

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 574

Short Title: Franklin School Revenue Options.

(Local)

Sponsors: Senator Speed.

Referred to: Finance

April 4, 1995

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE FRANKLIN COUNTY TO LEVY FACILITY FEES, AN
ADDITIONAL SALES AND USE TAX OF ONE PERCENT, AND A TWO
PERCENT REAL ESTATE TRANSFER TAX, SUBJECT TO APPROVAL BY THE
VOTERS OF THE COUNTY, TO GENERATE FUNDS FOR PUBLIC SCHOOL
CAPITAL NEEDS.

The General Assembly of North Carolina enacts:

Section 1. This act applies only to Franklin County.

PART I

LOCAL SALES TAX

Sec. 1.1. Subchapter VIII of Chapter 105 of the General Statutes is amended
by adding a new Article to read:

"ARTICLE 43.

**"SECOND ONE-CENT (1¢) LOCAL GOVERNMENT
SALES AND USE TAX.**

"§ 105-505. Short title.

This Article shall be known as the Second One-Cent (1¢) Local Government Sales
and Use Tax Act.

"§ 105-506. Purpose.

1 the construction materials would otherwise be subject to the tax levied under Article 43
2 of Chapter 105 of the General Statutes.

3 **PART II**
4 **FACILITY FEES**

5 Sec. 2.1. County election on facility fees.

6 The Franklin County Board of Commissioners may direct the county board of
7 elections to conduct an advisory referendum on the question of whether the county may
8 by ordinance impose and collect facility fees, in an amount not to exceed eight hundred
9 fifty dollars (\$850.00), to be paid for each new residential unit or development to help
10 defray the costs to the county of public school capital needs, including the construction,
11 equipment, expansion, improvement, and renovation of public schools, the need for
12 which is created in substantial part by the new residential development that takes place
13 within the county. The election shall be held on a date jointly agreed upon by the two
14 boards and shall be held in accordance with the procedures of G.S. 163-287.

15 The form of the question to be presented on the ballot for a special election
16 concerning the facility fees authorized by this Part shall be:

17 **"[] FOR [] AGAINST**

18 Facility fees, in an amount not to exceed eight hundred fifty dollars (\$850.00),
19 to be paid for each new residential unit or development to help defray the costs to the
20 county of public school capital needs, including the construction, equipment, expansion,
21 improvement, and renovation of schools."

22 Sec. 2.2. Imposition of facility fees.

23 If the majority of those voting in the referendum held pursuant to this Part vote
24 for the imposition of facility fees, the board of commissioners of Franklin County may
25 adopt ordinances, pursuant to this Part, to impose and collect facility fees, in an amount
26 not to exceed eight hundred fifty dollars (\$850.00), to be paid for each new residential
27 unit or development to help defray the costs to the county of public school capital needs,
28 including the construction, equipment, expansion, improvement, and renovation of
29 schools, the need for which is created in substantial part by the new residential
30 development that takes place within the county.

31 Sec. 2.3. Scope of facility fees.

32 (a) A county may by ordinance impose and collect facility fees, in an amount not
33 to exceed eight hundred fifty dollars (\$850.00), to be paid for each new residential unit or
34 development to help defray the costs to the county of public school capital needs,
35 including the construction, equipment, expansion, improvement, and renovation of
36 schools, the need for which is created in substantial part by the new residential
37 development that takes place within the county.

38 (b) An ordinance authorized by this act shall apply everywhere within the county,
39 including within the corporate limits and extraterritorial planning jurisdiction of any city,
40 town, or municipal corporation within the county.

41 (c) In establishing the amount of facility fees to be imposed, the county shall
42 endeavor to approach the objective of having each new residential unit or development
43 contribute to a public school capital costs reserve fund an amount of revenue that bears a

1 reasonable relationship to that residential unit's or development's fair share of the costs to
2 the county of public school capital needs that are needed in part because of that
3 residential unit or development. In fulfilling this objective, the board of county
4 commissioners shall, among other steps and actions:

5 (1) Estimate the total costs of public school capital needs required during a
6 reasonable planning period not to exceed 20 years. The board of county
7 commissioners may divide the county into two or more districts and
8 estimate the costs of public school capital needs within each district.
9 The facility fees imposed may be different in different districts, based
10 upon differing public school capital needs among the districts.

11 (2) Establish a method of imposing facility fees that fairly and objectively
12 apportions the total costs of public school capital needs that are to be
13 borne by those paying the facility fee. By way of illustration, and
14 without limitation:

- 15 a. A facility fee may be imposed on each new residential unit; or
16 b. The amount of facility fees may be related to the size of the
17 development, i.e., the number of houses, the anticipated number
18 of students expected from the development according to
19 recognized estimates, and the costs to the county of public school
20 capital needs associated with the development.

21 (d) An ordinance adopted under this Part shall state when in the process of
22 development approval and construction facility fees shall be paid and by whom. By way
23 of illustration, and without limitation, the ordinance may provide that an applicant for a
24 building permit shall submit the facility fee along with the permit application and that
25 building permits shall not be issued until the facility fee has been paid.

26 (e) Facility fees collected by the county shall be deposited in a Public School
27 Capital Costs Reserve Fund established pursuant to Part 2, Article 3 of Chapter 159 of the
28 General Statutes. The funds may be expended only on the costs to the county of public
29 school capital needs.

30 (f) In order to provide that facility fees paid by a particular residential unit or
31 development are expended on public school capital needs related to that unit or
32 development, the county may establish within the county two or more districts or zones,
33 and facility fees generated by units or developments within those districts or zones shall
34 be spent on the public school capital needs within those districts or zones.

35 (g) An ordinance adopted under this act may provide that any person
36 aggrieved by a decision regarding a facility fee may appeal to the county board of
37 adjustment. If the ordinance establishes an appeal procedure, it shall state the time within
38 which the appeal must be taken to the board of adjustment, the possible grounds for an
39 appeal, the board's authority in the matter, whether the fee must be paid prior to
40 resolution of the appeal, and other procedural or substantive matters related to appeals.

41 (h) Any decision of the board of adjustment shall be subject to review by the
42 superior court within the county by proceedings in the nature of certiorari in the same
43 manner as provided in G.S. 153A-345(e).

1 (i) If an ordinance adopted under this act is declared to be invalid by any court
2 of competent jurisdiction, then any facility fee collected thereunder shall be refunded to
3 the person paying them together with interest at the rate established under G.S. 105-
4 241.1, being the same rate paid by the Secretary of Revenue on refunds for tax
5 overpayments.

6 (j) Any action contesting the validity of an ordinance adopted pursuant to this
7 act shall be commenced not later than nine months after the facility fee is paid. Any
8 action seeking to recover a facility fee shall be commenced not later than nine months
9 after the facility fee is paid.

10 **PART III**
11 **REAL ESTATE TRANSFER TAX**

12 Sec. 3.1. Chapter 105 of the General Statutes is amended by adding a new
13 Article to read:

14 **"ARTICLE 8F.**
15 **"LOCAL GOVERNMENT EXCISE STAMP TAX ON CONVEYANCES.**
16 **"§ 105-228.50. Purpose.**

17 This Article gives the counties and cities of this State an opportunity to obtain an
18 added source of revenue with which to meet their growing financial needs.

19 **"§ 105-228.51. Levy of county conveyance tax.**

20 (a) The board of commissioners of a county may direct the county board of
21 elections to conduct an advisory referendum on the question of whether an excise tax on
22 instruments conveying interests in real property located in the county will be levied in
23 accordance with this Article. The election shall be held on a date agreed upon by the two
24 boards, and shall be held in accordance with the procedures of G.S. 163-287.

25 The form of the question to be presented on a ballot for a special election concerning
26 the levy of the tax authorized by this Article shall be:

27 **'[] FOR [] AGAINST**

28 Local real property transfer tax at a rate not to exceed two dollars (\$2.00) on each one
29 hundred dollars (\$100.00) of value or consideration, to be used only for public school
30 capital outlay purposes.'

31 (b) If the majority of those voting in a referendum held pursuant to this Article
32 vote for the levy of the tax, the board of commissioners of the county may, by resolution,
33 levy an excise tax on instruments conveying interests in real property located in that
34 county at a rate not to exceed two dollars (\$2.00) on each one hundred dollars (\$100.00)
35 of the consideration or value, whichever is greater, of the interest conveyed, including the
36 value of any lien or encumbrance remaining on the property at the time of sale. This tax
37 is in addition to the tax levied by Article 8E of this Chapter. Upon adoption of the
38 resolution, the board of commissioners shall send a certified copy to the register of deeds
39 of the county.

40 Collection of the tax, and liability therefor, shall begin and continue only on and after
41 the first day of a calendar month set by the board of county commissioners in the
42 resolution levying the tax, which may not be earlier than the first day of the second
43 succeeding calendar month after the date the resolution is adopted.

1 **"§ 105-228.52. Scope and administration of tax.**

2 A tax levied under this Article does not apply to transfers exempt pursuant to G.S.
3 105-228.28 or G.S. 105-228.29 from the tax levied by Article 8E of this Chapter. A tax
4 levied under this Article applies to transfers of interests in real property located within the
5 taxing county, except that if the property is located in two or more counties, a transfer of
6 an interest in the property is taxable only by the county in which the greater part of the
7 property, with respect to value, lies.

8 A tax levied under this Article is payable by the transferor of the interest. The
9 provisions of G.S. 105-228.31 through G.S. 105-228.36 apply to a tax levied under this
10 Article.

11 **"§ 105-228.53. Use of proceeds.**

12 A county may use taxes collected under this Article only for public school capital
13 outlay purposes and to retire debt incurred for these purposes.

14 **"§ 105-228.54. Repeal or reduction of tax.**

15 A county may, by resolution, repeal or reduce the rate of a tax levied under this
16 Article. Repeal or reduction of the tax shall become effective on the first day of a month
17 and may not become effective until the end of the fiscal year in which the repeal or
18 reduction resolution was adopted. Repeal of a conveyance tax, or reduction of its rate,
19 under this Article does not affect a liability for a tax that attached before the effective
20 date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued
21 before the effective date of the repeal or reduction."

22 **PART IV**

23 **EFFECTIVE DATE**

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