

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 861

Short Title: Local Option Tax Menu. (Public)

Sponsors: Representative Michaux (Primary Sponsor).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Rules, Calendar, and Operations of the House.

April 12, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE ADDITIONAL REVENUE OPTIONS FOR LOCAL  
3 GOVERNMENTS.

4 The General Assembly of North Carolina enacts:

5 **PART 1. LOCAL OPTION TAXES**

6 **SECTION 1.1.** Subchapter X of Chapter 105 of the General Statutes is amended by  
7 adding the following new Articles to read:

8 "Article 61.

9 "Local Government Meals Tax.

10 "**§ 105-610. Short title.**

11 This Article is the Local Government Meals Tax Act.

12 "**§ 105-611. Definitions.**

13 The definitions in G.S. 105-164.3 apply to this Article. In addition, the following  
14 definitions apply in this Article:

15 (1) City. – Defined in G.S. 153A-1.

16 (2) Person. – Defined in G.S. 105-228.90.

17 (3) Taxing unit. – A city or a county.

18 "**§ 105-612. Effect of local acts.**

19 This Article supplements but does not supplant the authority of a county or a city to levy a  
20 meals tax pursuant to a local act. If a local act authorizes a county to levy a meals tax, the  
21 maximum rate the county could otherwise levy under this Article is reduced by the maximum  
22 rate the county is authorized to levy under all local acts. If a local act authorizes a city to levy a  
23 meals tax, the local act that authorizes that tax and any tax levied under that act is repealed  
24 when the county in which that city is located levies a tax under this Article. The repeal of a  
25 local act under this section and the repeal of any tax levied under that act are effective on the  
26 date that the tax levied under this Article by the county becomes effective.

27 "**§ 105-613. Levy.**

28 (a) Vote. – The board of commissioners of a county may direct the county board of  
29 elections to conduct a special election on the question of whether to levy a local meals tax in  
30 the county as provided in this Article. The election shall be held on a date jointly agreed upon  
31 by the two boards and shall be held in accordance with the procedures of G.S. 163-287.

32 (b) Ballot Question. – The question may either restrict the use of the tax proceeds to  
33 specific purposes designated by the board of commissioners or may contain no use restrictions.  
34 If the county wishes to restrict the use of the tax proceeds, the question to be presented on a



1 ballot for a special election in a county concerning the levy of a tax authorized by this Article  
2 must be in the following form:

3  FOR  AGAINST

4  percent (X%) county meals tax, in addition to the current local sales and use taxes, to  
5 be used only for [specify purposes].'

6 If the county does not wish to restrict the use of the tax proceeds, the question to be  
7 presented on a ballot for a special election in a county concerning the levy of a tax authorized  
8 by this Article must be in the following form:

9  FOR  AGAINST

10  percent (X%) county meals tax, in addition to the current local sales and use taxes.'

11 (c) Levy. – If the majority of those voting in an election held pursuant to this Article  
12 vote for the levy of the tax in a county, the board of commissioners of the county may, by  
13 resolution, levy a local meals tax of up to one percent (1%).

14 (d) Scope. – The tax applies to the sales price of prepared food and drink sold within  
15 the county at retail, for consumption on or off the premises, by a retailer within the county that  
16 is subject to sales tax under G.S. 105-164.4(a)(1). A tax levied under this Article is in addition  
17 to any State and local sales and use taxes levied pursuant to law.

18 (e) Effective Date. – A meals tax becomes effective on the date specified in the  
19 resolution levying the tax. That date must be the first day of a calendar month, however, and  
20 may not be earlier than the first day of the second month after the date the resolution is  
21 adopted. When a county in which a city that is authorized to levy a meals tax under a local act  
22 levies a meals tax under this Article, the tax may not become effective earlier than the first day  
23 of the next fiscal year or earlier than the first day of the second month after the date the  
24 resolution is adopted.

25 **"§ 105-614. Exemptions.**

26 A meals tax levied under this Article does not apply to food exempted pursuant to  
27 G.S. 105-164.13B from the taxes imposed by Article 5 of Chapter 105 of the General Statutes.

28 **"§ 105-615. Collection.**

29 Every retailer subject to a tax levied under this Article must, on and after the effective date  
30 of the levy of the tax, collect the tax. This tax must be collected as part of the charge for  
31 furnishing prepared food and drink. The tax must be stated and charged separately from the  
32 sales records and must be paid by the purchaser to the retailer as trustee for and on account of  
33 the county. The tax must be added to the sales price and passed on to the purchaser instead of  
34 being borne by the retailer. The county must design, print, and furnish to all appropriate  
35 businesses and persons in the county the necessary forms for filing returns and instructions to  
36 ensure the full collection of the tax.

37 **"§ 105-616. Administration.**

38 The county must administer a tax levied under this Article. A tax levied under this Article is  
39 due and payable to the county finance officer in monthly installments on or before the 15th day  
40 of the month following the month in which the tax accrues. Every retailer liable for the tax  
41 must, on or before the 15th day of each month, prepare and file a return on a form prescribed  
42 by the county. The return must show the total gross receipts derived in the preceding month  
43 from sales to which the tax applies.

44 A return filed with the county finance officer under this Article is not a public record and  
45 may not be disclosed except as provided in G.S. 153A-148.1.

46 **"§ 105-617. Distribution and use.**

47 (a) Distribution. – The taxing county must distribute the net proceeds of the tax levied  
48 under this Article quarterly between the county and its cities on a per capita basis. To make the  
49 per capita distributions required by this section, the county must first compute a per capita  
50 distributable amount by dividing the amount to be distributed by the total population of the  
51 county plus the population of all cities located in the county. The county must then distribute to

1 each taxing unit in the county, including the county itself, the product of the population of the  
2 taxing unit and the per capita distributable amount. In making the per capita calculations under  
3 this section, the county must use the most recent annual population estimates certified by the  
4 State Planning Officer.

5 (b) Use. – Cities and counties may use the proceeds of a tax levied under this Article for  
6 any lawful purpose. If the special election approved by the voters restricted the use of the tax  
7 proceeds to specified purposes, the proceeds may be used only in accordance with those  
8 restrictions.

9 **"§ 105-618. Refunds.**

10 The county must refund to a nonprofit or governmental entity the meals tax paid by the  
11 entity on eligible purchases of prepared food and drink. A nonprofit or governmental entity's  
12 purchase of prepared food and drink is eligible for a refund under this section if the entity is  
13 entitled to a refund under G.S. 105-164.14(b) or (c) of local sales and use tax paid on the  
14 purchase. The time limitations, application requirements, penalties, and restrictions provided in  
15 G.S. 105-164.14(b) and (d) apply to refunds to nonprofit entities; the time, limitations,  
16 application requirements, penalties, and restrictions provided in G.S. 105-164.14(c), (d), and (e)  
17 apply to refunds to governmental entities. When an entity applies for a refund of the meals tax  
18 paid by it on purchases, it must attach to its application a copy of the application submitted to  
19 the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the  
20 same purchases. An applicant for a refund under this subsection must provide any information  
21 required by the county to substantiate the claim.

22 **"§ 105-619. Penalties.**

23 The penalties provided in G.S. 153A-154.1 apply to a tax levied under this Article.

24 **"§ 105-620. Repeal or reduction.**

25 A meals tax levied under this Article may be repealed or reduced by a resolution adopted by  
26 the board of commissioners of the taxing county. Repeal or reduction of a meals tax must  
27 become effective on the first day of a month and may not become effective until the end of the  
28 fiscal year in which the resolution was adopted. Repeal or reduction of a meals tax does not  
29 affect a liability for a tax that was attached before the effective date of the repeal or reduction,  
30 nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal  
31 or reduction.

32 "Article 62.

33 "Local Government Occupancy Tax.

34 **"§ 105-625. Short title.**

35 This Article is the Local Government Occupancy Tax Act.

36 **"§ 105-626. Definitions.**

37 The following definitions apply in this Article:

38 (1) City. – Defined in G.S. 153A-1.

39 (2) Taxing unit. – A city or a county.

40 **"§ 105-627. Effect of local acts.**

41 (a) Limitations. – This Article supplements but does not supplant the authority of a  
42 county or a city to levy an occupancy tax pursuant to a local act. If a local act authorizes a  
43 county to levy an occupancy tax, the maximum rate the county could otherwise levy under this  
44 Article is reduced by the maximum rate the county is authorized to levy under all local acts,  
45 and the maximum rate any city in the county could otherwise levy under this Article may not  
46 exceed a total of six percent (6%) when added to the maximum rate the county is authorized to  
47 levy under all local acts. If a local act authorizes a city to levy an occupancy tax, the maximum  
48 rate the city could otherwise levy under this Article is reduced by the maximum rate the city is  
49 authorized to levy under all local acts, and the maximum rate the county in which the city is  
50 located could otherwise levy under this Article may not exceed a total of six percent (6%) when  
51 added to the maximum rate the city is authorized to levy under all local acts.



1 "Article 63.

2 "Local Government Excise Tax on Conveyances.

3 **"§ 105-635. Short title.**

4 This Article is the Local Government Excise Tax on Conveyances Act.

5 **"§ 105-636. Effect of local acts.**

6 This Article supplements but does not supplant the authority of a county to levy an excise  
7 tax on conveyances pursuant to a local act. If a local act authorizes a county to levy an excise  
8 tax on conveyances, the maximum rate the county could otherwise levy under this Article is  
9 reduced by the maximum rate the county is authorized to levy under all local acts.

10 **"§ 105-637. Levy.**

11 (a) **Vote.** – The board of commissioners of a county may direct the county board of  
12 elections to conduct a special election on the question of whether to levy a local excise tax on  
13 conveyances in the county as provided in this Article. The election shall be held on a date  
14 jointly agreed upon by the two boards and shall be held in accordance with the procedures of  
15 G.S. 163-287.

16 (b) **Ballot Question.** – The question may either restrict the use of the tax proceeds to  
17 specific purposes designated by the board of commissioners or may contain no use restrictions.  
18 If the county wishes to restrict the use of the tax proceeds, the question to be presented on a  
19 ballot for a special election in a county concerning the levy of a tax authorized by this Article  
20 must be in the following form:

21  FOR  AGAINST

22  percent (X%) county excise tax on conveyances of real property, in addition to the  
23 current State excise tax on conveyances of real property, to be used only for [specify  
24 purposes].'

25 If the taxing unit does not wish to restrict the use of the tax proceeds, the question to be  
26 presented on a ballot for a special election in a taxing unit concerning the levy of a tax  
27 authorized by this Article must be in the following form:

28  FOR  AGAINST

29  percent (X%) county excise tax on conveyances of real property, in addition to the  
30 current State excise tax on conveyances of real property.'

31 (c) **Levy.** – If the majority of those voting in an election held pursuant to this Article  
32 vote for the levy of the tax in a county, the board of commissioners of the county may, by  
33 resolution, levy a local excise tax on conveyances at a rate of up to one percent (1%) on  
34 instruments conveying interests in real property located in the county.

35 (d) **Basis and Effective Date.** – The tax applies to the consideration or value, whichever  
36 is greater, of the interest conveyed, including the value of any lien or encumbrance remaining  
37 on the property at the time of sale. The levy of the tax may become effective only on the first  
38 day of a calendar month set in the resolution levying the tax, which may not be earlier than the  
39 first day of the second succeeding calendar month after the date the resolution is adopted.

40 **"§ 105-638. Administration.**

41 (a) **Resolution.** – The board of commissioners of a county must, upon adoption of a  
42 resolution levying a tax under this Article, immediately deliver a certified copy of the  
43 resolution to the register of deeds of the county. Upon receipt of this document, the register of  
44 deeds shall administer the tax in the county as provided in this Article.

45 (b) **Scope.** – A tax levied under this Article does not apply to a transfer exempt pursuant  
46 to G.S. 105-228.28 or G.S. 105-228.29 from the tax levied by Article 8E of this Chapter. In  
47 addition, the tax does not apply to a transfer to the owner's spouse, siblings, parents,  
48 grandparents, children, or grandchildren.

49 The tax is in addition to the tax levied by Article 8E of this Chapter. A tax levied under this  
50 Article applies to transfers of interests in real property located within the county. If the property

1 is located in two or more counties, a transfer of an interest in the property is taxable only by the  
2 county in which the greater part of the property, with respect to value, lies.

3 (c) Collection. – A tax levied under this Article is payable by the transferor of the  
4 interest. Except as otherwise provided in this Article, the provisions of G.S. 105-228.32  
5 through G.S. 105-228.37 apply to a tax levied under this Article. The county must provide  
6 metering or similar equipment for the collection of the tax in lieu of the use of tax stamps.

7 (d) Repeal or Reduction. – A taxing county may, by resolution, repeal or reduce the rate  
8 of a tax levied under this Article. Repeal or reduction of the tax must become effective on the  
9 first day of a month and may not become effective until the end of the fiscal year in which the  
10 repeal or reduction resolution was adopted. Repeal of an excise tax on conveyances, or  
11 reduction of its rate, under this Article does not affect a liability for a tax that attached before  
12 the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that  
13 accrued before the effective date of the repeal or reduction.

14 **"§ 105-639. Distribution and use.**

15 (a) Distribution. – A taxing county must distribute the net proceeds of a tax levied  
16 under this Article between the county and the cities and towns located in the county according  
17 to the formula by which local sales tax proceeds are divided between the county and its cities  
18 and towns under G.S. 105-472 or under Chapter 1096 of the 1967 Session Laws.

19 (b) Use. – The proceeds of the tax may be used for any lawful purpose. If the special  
20 election approved by the voters restricted the use of the tax proceeds to specified purposes, the  
21 proceeds may be used only in accordance with those restrictions."

22 **SECTION 1.2.** Section 5 of Chapter 413 of the 1993 Session Laws reads as  
23 rewritten:

24 "Sec. 5. Administration. – A tax levied under this act is due and payable to the county in  
25 monthly installments on or before the ~~25th~~ 15th day of the month following the month in which  
26 the tax accrues. Every retailer liable for the tax shall, on or before the ~~25th~~ 15th day of each  
27 month, prepare and render a return on a form prescribed by the county. The return shall show  
28 the total gross receipts derived in the preceding month from sales to which the tax applies. The  
29 county shall design, print, and furnish to all appropriate retailers the necessary forms for filing  
30 returns and instructions to ensure the full collection of the tax.

31 A return filed with the county under this act is not a public record ~~as defined by G.S. 132-1~~  
32 ~~and may not be disclosed except as required by law~~ and may not be disclosed except as  
33 provided in G.S. 153A-148.1."

34 **SECTION 1.3.** Section 1(e) of Chapter 449 of the 1993 Session Laws reads as  
35 rewritten:

36 "Section 1. Hillsborough Prepared Food and Beverage Tax.

37 ...

38 (e) Administration. – The town shall administer a tax levied under this section. A tax  
39 levied under this section is due and payable to the town's finance officer in monthly  
40 installments on or before the ~~25th~~ 15th day of the month following the month in which the tax  
41 accrues. Every retailer liable for the tax shall, on or before the ~~25th~~ 15th day of each month,  
42 prepare and render a return on a form prescribed by the town. The return shall show the total  
43 gross receipts derived in the preceding month from sales to which the tax applies.

44 A return filed with the town's finance officer under this section is not a public record and  
45 may not be disclosed except in accordance with G.S. 160A-208.1 ~~as defined by G.S. 132-1~~ ~~and~~  
46 ~~may not be disclosed except as required by law."~~

47  
48 **PART 2. IMPACT FEES**

49 **SECTION 2.** The General Statutes are amended by adding a new Chapter to read:

50 **"Chapter 159J.**

51 **"Local Government Impact Fees.**

**"§ 159J-1. Purpose.**

It is the purpose of this Chapter to place an equitable share of the cost of providing new community service facilities upon all new inhabitants and upon those associated with the development process.

**"§ 159J-2. Definitions.**

The following definitions apply in this Chapter:

- (1) Capital costs. – Costs spent for developing community service facilities. Capital costs are limited to capital outlay items listed in the 'Uniform Local Government Accounting Systems' procedural manual prepared by the North Carolina Local Government Commission.
- (2) Community services facilities. – The following public facilities or improvements provided or established by the local government or in conjunction with other units of government:
  - a. Water, sewer, and drainage projects.
  - b. Parks, open spaces, and recreational facilities.
  - c. Streets, sidewalks, thoroughfare rights-of-way, and public transit stations and capital equipment.
  - d. Emergency medical services facilities.
  - e. Fire stations.
  - f. Schools.
  - g. Cultural facilities, including libraries.
  - h. Solid waste collection, handling, disposal, and recycling.
- (3) Developer. – An individual, corporation, partnership, organization, association, firm, political subdivision, or other legal entity constructing or creating new construction.
- (4) Impact fee. – The charge imposed upon new construction under this Chapter.
- (5) Local government. – A city as defined by G.S. 160A-1 or a county.
- (6) New construction. – Any new development, construction, or installation for which a building or zoning permit, a certification, or any other type of governmental approval is required. New construction includes the installation of a mobile home, factory-built housing, or modular housing. New construction does not include (i) renovation and repair of existing structures, structures incidental to accessory uses, or additions, unless the renovation, repairs, or additions will cause an increase in off-street parking requirements or a change in occupancy as occupancy is defined by the North Carolina State Building Code and (ii) fences, billboards, poles, pipelines, transmission lines, advertising signs, or similar structures that do not generate a need for community service facilities.

**"§ 159J-3. Imposition of impact fee.**

(a) A city may not impose an impact fee for schools. A city may, for the purposes of placing an equitable share of the cost of providing other new community service facilities upon developers and inhabitants of newly developed areas, impose an impact fee upon all new construction within the city's corporate limits or extraterritorial planning jurisdiction.

(b) A county may, for the purpose of placing an equitable share of the cost of providing new community service facilities upon developers and inhabitants of newly developed areas, impose an impact fee, other than for schools, upon all new construction in the county that is not within a city's corporate limits or extraterritorial planning jurisdiction.

(c) A county may impose an impact fee for schools upon all new construction within the county for the purpose of placing an equitable share of the cost of providing community service facilities upon developers and inhabitants of newly developed areas.

**"§ 159J-4. Amount of fee.**

1       (a) The amount of each impact fee imposed shall be uniform and based upon the capital  
2 costs to be incurred by the local government as a result of the new construction. In establishing  
3 the impact fee, the local government may establish zones within which the costs of providing  
4 community service facilities are estimated. Zones may have different impact fees, depending  
5 upon the community service facilities available and the extent to which capital costs have been  
6 paid in each zone. Facilities upon which fees are based must directly result in additional capital  
7 costs, and fees must be expended within the same zone as or otherwise benefit the new  
8 construction upon which the fee is imposed. The governing body of the local government must  
9 hold a public hearing before it may establish the zones authorized in this section.

10       (b) The amount of each impact fee shall be based upon documented needs and upon  
11 specific classifications and rates that shall be uniformly applied. Classifications upon which  
12 fees are based must account for the costs and extent of the additional burden placed upon  
13 community service facilities by different types and sizes of new construction.

14       (c) Before imposing an impact fee, the local government shall prepare, or have  
15 prepared, a report containing each of the following:

16           (1) A description of the anticipated capital cost to the local government of each  
17 additional or expanded community service facility necessitated by the new  
18 construction.

19           (2) A description of the characteristics of the new construction that necessitate  
20 the additional or expanded community service facility, such as population,  
21 trip generation, stormwater runoff, and flow characteristics.

22           (3) A plan for providing the community service facilities necessitated by the  
23 new construction.

24 **"§ 159J-5. Enactment of ordinances.**

25 A local government may enact ordinances to exercise the authority granted by this Chapter.  
26 Before enacting any ordinance to exercise the authority granted by this Chapter, a local  
27 government must hold a public hearing on the ordinance. Notice of the public hearing shall be  
28 given in accordance with G.S. 153A-323 or G.S. 160A-364.

29 **"§ 159J-6. Funds.**

30 Funds for each community service facility for which an impact fee is collected shall be  
31 placed in a separate capital reserve fund under Part 2 of Article 3 of Chapter 159 of the General  
32 Statutes. Separate capital reserve funds shall be established for separate zones. All funds shall  
33 be expended for the facility for which they were collected. Payment of impact fees does not  
34 entitle the payer to any greater right to use or ownership in the facility for which the fee is  
35 collected than is shared by the general public.

36 **"§ 159J-7. Credits for improvements.**

37 An ordinance adopted under this Chapter shall provide for credits against required impact  
38 fees when a developer installs improvements of a type that generally would be paid for by the  
39 local government out of a capital reserve account funded by impact fees. The ordinance may  
40 specify the circumstances under which a developer will be allowed to install improvements and  
41 receive credits.

42 **"§ 159J-8. Effect on local acts.**

43 This Chapter supplements but does not supplant the authority of a local government to levy  
44 an impact fee under a local act.

45 **"§ 159J-9. Challenge to impact fee.**

46 To challenge an impact fee, a developer shall pay the amount charged by the local  
47 government, clearly identify that payment is made under protest, and give notice of appeal  
48 within 30 days after the date that payment under protest is made. The notice required by this  
49 section shall be delivered by personal service or by registered or certified mail, return receipt  
50 requested, to:

51           (1) In the case of an impact fee levied by a city:



- 1                   a.     The city manager; or
- 2                   b.     The mayor, if the city does not have a city manager.
- 3           (2)     In the case of an impact fee levied by a county:
- 4                   a.     The county manager; or
- 5                   b.     The chair of the county board of commissioners, if the county does
- 6                             not have a county manager.

7     The governing body of the local government shall hold a public hearing to review the  
8 appeal within 35 days after receiving the notice of appeal. The decision of the governing body  
9 on the appeal is subject to review by the superior court of the county where the new  
10 construction is to occur, in the nature of certiorari. A petition for review by the superior court  
11 shall be filed with the Clerk of Superior Court within 30 days after the date that the governing  
12 body delivers its decision in writing, either by personal service or by registered or certified  
13 mail, return receipt requested, to the appealing party."

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16

**PART 3. EFFECTIVE DATE**

**SECTION 3.** This act is effective when it becomes law.