

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 703
Committee Substitute Favorable 6/25/91

Short Title: Wake Occupancy/Meals Tax.

(Local)

Sponsors:

Referred to:

April 11, 1991

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE WAKE COUNTY TO LEVY A ROOM OCCUPANCY
TAX AND A PREPARED FOOD AND BEVERAGE TAX.

The General Assembly of North Carolina enacts:

Section 1. Intent. This act authorizes Wake County to levy a room
occupancy tax and a prepared food and beverage tax.

Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply to this act to the
extent they are not inconsistent with the provisions of this act. The following
definitions also apply in this act:

- (1) Financing. Debt service, lease payments, or any other obligations or
means of supporting capital costs, together with any related reserve
requirements.
- (2) Net proceeds. The gross proceeds of the taxes levied pursuant to this
act less the cost to the county of administering and collecting the taxes
as provided in Sections 10 and 11 of this act.
- (3) Prepared food and beverage. Any food or beverage to which a retailer
has added value or has altered its state (other than by cooling alone) by
preparing, combining, dividing, heating, or serving, in order to make
the food or beverage available for immediate human consumption.
- (4) Retailer. A caterer or a retailer as defined in G.S. 105-164.3 as in
effect on the effective date of this act.
- (5) Taxable establishment. A hotel, motel, inn, tourist camp, or similar
place that is subject to a room occupancy tax levied pursuant to this act

1 and a retailer that sells prepared food or beverages and is subject to the
2 prepared food and beverage tax levied pursuant to this act.

3 Sec. 3. Sales and Use Tax Statutes. The provisions of Article 5 and Article 9
4 of Chapter 105 of the General Statutes apply to this act to the extent they are not
5 inconsistent with the provisions of this act.

6 Sec. 4. Occupancy Tax. The Wake County Board of Commissioners may,
7 by resolution, levy a room occupancy tax of up to six percent (6%) of the gross receipts
8 derived from the rental of any room, lodging, or accommodation furnished by a hotel,
9 motel, inn, tourist camp, or similar place within the county that is subject to the State
10 sales tax imposed under G.S. 105-164.4(a)(3). This tax does not apply to
11 accommodations furnished by nonprofit charitable, educational, benevolent, or religious
12 organizations when furnished in furtherance of their nonprofit purpose or to
13 accommodations furnished to the same person for at least 90 consecutive days. Before
14 levying the tax authorized in this section, the board of commissioners must hold a
15 public hearing on the tax. Notice of the public hearing shall be advertised at least 10
16 days, but not more than 25 days, before the scheduled date of the hearing.

17 Before a tax may be enacted pursuant to this section, Wake County and the
18 City of Raleigh must enter into an interlocal agreement pursuant to Article 20 of
19 Chapter 160A of the General Statutes. The agreement shall contain, at the minimum,
20 the type and general location of all capital projects to be funded in any way by the
21 proceeds of the tax levied under this section. The agreement shall also contain a
22 preliminary schedule for the completion of any projects to be so funded. If the city and
23 the county are unable to approve and execute the required agreement within three years
24 after the effective date of this act, this section is repealed.

25 Sec. 5. Prepared Food and Beverage Tax. The Wake County Board of
26 Commissioners may, by resolution, levy a prepared food and beverage tax of up to one
27 percent (1%) of the sales price of prepared food and beverages sold at retail for
28 consumption on or off the premises by any retailer within the county that is subject to
29 sales tax imposed by the State under G.S. 105-164.4(a)(1). Before levying the tax
30 authorized in this section, the board of commissioners must hold a public hearing on the
31 tax. Notice of the public hearing shall be advertised at least 10 days, but not more than
32 25 days, before the scheduled date of the hearing.

33 Before a tax may be enacted pursuant to this section, Wake County and the
34 City of Raleigh must enter into an interlocal agreement pursuant to Article 20 of
35 Chapter 160A of the General Statutes. The agreement shall contain, at the minimum,
36 the type and general location of all capital projects to be funded in any way by the
37 proceeds of the tax levied under this section. The agreement shall also contain a
38 preliminary schedule for the completion of any projects to be so funded. If the city and
39 the county are unable to approve and execute the required agreement within three years
40 after the effective date of this act, this section is repealed.

41 Sec. 6. Exemptions. The prepared food and beverage tax does not apply to
42 the following sales of prepared food and beverages:

- 1 (1) Prepared food and beverages served to residents in boarding houses
2 and sold together on a periodic basis with rental of any sleeping room
3 or lodging.
- 4 (2) Retail sales exempt from taxation under G.S. 105-614.13 on the
5 effective date of this act.
- 6 (3) Retail sales through or by means of vending machines.
- 7 (4) Prepared food and beverages served by any taxable establishment
8 subject to the occupancy tax levied pursuant to this act if the charge for
9 the prepared food or beverages is included in a single, nonitemized
10 sales price together with the charge for rental of a room, lodging, or
11 accommodation furnished by the taxable establishment.
- 12 (5) Prepared food and beverages furnished without charge by an employer
13 to any employee.
- 14 (6) Retail sales by grocers or by grocery sections of supermarkets or other
15 diversified retail establishments other than sales of prepared food and
16 beverages in the delicatessen or similar department of the grocer or
17 grocery section.

18 Sec. 7. Date of Levy. A tax levied under this act shall become effective on
19 the date specified in the resolution or ordinance levying the tax. The levy of the
20 prepared food and beverage tax may not become effective before January 1, 1993.

21 Sec. 8. Collection. Every operator of a taxable establishment shall, on and
22 after the effective date of the levy of a tax under this act, collect the tax. The tax shall
23 be stated and charged separately from the rental charge or sales price, shall be shown
24 separately on the taxable establishment's sales records, and shall be paid by the
25 purchaser to the taxable establishment as trustee for and on account of the county. The
26 tax shall be added to the rental charge or sales price and shall be passed on to and
27 collected from the purchaser instead of being borne by the taxable establishment.

28 For the convenience of each retailer and to facilitate the administration of this
29 act, the county shall determine the amount to be added to the sales price of all sales
30 subject to the prepared food and beverage tax. The amounts shall be set forth in a
31 bracket system and distributed to each retailer responsible for collecting the prepared
32 food and beverage tax. The use of the bracket system does not relieve the retailer from
33 the duty and liability of collecting and remitting to the local administrative authority an
34 amount equal to the prepared food and beverage tax levied by the county.

35 Sec. 9. Administration. The county shall administer and collect the taxes
36 levied pursuant to this act. Wake County may contract with the City of Raleigh to
37 perform these functions.

38 The taxes levied pursuant to this act are due and payable to the county in
39 monthly installments on or before the fifteenth day of the month following the month in
40 which the tax accrues. Every taxable establishment liable for the tax shall, on or before
41 the fifteenth day of each month, prepare and render a return to the county. The county
42 shall design, print, and furnish on request to all taxable establishments the necessary
43 forms for filing returns and instructions to ensure the full collection of the tax.

1 Returns filed with the county pursuant to this act are not public records as
2 defined by G.S. 132-1 and may not be disclosed except as required by law.

3 Sec. 10. Distribution and Use of Proceeds of Occupancy Tax. (a) Initial
4 Deductions. It is anticipated for allocation purposes that the annual net proceeds
5 realized from the levy of the tax authorized by Section 4 of this act will be at least three
6 million eight hundred fifteen thousand dollars (\$3,815,000). The county shall distribute
7 the first three million eight hundred fifteen thousand dollars (\$3,815,000) of the net
8 proceeds of the tax levied under Section 4 of this act as provided in this section; the
9 county shall distribute any proceeds in excess of this amount as provided in Section 12
10 of this act.

11 The county may deduct from the gross proceeds of the taxes collected
12 pursuant to Section 4 of this act an amount not to exceed three percent (3%) of the gross
13 proceeds to pay for the direct cost of administering and collecting the taxes. For the
14 first two years the tax levied under Section 4 of this act is in effect, before making the
15 distributions provided in subsection (b), the county shall deduct from the net proceeds
16 of the tax the sum of one hundred thousand dollars (\$100,000) in each fiscal year and
17 shall remit this sum to Wake Technical Community College. After the first two years
18 the tax levied under Section 4 of this act is in effect, before making the distributions
19 provided in subsection (b), the Board of Commissioners of Wake County may, in its
20 discretion, deduct from the net proceeds of the tax the sum of one hundred thousand
21 dollars (\$100,000) in each fiscal year and remit this sum to Wake Technical Community
22 College. Wake Technical Community College must use funds remitted to it under this
23 subsection only to support its ongoing program of training individuals in hotel and
24 motel management and in food service. Funds received by Wake Technical Community
25 College under this subsection that have not been expended for this purpose at the end of
26 each fiscal year shall revert to Wake County for distribution in the following fiscal year
27 pursuant to this section and Section 12 of this act.

28 (b) Monthly Distributions; Use. The county shall make the distributions
29 provided in this subsection by the twentieth day of the month following the month in
30 which the tax is collected.

31 (1) Distribution to Raleigh. After deducting the amounts provided in
32 subsection (a), the county shall transfer to the City of Raleigh an
33 amount equal to forty-five and twenty-five one hundredths percent
34 (45.25%) of the remaining net proceeds of each monthly collection.
35 The net proceeds received by Raleigh shall be applied in accordance
36 with the following priorities.

37 a. The city may use the first six hundred eighty thousand dollars
38 (\$680,000) of the net proceeds of the taxes levied under this act
39 to fund the acquisition, construction, financing, debt servicing,
40 maintenance, or operation of convention centers, civic centers,
41 performing arts centers, coliseums, auditoriums, and museums;
42 to provide off-street parking facilities for use in conjunction
43 with such facilities; and to fund visitor-related programs and
44 activities, including cultural programs, events or festivals, and

- 1 convention and visitor programs and activities of the Greater
2 Raleigh Convention and Visitor Bureau.
- 3 b. The city shall use any additional net tax proceeds received only
4 for (i) the acquisition, construction, renovation, financing, debt
5 service, maintenance, and operation of expansions and additions
6 to the Raleigh Civic Center Complex or similar facilities, and
7 (ii) the construction of sports, cultural, and arts facilities,
8 including a coliseum to be built in conjunction with North
9 Carolina State University at Raleigh, a performing arts theater,
10 a visual arts program, and a children's museum. Any funds not
11 spent in a fiscal year may be held in one or more reserve
12 accounts by the city for future use in the range of activities
13 allowed by this subsection. The city may make expenditures
14 pursuant to this subdivision b. only after the city and county
15 have agreed on the amount and purpose of the expenditure. The
16 county's approval of an expenditure must be evidenced by a
17 resolution adopted by the board of commissioners.
- 18 (2) Distribution to Cary. After deducting the amount provided in
19 subsection (a), the county shall transfer to the Town of Cary an amount
20 equal to five percent (5%) of the remaining net proceeds of the tax
21 levied under Section 4 of this act. The Town of Cary shall expend
22 these proceeds for public relations and promotional activities for the
23 town and for visitor-related programs and activities, including cultural
24 programs, events, festivals, and other visitor-related programs.
- 25 (3) Distribution to Wake County. After deducting the amount provided in
26 subsection (a), the county shall retain an amount equal to thirty-four
27 and seventy-five one hundredths percent (34.75%) of the remaining
28 net proceeds of the tax levied under Section 4 of this act. Wake
29 County may expend these proceeds only for the Raleigh Civic Center
30 Complex or similar facilities or for construction of sports, cultural, and
31 arts facilities, including a coliseum to be built in conjunction with
32 North Carolina State University at Raleigh, a performing arts theater, a
33 visual arts program, and a children's museum. Any funds not spent in
34 a fiscal year may be held in reserve accounts by the county for future
35 use in the range of activities allowed by this subsection. The county
36 may make expenditures pursuant to this subdivision only after the city
37 and county have agreed on the amount and purpose of the expenditure.
38 The city's approval of an expenditure must be evidenced by a
39 resolution adopted by the city council.
- 40 (4) Distribution to Greater Raleigh Convention and Visitor Bureau. After
41 deducting the amounts provided in subsection (a), the county shall
42 remit fifteen percent (15%) of the remaining net proceeds to the
43 Greater Raleigh Convention and Visitor Bureau. The Greater Raleigh

1 Convention and Visitor Bureau may expend these funds pursuant to
2 the provisions of Section 15 of this act.

3 In the event that the amount distributed to the Greater Raleigh
4 Convention and Visitor Bureau under this act is less than one million
5 dollars (\$1,000,000) in a fiscal year, the city and the county shall each
6 pay to the Greater Raleigh Convention and Visitor Bureau a sum,
7 derived from its expected portion of the proceeds of the taxes
8 authorized in this act, equal to one-half of the difference between one
9 million dollars (\$1,000,000) and the amount received by the Bureau,
10 so that the total revenue received by the Bureau equals at least one
11 million dollars (\$1,000,000) in each fiscal year.

12 Sec. 11. Distribution of Prepared Food and Beverage Tax. It is anticipated
13 for allocation purposes that the annual net proceeds realized from the levy of the tax
14 authorized by Section 5 of this act will be at least four million five hundred thousand
15 dollars (\$4,500,000). The county shall distribute the first four million five hundred
16 thousand dollars (\$4,500,000) of the net proceeds of the taxes levied under Section 5 of
17 this act as provided in this section; the county shall distribute any proceeds in excess of
18 this amount as provided in Section 13 of this act.

19 The county may deduct from the gross proceeds of the taxes collected
20 pursuant to Section 5 of this act an amount not to exceed three percent (3%) of the gross
21 proceeds to pay for the direct cost of administering and collecting the taxes. The county
22 shall make the distributions provided in this section by the twentieth day of the month
23 following the month in which the tax is collected.

24 (1) Distribution to Raleigh. After deducting the amount provided above,
25 the county shall transfer to the City of Raleigh an amount equal to
26 forty-seven and seventy-five one hundredths percent (47.75%) of the
27 net proceeds of each monthly collection. The net proceeds received by
28 Raleigh shall be applied in accordance with the following priorities.

29 a. The city may use the first six hundred eighty thousand dollars
30 (\$680,000) of the net proceeds of the taxes levied under this act
31 to fund the acquisition, construction, financing, debt servicing,
32 renovation, maintenance, or operation of convention centers,
33 civic centers, performing arts centers, coliseums, auditoriums,
34 and museums; to provide off-street parking facilities for use in
35 conjunction with such facilities; and to fund visitor-related
36 programs and activities, including cultural programs, events or
37 festivals, and convention and visitor programs and activities of
38 the Convention and Visitor Bureau.

39 b. The city shall use any additional net tax proceeds received only
40 for (i) the acquisition, construction, renovation, financing, debt
41 service, maintenance, and operation of expansions and additions
42 to the Raleigh Civic Center Complex, and (ii) the construction
43 of sports, cultural, and arts facilities, including a coliseum to be
44 built in conjunction with North Carolina State University at

1 Raleigh, a performing arts theater, a visual arts program, and a
2 children's museum. Any funds not spent in a fiscal year may be
3 held in one or more reserve accounts by the city for future use
4 in the range of activities allowed by this subsection. The city
5 may make expenditures pursuant to this section only after the
6 city and county have agreed on the amount and purpose of the
7 expenditure. The county's approval of an expenditure must be
8 evidenced by a resolution adopted by the board of
9 commissioners.

10 (2) Distribution to Wake County. The county shall retain an amount equal
11 to thirty-seven and twenty-five one hundredths percent (37.25%) of the
12 net proceeds of the tax levied under Section 5 of this act. Wake
13 County may expend these proceeds only for the planning, acquisition,
14 renovation, or construction of the Raleigh Civic Center Complex or
15 similar facilities or for construction of sports, cultural, and arts
16 facilities, including a coliseum to be built in conjunction with North
17 Carolina State University at Raleigh, a performing arts theater, a visual
18 arts program, and a children's museum. Any funds not spent in a fiscal
19 year may be held in reserve accounts by the county for future use in
20 the range of activities allowed by this subsection. The county may
21 make expenditures pursuant to this subdivision only after the city and
22 county have agreed on the amount and purpose of the expenditure.
23 The city's approval of an expenditure must be evidenced by a
24 resolution adopted by the city council.

25 (3) Distribution to Greater Raleigh Convention and Visitor Bureau. The
26 county shall remit fifteen percent (15%) of the net proceeds of the tax
27 levied under Section 5 of this act to the Greater Raleigh Convention
28 and Visitor Bureau. The Greater Raleigh Convention and Visitor
29 Bureau may expend these funds pursuant to the provisions of Section
30 15 of this act.

31 Sec. 12. Future Revenue Allocations of the Occupancy Tax. In the event that
32 the annual net proceeds of the tax levied under Section 4 of this act exceed three million
33 eight hundred fifteen thousand dollars (\$3,815,000) in a fiscal year, the additional
34 proceeds will be distributed as follows:

35 (1) Any net proceeds in excess of three million eight hundred fifteen
36 thousand dollars (\$3,815,000) but less than four million one dollars
37 (\$4,000,001) shall be allocated on the following basis:

- 38 a. Ninety-five percent (95%) to the City of Raleigh for the
39 purposes set out in Section 10 herein.
- 40 b. Five percent (5%) to the Town of Cary for the purposes set out
41 in Section 10 of this act.

42 (2) Any net proceeds above four million dollars (\$4,000,000) and up to
43 four million five hundred thousand dollars (\$4,500,000) shall be
44 distributed monthly on the following basis:

- 1 a. Twenty-five percent (25%) to the Raleigh Regional Convention
2 and Visitor Bureau.
- 3 b. Five percent (5%) to the Town of Cary, at least one-half of
4 which shall be used only for capital projects authorized under
5 Section 10 or 11 of this act and the remainder of which shall be
6 used for the purposes authorized in Section 10(b)(2) of this act.
- 7 c. Forty-seven and five-tenths percent (47.5%) to the City of
8 Raleigh to be used for the purposes set out in Section 10 of this
9 act.
- 10 d. Twenty-two and five-tenths percent (22.5%) to Wake County
11 for any use related to any of the purposes for which any local
12 government is authorized by this act to expend tax proceeds.
- 13 (3) Any net proceeds above four million five hundred thousand dollars
14 (\$4,500,000) shall be distributed monthly on the following basis:
- 15 a. Twenty-five percent (25%) to the Raleigh Regional Convention
16 and Visitor Bureau.
- 17 b. Five percent (5%) to the Town of Cary, at least one-half of
18 which shall be used only for capital projects authorized under
19 Section 10 or 11 of this act and the remainder of which shall be
20 used for the purposes authorized in Section 10(b)(2) of this act.
- 21 c. Thirty-five percent (35%) to the City of Raleigh for any lawful
22 purpose authorized by this act.
- 23 d. Thirty-five percent (35%) to Wake County for any lawful
24 purpose authorized by this act.

25 Sec. 13. Future Revenue Allocations of the Prepared Food and Beverage
26 Tax. In the event that the annual net proceeds of the tax levied under Section 5 of this
27 act exceed four million five hundred thousand dollars (\$4,500,000) in a tax year, the
28 additional proceeds will be allocated according to the following schedule:

- 29 (1) Any additional net proceeds up to six million five hundred thousand
30 dollars (\$6,500,000) shall be divided between the City of Raleigh and
31 Wake County. The city shall receive seventy-five percent (75%) of
32 the additional net proceeds for use in activities allowed under Section
33 10 of this act while the county will receive twenty-five percent (25%)
34 of the net proceeds for use in any lawful activity authorized by this act.
- 35 (2) Any net proceeds in excess of six million five hundred thousand
36 dollars (\$6,500,000) shall be divided between the City of Raleigh and
37 Wake County. The city shall receive sixty percent (60%) of the
38 additional net proceeds for use in any lawful purpose authorized by
39 this act while the county shall receive the remaining forty percent
40 (40%) of the additional net proceeds for use in any lawful purpose
41 authorized by this act.

42 Sec. 14. Restrictions on Certain Capital Projects. This section expires the
43 earlier of (i) three years after the effective date of the first tax levied under this act or (ii)
44 three and one-half years after the date this act is ratified. Notwithstanding any other

1 provision of this act, the proceeds of the taxes levied under this act may not be
2 expended for the cost of any capital project other than (i) a coliseum to be built in
3 conjunction with North Carolina State University at Raleigh, (ii) a civic center complex,
4 (iii) a visual or performing arts center, or (iv) a children's museum, and off-street
5 parking associated with these four projects. As used in this section, the term "cost"
6 includes the cost of construction of a capital facility; planning, engineering, as well as
7 architectural and consulting services, and any other expenses and charges relating to a
8 new capital project.

9 Sec. 15. Greater Raleigh Convention and Visitor Bureau.

10 (1) When the board of county commissioners adopts a resolution levying
11 the tax, the City of Raleigh shall take immediate action to adopt an
12 ordinance establishing the Greater Raleigh Convention and Visitor
13 Bureau. The Bureau shall be governed by a Board of Directors
14 consisting of 12 members. This Bureau shall be the continuation of
15 the existing Raleigh Convention and Visitor Bureau established
16 pursuant to Chapter 850 of the Session Laws of 1985. At least three of
17 the county's appointees shall reside in Raleigh and at least one of the
18 county's appointees shall reside in Cary. The appointments shall be
19 made as follows:

- 20 a. Five owners or operators of hotels, motels, or other taxable
21 establishments, three of whom shall be elected by the Raleigh
22 City Council and two of whom shall be elected by the Board of
23 Commissioners of Wake County from a list of at least 10
24 nominees furnished by the Raleigh Hotel and Motel
25 Association. The list of nominees shall include the names of at
26 least three restaurant owners or operators.
- 27 b. Two representatives of tourist or convention related businesses,
28 one appointed by the Raleigh City Council and one by the
29 Wake County Board of Commissioners.
- 30 c. One member nominated by the Greater Raleigh Chamber of
31 Commerce and appointed by the Wake County Board of
32 Commissioners.
- 33 d. Four at-large members, two appointed by the City of Raleigh
34 and two appointed by Wake County.

35 Members shall serve according to the ordinances and regulations of the city
36 concerning service on city boards and commissions, except that
37 members appointed by Wake County shall serve according to the
38 ordinances and regulations of Wake County concerning service on
39 county boards and commissions.

40 (2) Powers and Duties of Bureau. The Greater Raleigh Convention and
41 Visitor Bureau may contract with any person, firm, or agency to advise
42 and assist it in the promotion of travel, tourism, and conventions. The
43 Bureau shall prepare an annual budget based on anticipated revenues
44 and shall submit the budget to the Raleigh City Manager and Wake

1 County Manager for processing and approval through the regular
2 budget procedures of the city and the county. The Bureau shall make
3 quarterly reports to the Raleigh City Council and the Wake County
4 Board of Commissioners detailing its revenues, expenditures, and
5 activities. The city or the county may audit the Bureau's financial
6 records upon reasonable notice to the Bureau. At the end of each
7 fiscal year, any funds of the Bureau not expended, or obligated or
8 reserved as approved by the Raleigh City Council and the Wake
9 County Board of Commissioners, shall be remitted equally to the City
10 of Raleigh and Wake County for use in accordance with Section 10 of
11 this act.

12 Sec. 16. Penalties. A person, firm, corporation, or association who fails or
13 refuses to file a return and pay the tax due under this Part shall pay a penalty of ten
14 dollars (\$10.00) for each day's omission up to a maximum of two thousand dollars
15 (\$2,000) for each return. In case of failure or refusal to file the return or pay the tax for
16 a period of 30 days after the time required for filing the return or paying the tax, there
17 shall be an additional tax, as a penalty, of five percent (5%) of the tax due, with an
18 additional tax of five percent (5%) for each additional month or fraction thereof until the
19 tax is paid. The Wake County Board of Commissioners may, for good cause shown,
20 compromise or forgive the additional tax penalties imposed by this section.

21 Sec. 17. Authority to Contract. Wake County and each municipality located
22 in Wake County may contract with any person, agency, association, or nonprofit
23 corporation to undertake or carry out the activities and programs for which the proceeds
24 may be expended. All contracts entered into pursuant to this subsection shall require an
25 annual financial audit of any funds expended and a performance audit of contractual
26 obligations.

27 Sec. 18. Effect on existing taxes. The levy of a tax pursuant to this act
28 repeals the authority of the county or a unit of local government in Wake County to
29 enact an occupancy tax under any other local act.

30 Sec. 19. Repeal. The taxes levied pursuant to this authority may be repealed
31 by the county by enacting an ordinance of repeal. No such repeal shall be effective until
32 at least 180 days after the passage of the repeal ordinance. Repeal of a tax levied under
33 this act does not affect a liability for a tax that was attached before the effective date of
34 the repeal, nor does it affect a right to a refund of a tax that accrued before the effective
35 date of the repeal.

36 Sec. 20. This act is effective upon ratification.