

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2004-123
HOUSE BILL 142**

AN ACT TO AUTHORIZE DARE COUNTY TO LEVY AN ADDITIONAL ONE PERCENT SALES AND USE TAX THE PROCEEDS OF WHICH SHALL BE USED FOR BEACH NOURISHMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 45.

"Local Government Sales and Use Tax for Beach Nourishment.

"§ 105-525. Short title.

This Article is the Local Government Sales and Use Tax for Beach Nourishment Act.

"§ 105-526. Limitations.

This Article applies only to counties that levy the first one-cent (1¢) sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter, and the third one-half cent (1/2¢) local sales and use tax under Article 44 of this Chapter.

"§ 105-527. Definitions.

The following definitions apply in this Article:

- (1) Beach nourishment. – The placement of sand, from other sand sources, on a beach or dune by mechanical means and other associated activities that are in conformity with the North Carolina Coastal Management Program, or which have otherwise been authorized by the General Assembly, along the North Carolina shorelines and connecting inlets for the purpose of widening the beach to benefit public recreational use and mitigating damage and erosion from storms to inland property and transportation routes. The term includes expenditures for the following:
 - a. Costs directly associated with qualifying for projects either contracted through the U.S. Army Corps of Engineers or otherwise permitted by all appropriate federal and State agencies.
 - b. The nonfederal share of the costs required to construct these projects.
 - c. The costs associated with providing enhanced public beach access.
 - d. The costs of associated nonhardening activities such as the planting of vegetation, the building of dunes, and the placement of sand fences.
- (2) Net proceeds. – Defined in G.S. 105-472.

"§ 105-528. Levy.

The board of commissioners of a county may, by resolution, levy one percent (1%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Before adopting a resolution under this section, the board of

commissioners must give at least 10 days' public notice of its intent to adopt the resolution and must hold a public hearing on the issue of adopting the resolution.

"§ 105-529. Administration of taxes.

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of these additional taxes must be in accordance with Article 39 of this Chapter. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B.

"§ 105-530. Expiration.

A tax levied under this Article expires eight years after the effective date of its levy. A county's authorization to levy a tax under this Article expires eight years after the effective date of the first tax a county levies under this Article, even if the tax has not remained in effect for the entire eight-year period. The expiration of a tax pursuant to this Article does not affect the rights or liabilities of a county, a taxpayer, or another person arising under the expired tax; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the expired tax before its expiration.

If the Secretary receives a valid request for a refund of a tax levied under this Article after the tax has expired and the net proceeds have been distributed, the Secretary shall draw the refund from the taxing county's share of the net proceeds of the tax it levies under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, as applicable.

"§ 105-531. Distribution and use of taxes.

(a) Distribution. – The Secretary shall, on a monthly basis, distribute to each taxing county for which the Secretary collects the tax the net proceeds of the tax collected in that county under this Article. If the Secretary collects local sales or use taxes in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate the taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article during that month and shall include them in the monthly distribution. Amounts collected by electronic funds transfer payments are included in the distribution for the month in which the return that applies to the payment is received.

(b) Use. – A county may use the net proceeds of a tax levied under this Article only for beach nourishment."

SECTION 2. A tax levied under Article 45 of Chapter 105 of the General Statutes, as enacted by this part, does not apply to construction materials purchased to fulfill a lump-sum or unit-price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 45 of Chapter 105 of the General Statutes.

SECTION 3. Section 2 of Chapter 449 of the 1985 Session Laws, as amended by Chapter 177 of the 1991 Session Laws, S.L. 2001-347, and S.L. 2001-439, reads as rewritten:

"Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply in this act. In addition, the following definitions apply in this act:

- (1) Net proceeds. Gross proceeds less the cost to the county of administering and collecting the tax.
- (2) Prepared food and beverages. The term has the same meaning as the term "prepared food" in G.S. 105-164.3.
- (3) Beach nourishment. The term has the same meaning as in G.S. 105-527. The placement of sand, from other sand sources, on a beach or dune by mechanical means and other associated activities that are in conformity with the North Carolina Coastal Management Program, or which have otherwise been authorized by the General Assembly, along the North Carolina shorelines and connecting inlets for the purpose of widening the beach to benefit public recreational use

~~and mitigating damage and erosion from storms to inland property and transportation routes. The term includes expenditures for the following:~~

- ~~a. Costs directly associated with qualifying for projects either contracted through the U.S. Army Corps of Engineers or otherwise permitted by all appropriate federal and State agencies;~~
- ~~b. The nonfederal share of the costs required to construct these projects;~~
- ~~c. The costs associated with providing enhanced public beach access; and~~
- ~~d. The costs of associated nonhardening activities such as the planting of vegetation, the building of dunes, and the placement of sand fences."~~

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2004.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives