Rockingham County Board of Commissioners. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"Sec. 2. Tourism Development Authority. =

(a) Appointment and Membership. = When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act and Act. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the county. The Authority shall be composed of the following 12 members:

- (1) The Executive Director of the Rockingham County Economic Development Commission, who shall serve as an ex officio, nonvoting member.
- (2) A county commissioner appointed by the Rockingham County Board of Commissioners, who shall serve as an ex officio, nonvoting member.
- (3) Two owners or operators of hotels, motels, or other taxable accommodations and two individuals involved in tourist businesses who have demonstrated an interest in tourism development, appointed as follows: one by the Rockingham County Board of Commissioners and one by each chamber of commerce in Rockingham County.
- (4) Five individuals involved in businesses or professions that are concerned with or affected by tourism development in such a way that their expertise would benefit the Authority, appointed as follows: one by each chamber of commerce in Rockingham County and two by the Rockingham County Board of Commissioners.
- (5) The President of the Chinqua-Penn Foundation, Inc., who shall serve as an ex officio, nonvoting member.

All members of the Authority shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term which they are appointed to fill. Except as provided in subsection (b) for initial members, members shall serve three-year terms. Members may serve no more than two consecutive terms. The members shall elect a chair from the membership of the Authority, who shall serve for a term of two years. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Rockingham County shall be the ex officio finance officer of the Authority.

"Sec. 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. It shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

"Sec. 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

~~"Sec. 3. Review of Levy and Authority.~~

~~Three years after the effective date of a tax levied under this act, the Rockingham County Board of Commissioners shall conduct a thorough review of the tax and the function of the Tourism Development Authority established under this act to determine the effectiveness of the levy and of the Authority.~~

"Sec. 4. This act is effective upon ratification."

PART VI. UNIFORM PROVISIONS.

SECTION 6.1. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averagesboro in Harnett County."

SECTION 6.2. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

PART VII. EFFECTIVE DATE.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 2005.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Richard T. Morgan
Speaker Pro Tempore of the House of Representatives