

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 808

Local Government and Regional Affairs Committee Substitute Adopted 6/2/93

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Short Title: Orange Revenue Changes.

(Local)

Sponsors:

Referred to: Finance.

April 12, 1993

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL LOCAL REVENUE OPTIONS IN ORANGE COUNTY AND TO CORRECT THE CHAPEL HILL CHARTER CONCERNING LOW AND MODERATE HOUSING.

The General Assembly of North Carolina enacts:

Section 1. Hillsborough prepared food and beverage tax.

(a) Authorization. The board of commissioners of the Town of Hillsborough (the town board) may, by resolution after not less than 10 days' public notice and a public hearing held pursuant thereto, levy a prepared food and beverage tax of up to one percent (1%) of the sales price of prepared food and beverages sold within the Town of Hillsborough at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. 105-164.4(a)(1). This tax is in addition to State and local sales tax.

The tax applies to prepared food and beverages served in the Town of Hillsborough even if the caterer serving them is not a resident of the town; the tax does not apply to prepared food and beverages served outside the town even if the caterer serving it is a resident of the town.

(b) Definitions; Sales and Use Tax Statutes. The definitions in G.S. 105-164.3 apply to this section to the extent they are not inconsistent with the provisions of this section. In addition, the term "prepared food and beverages" means any meals, food, or beverages to which a retailer has added value or has altered its state (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make the food or beverage available for immediate human consumption. The provisions of

1 Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this section to the  
2 extent they are not inconsistent with the provisions of this section.

3 (c) Exemptions. The prepared food and beverage tax does not apply to the  
4 following sales of prepared food and beverages:

5 (1) Prepared food and beverages served to residents in boarding houses  
6 and sold together on a periodic basis with rental of a sleeping room or  
7 lodging.

8 (2) Retail sales exempt from taxation under G.S. 105-164.13.

9 (3) Retail sales through or by means of vending machines.

10 (4) Prepared food and beverages served by a retailer subject to the local  
11 occupancy tax if the charge for the meals or prepared food or  
12 beverages is included in a single, nonitemized sales price together with  
13 the charge for rental of a room, lodging, or accommodation furnished  
14 by the retailer.

15 (5) Prepared food and beverages furnished without charge by an employer  
16 to an employee.

17 (6) Retail sales by grocers or by grocery sections of supermarkets or other  
18 diversified retail establishments, other than sales of prepared food and  
19 beverages in the delicatessen or similar department of the grocer or  
20 grocery section.

21 (d) Collection. Every retailer subject to the tax levied under this section shall,  
22 on and after the effective date of the levy of the tax, collect the tax. This tax shall be  
23 collected as part of the charge for furnishing prepared food and beverages. The tax shall be  
24 added and charged separately from the sales records, and shall be paid by the  
25 purchaser to the retailer as trustee for and on account of the town. The tax shall be  
26 added to the sales price and shall be passed on to the purchaser instead of being borne  
27 by the retailer. The town shall design, print, and furnish to all appropriate businesses  
28 and persons in the town the necessary forms for filing returns and instructions to ensure  
29 the full collection of the tax.

30 (e) Administration. The town shall administer a tax levied under this section.  
31 A tax levied under this section is due and payable to the town's finance officer in  
32 monthly installments on or before the 25th day of the month following the month in  
33 which the tax accrues. Every retailer liable for the tax shall, on or before the 25th day  
34 of each month, prepare and render a return on a form prescribed by the town. The  
35 return shall show the total gross receipts derived in the preceding month from sales to  
36 which the tax applies.

37 A return filed with the town's finance officer under this section is not a public  
38 record as defined by G.S. 132-1 and may not be disclosed except as required by law.

39 (f) Refunds. The town shall refund to a nonprofit or governmental entity the  
40 prepared food and beverage tax paid by the entity on eligible purchases of prepared food  
41 and beverages. A nonprofit or governmental entity's purchase of prepared food and  
42 beverages is eligible for a refund under this subsection if the entity is entitled to a refund  
43 under G.S. 105-164.14(b) through (d) of the sales and use tax paid on the purchase. The  
44 time limitations, application requirements, penalties, and restrictions provided in G.S.

1 105-164.14(b) and (d) shall apply to refunds to nonprofit entities; the time, limitations,  
2 application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and  
3 (d) shall apply to refunds to governmental entities. When an entity applies for a refund  
4 of the prepared food and beverages tax paid by it on purchases, it shall attach to its  
5 application a copy of the application submitted to the Department of Revenue under  
6 G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An  
7 applicant for a refund under this subsection shall provide any information required by  
8 the town to substantiate the claim.

9 (g) Penalties. A person, firm, corporation, or association who fails or refuses  
10 to file a return required by this section shall pay a penalty of two dollars (\$2.00) for  
11 each day's omission. In case of failure or refusal to file the return or pay the tax for a  
12 period of 30 days after the time required for filing the return or for paying the tax, there  
13 shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to  
14 any other penalty, with an additional tax of five percent (5%) for each additional month  
15 or fraction thereof until the tax is paid. The town board may, for good cause shown,  
16 compromise or forgive the additional tax penalties imposed by this section.

17 A person who willfully attempts in any manner to evade a tax imposed under  
18 this section or who willfully fails to pay the tax or make and file a return shall, in  
19 addition to all other penalties provided by law, be guilty of a misdemeanor and shall be  
20 punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment not to  
21 exceed six months, or both.

22 (h) Use of Proceeds. The Town of Hillsborough shall remit the net proceeds  
23 of the tax levied under this section on a monthly basis to the Hillsborough Tourism  
24 Board. The Tourism Board may deduct the cost of its annual audit from the proceeds  
25 remitted to it.

26 The Tourism Board shall use the remaining net proceeds of the tax as  
27 follows:

- 28 (1) Sixty percent (60%) shall be used to provide visitor services. Visitor  
29 services may include any of the following:
  - 30 a. Operation of a center where visitors can be provided with  
31 information about the community, about facilities and  
32 businesses in it, and about points of historical or cultural  
33 interest.
  - 34 b. Production and distribution of a free directory of restaurants to  
35 include the name, address, and phone number of each restaurant  
36 in the town.
  - 37 c. Production and distribution of pamphlets, film clips, and other  
38 informational materials on the community.
  - 39 d. Advertising the town and publicizing special events in it.
  - 40 e. Doing market research pertaining to tourism.
  - 41 f. Responding to mail and telephone inquiries submitted by  
42 visitors or potential visitors.
  - 43 g. Providing other services to visitors designed to make their stay  
44 pleasant and instructive.

1 (2) Forty percent (40%) shall be used for facilities, programs, and services  
2 designed to attract tourists to the town.

3 Beginning two years after a tax levied under this section has been in effect,  
4 the town board, taking into account the experience gained in using the tax proceeds,  
5 may change the percentages set out in subdivisions (1) and (2) above. The town board  
6 may not, however, authorize the use of the tax proceeds for any purpose other than  
7 those provided in subdivisions (1) and (2) above.

8 The Tourism Board may expend funds only for public purposes. The  
9 Tourism Board shall report quarterly and at the close of the fiscal year to the town board  
10 on its receipts and expenditures for the preceding quarter and year in such detail as the  
11 town board may require. The Tourism Board may not, without the prior approval of the  
12 town board, purchase any real estate, nor may it spend more than five thousand dollars  
13 (\$5,000) for any item covered by subdivision (2) above without the prior approval of the  
14 town board.

15 (i) Effective Date of Levy. A tax levied under this section shall become  
16 effective on the date specified in the resolution levying the tax. The date must be the  
17 first day of a calendar month and may not be before January 1, 1994 and before the first  
18 day of the fourth month after the date that the resolution is adopted.

19 (j) Repeal. A tax levied under this section may be repealed by a resolution  
20 adopted by the board of commissioners of the Town of Hillsborough. Any repeal shall  
21 become effective on the first day of a month and may not become effective until the end  
22 of the fiscal year in which the repeal resolution is adopted. Repeal of a tax levied under  
23 this section does not affect a liability for a tax that attached before the effective date of  
24 the repeal, nor does it affect a right to a refund of a tax that accrued before the effective  
25 date of the repeal.

26 (k) Hillsborough Tourism Board. Before or at the time the town board  
27 adopts a resolution levying a tax under this section, it shall adopt a resolution creating a  
28 Hillsborough Tourism Board, which shall be a public authority under the Local  
29 Government Budget and Fiscal Control Act. The Tourism Board shall consist of not  
30 more than nine members, all appointed by the town board. The members shall represent  
31 four organizations or groups in the community, as provided below, and one individual  
32 may represent more than one of these organizations or groups. In addition, the town  
33 board may appoint representatives of the public at large as long as the number of  
34 members of the Tourism Board does not exceed nine. The membership of the Tourism  
35 Board shall include the following:

36 (1) One member who is a member of the town board.

37 (2) One member who is a member of the Hillsborough Area Chamber of  
38 Commerce. This member shall be chosen by the town board from  
39 nominees submitted by the board of directors of the Hillsborough Area  
40 Chamber of Commerce.

41 (3) Four members who are owners or operators of restaurants in  
42 Hillsborough that are affected by this section.

43 (4) One member chosen by the town board from nominees submitted by  
44 the Alliance for Historic Hillsborough, Inc.

1 In appointing members to the initial Tourism Board, the town board shall  
2 designate roughly half as having terms of one year and the balance as having terms of  
3 two years. In subsequent years, all members shall be appointed for two-year terms.  
4 Members shall serve the full term for which appointed regardless of whether they  
5 continue to be affiliated with the organization or group which they originally  
6 represented.

7 All members of the Tourism Board shall serve without compensation. The  
8 town board may remove a member of the Tourism Board only for good cause.

9 The Tourism Board shall elect a Chair and other officers from among its  
10 members, each to serve one-year terms. The Tourism Board shall meet at least  
11 quarterly on call of the Chair or of any three members. It shall adopt rules of procedure  
12 to govern its meetings. The Tourism Board shall promote tourism in Hillsborough and  
13 otherwise carry out the duties prescribed in this section. It may, if it sees fit, perform its  
14 duties by contracting with appropriate individuals or organizations.

15 Sec. 2. Authorizing requirements of payments in lieu of reserved or  
16 dedicated recreation area in developments.

17 (a) A town may adopt ordinances applicable in the town and the town's  
18 extraterritorial planning jurisdiction to require that developers make payment to the  
19 town in lieu of reserving or dedicating recreation areas, where the town's planning and  
20 development regulations would otherwise require provision of recreation areas equaling  
21 two acres or less. The amount of payment shall be determined through procedures to be  
22 established by ordinance and in a manner consistent with G.S. 160A-372.

23 (b) This section applies to the Town of Chapel Hill only.

24 Sec. 3. Section 1 of Chapter 478 of the 1989 Session Laws reads as  
25 rewritten:

26 "Section 1. The Charter of the Town of Chapel Hill, being Chapter 473, Session  
27 Laws of 1975, is hereby amended by adding a new Section 5.20 to read as follows:

28 'Sec. 5.20. Ordinances permitting low and moderate housing and providing density  
29 bonuses.

30 (a) For the purpose of increasing the availability of housing for persons of low  
31 and moderate income, and thereby promoting the public health, safety and welfare, the  
32 Town of Chapel Hill may grant a density bonus or provide other incentives of  
33 equivalent financial value to a developer of housing within the Town and its  
34 extraterritorial planning jurisdiction, if the developer agrees:

35 (1) To construct ~~at least~~ up to but no more than twenty-five percent (25%)  
36 of the total units of a housing development for persons and families of  
37 low or moderate income; ~~or~~ or

38 (2) To construct ~~at least~~ up to but no more than ten percent (10%) of the  
39 total units of a housing development for lower income households.

40 (b) For the purposes of this Article, 'density bonus' means a density increase of ~~at~~  
41 least up to but no more than twenty-five percent (25%) ~~over~~ of the otherwise maximum  
42 allowable residential density under the applicable zoning classification. The density  
43 bonus shall not be included when determining the number of housing units which is  
44 ~~equal to~~ up to but no more than ten percent (10%) or twenty-five percent (25%) of the

- 1 total. The Town may apply the density bonus to housing developments consisting of  
2 five or more dwelling units."  
3           Sec. 4. This act is effective upon ratification.