

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 525
SENATE BILL 716

AN ACT TO PERMIT MUNICIPALITIES BORDERING ON THE ATLANTIC OCEAN TO REGULATE SEWER TIE-ONS WITHIN THEIR CORPORATE LIMITS, AND TO AUTHORIZE DARE COUNTY TO LEVY AN EXCISE TAX ON INSTRUMENTS CONVEYING REAL PROPERTY IN DARE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-196. **Sewage tie-ons.**—Cities that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean and Pamlico Sound may by ordinance regulate the tie-ons to sewage systems within their corporate limits."

Sec. 2. Tax. (a) Authorization. The Dare County Board of Commissioners may, by resolution, levy an excise tax on instruments conveying certain interests in real property in Dare County. The tax imposed may not exceed one dollar (\$1.00) on each one hundred dollars (\$100.00) or fraction thereof of the total consideration or value of the interest conveyed, including, in the case of a sale, the value of any lien or encumbrance remaining on the property at the time of sale. This tax is in addition to the tax levied by Article 8E of Chapter 105 of the General Statutes. The value of a lease subject to this tax shall be computed on the basis of the present value of the fixed lease payments and, if the lease payments are based in whole or in part on the lessee's receipts, the estimated amount of the lessee's receipts.

(b) Scope. A tax levied under this section applies to all instruments conveying an interest in real property in Dare County except an instrument:

- (1) Conveying an interest in real property from the United States, the State, or a political subdivision of the State;
- (2) Recording a lease for a term of 10 years or less, unless:
 - a. The lease gives the lessee an option to renew the lease for a period that, when added to the term of the lease, exceeds the 10-year limitation; or
 - b. The lease is for substantially the same property and is between the same parties as a lease previously recorded, and the term of the new lease, when added to that of the previous lease, exceeds the 10-year limitation; or
 - c. The lease requires or permits the property to be transferred to the lessee for less than the fair market value of the property;

- (3) Securing indebtedness; or (4) Recording a transfer in which no consideration was paid or is due the transferor by the transferee.

In addition, this tax does not apply to conveyances of an interest in real property by operation of law, by will, or by intestacy.

(c) Collection. A tax levied under this section is payable by the transferor of the interest to the Dare County Tax Collector. This tax must be paid at the tax collector's office before the instrument conveying the interest is recorded. The tax collector shall stamp or otherwise mark each instrument subject to the tax to indicate that the tax has been paid. The Dare County Register of Deeds may not accept for recordation an instrument subject to a tax levied under this section unless the instrument bears the tax collector's mark indicating that the tax has been paid.

(d) Appeal. A person who is liable for a tax levied under this section who disputes the amount of tax due shall pay the tax stated by the tax collector to be due, but may appeal the payment of the tax to the Land Transfer Tax Appeals Board by filing a written notice of appeal with the tax collector within 30 days after paying the tax. Upon receipt of a notice of appeal, the tax collector shall forward a copy of the notice of appeal to the chairman of the Land Transfer Tax Appeals Board. A notice of appeal shall state the reason for the appeal and the amount of tax the appellant contends is due.

The Land Transfer Tax Appeals Board is established to determine appeals of taxes imposed under this section. The Board shall consist of seven members, two of whom shall be appointed by the Dare County Board of Commissioners, one of whom shall be appointed by the governing body of Kill Devil Hills, one of whom shall be appointed by the governing body of Kitty Hawk, one of whom shall be appointed by the governing body of Manteo, one of whom shall be appointed by the governing body of Nags Head, and one of whom shall be appointed by the governing body of Southern Shores. The county commissioners shall designate a chairman of the Board from the membership of the Board. The expenses of the Board are an administrative expense and shall be paid from the proceeds of the tax.

Members of the Board shall serve staggered four-year terms, with the term of one of the members appointed by the board of commissioners and the terms of the members appointed by the governing bodies of Nags Head and Southern Shores ending on June 30 of one four-year period, and the terms of the remaining members ending on June 30 of the four-year period ending the second year following the year in which the terms of the other three members ended. Members shall serve until their successors are appointed. A vacancy shall be filled by the appointing authority of the member who created the vacancy.

The Land Transfer Tax Appeals Board shall meet at the call of the chairman and shall meet as often as needed to hear appeals. All appeals to the Board shall be heard by the Board within 45 days of the date the tax collector receives a notice of appeal. The Board shall issue a written decision within 20 days after hearing an appeal and shall send a copy of the decision to the appellant and to the tax collector. If the decision states that an appellant paid more tax than was due, the tax collector shall immediately refund to the appellant the amount of the overpayment. The appellant and the tax collector may

appeal the decision of the Board in an action brought in the superior court of the county. An appeal to the superior court shall be heard de novo.

(e) Use and Distribution of Tax Revenue. For the first 12 fiscal years in which a tax levied under this section is in effect, all proceeds of the tax shall be retained by the county and shall be placed in a special Capital Reserve Fund in the general fund of the county. Revenue in this Fund may be used by the county only for capital expenditures for the following:

courts, jails and detention facilities, emergency medical services, libraries, recreation, education, administration, water, sewage, health, and social services.

Beginning with the 13th fiscal year in which a tax levied under this section is in effect, the county shall distribute one-third (1/3) of the net proceeds of the tax on a quarterly basis to the Towns of Nags Head, Kill Devil Hills, Kitty Hawk, Southern Shores, and Manteo in Dare County in proportion to the amount of ad valorem taxes levied by each town for the preceding fiscal year. Revenue distributed to a town may be used only for capital expenditures. The remaining two-thirds (2/3) of the net proceeds shall be retained by the county and placed in the special Capital Reserve Fund established under this subsection, to be used only for the purposes listed above. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax.

(f) Penalties. A person who knowingly fails to pay a tax levied under this section, who knowingly aids another to fail to pay a tax levied under this section, or who, to avoid paying part or all of the tax due under this section, knowingly misstates the total consideration for an interest conveyed is guilty of a misdemeanor and is punishable by imprisonment for up to two years and a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000).

(g) Taxes Recoverable by Action. If a transferor fails to pay a tax imposed by this section within 30 days of the tax collector's demand that he pay the tax, the tax may be recovered by Dare County in an action brought in the superior court of the county. In an action to recover a tax imposed under this section, costs of court shall include a fee to the county of twenty-five dollars (\$25.00) for the expense of collection.

(h) Effective Date; Application. A tax levied under this section shall become effective on the first day of a month, as designated in the resolution levying the tax, and may not become effective for at least 30 days after the adoption of the resolution. A tax levied under this section applies to instruments that are executed on or after the effective date of the levy, except instruments executed on or after that date that convey an interest in real property pursuant to a recorded written contract made before the effective date.

(i) Repeal. A tax levied by this section may be repealed by a resolution adopted by the Dare County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and shall apply to instruments recorded on or after the effective date of the repeal. Repeal of a tax levied under this section does not affect a liability for this tax that attached before the effective date of the repeal.

Sec. 3. Notwithstanding subsection (d) of Section 2 of this act, the initial term of one of the members to the Land Transfer Tax Appeals Board appointed by Dare

County Board of Commissioners and the initial terms of the members appointed by the governing bodies of Nags Head and Southern Shores shall end on June 30 of the second year after their term begins.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 1st day of July, 1985.