

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

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**SENATE BILL 948\***

Short Title: Henderson County Occupancy Tax Changes. (Local)

Sponsors: Senator Apodaca (Primary Sponsor).

Referred to: Rules and Operations of the Senate.

May 31, 2012

A BILL TO BE ENTITLED

AN ACT TO SUPPORT THE STATE THEATER OF NORTH CAROLINA KNOWN AS  
THE FLAT ROCK PLAYHOUSE.

The General Assembly of North Carolina enacts:

**SECTION 1.** Sections 5 and 6 of Chapter 172 of the 1987 Session Laws, as amended by Chapter 55 of the 1991 Session Laws and by Section 21(p) of S.L. 2007-527, read as rewritten:

"**Sec. 5.** Occupancy Tax. (a) Authorization and Scope. ~~— The Board of Commissioners of Henderson County may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy and tourism development tax of~~ no less than three percent (3%) nor more than five percent (5%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3).~~G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of Additional Tax. — In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of Henderson County may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Henderson County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) ~~Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

(c) Administration. — A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in



1 monthly installments on or before the 20th day of the month following the month in which the  
2 tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before  
3 the 20th day of each month, prepare and render a return on a form prescribed by the county.  
4 The return shall state the total gross receipts derived in the preceding month from rentals upon  
5 which the tax is levied.

6 A return filed with the county finance officer under this act is not a public record as defined  
7 by G.S. 132-1 and may not be disclosed except as required by law.

8 (d) Penalties. A person, firm, corporation, or association who fails or refuses to file the  
9 return required by this act shall pay an additional tax, as a penalty, of one percent (1%) of the  
10 tax due for each day's omission up to 30 days, with a minimum penalty of twenty five dollars  
11 (\$25.00). In case of failure or refusal to file the return or pay the tax for a period of 30 days  
12 after the time required for filing the return or for paying the tax, there shall be an additional tax,  
13 as a penalty, of ten percent (10%) of the tax and penalty due in addition to any other penalty,  
14 with an additional tax of ten percent (10%) for each additional month or fraction thereof until  
15 the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive  
16 the tax penalties imposed by this subsection.

17 Any person who willfully attempts in any manner to evade a tax or penalty imposed under  
18 this act or who willfully fails to pay the tax or penalty 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 one thousand dollars (\$1,000), imprisonment not to exceed  
21 six months, or both.

22 (e) Use of Tax Revenue. – The county shall, on a quarterly basis, remit the net proceeds  
23 of the room occupancy and tourism development tax levied under this act to the Henderson  
24 County Tourism Development Authority. The Authority shall use at least two-thirds of the  
25 funds remitted to it under this subsection to promote travel and tourism in Henderson County  
26 and shall use the remainder for tourism-related expenditures.

27 (e1) Definitions. – The following definitions apply in this section:

28 (1) Net proceeds. – Gross proceeds less the cost to the county of administering  
29 and collecting the tax, as determined by the finance officer, not to exceed  
30 three percent (3%) of the first five hundred thousand dollars (\$500,000) of  
31 gross proceeds collected each year and one percent (1%) of the remaining  
32 gross receipts collected each year.

33 (2) Promote travel and tourism. – To advertise or market an area or activity,  
34 publish and distribute pamphlets and other materials, conduct market  
35 research, or engage in similar promotional activities that attract tourists or  
36 business travelers to the area. The term includes administrative expenses  
37 incurred in engaging in the listed activities.

38 (3) Tourism-related expenditures. – Expenditures that, in the judgment of the  
39 entity responsible for expending the net proceeds of the tax, are designed to  
40 increase the use of lodging facilities, meeting facilities, or convention  
41 facilities in a county or to attract tourists or business travelers to the county.  
42 The term includes tourism-related capital expenditures.

43 ~~shall place the net proceeds collected from a tax levied under this act in a special Travel and~~  
44 ~~Tourism Fund. Revenue in this fund may be used only to promote travel and tourism in the~~  
45 ~~county. This fund will be administered by the Henderson Travel and Tourism Committee. As~~  
46 ~~used in this subsection, "net proceeds" means gross proceeds less five percent (5%) of the gross~~  
47 ~~proceeds which the county may retain to defray the cost of administering and collecting the tax.~~

48 The scope of promotion of travel and tourism in the county may include the following:

49 (1) ~~Contracting with any person, firm, or agency to advise and assist in travel~~  
50 ~~and tourism promotion.~~

51 (2) ~~Advertising via appropriate media.~~

1           (3) ~~Assisting in the initial funding and possible annual subsidy of a fine arts~~  
2           ~~center or other similar facility which could logically be expected to promote~~  
3           ~~tourism in the county.~~

4           (4) ~~Promoting special events which would bring tourists to the county.~~

5           (f) ~~Effective Date of Levy. A tax levied under this act shall become effective on the~~  
6           ~~date specified in the resolution levying the tax. That date must be the first day of a calendar~~  
7           ~~month, however, and may not be earlier than the first day of the second month after the date the~~  
8           ~~resolution is adopted.~~

9           (g) ~~Repeal. A tax levied under this act may be repealed by a resolution adopted by the~~  
10          ~~board of commissioners of the county. Repeal of a tax levied under this act does not affect a~~  
11          ~~liability for a tax that attached before the effective date of the repeal, nor does it affect a right to~~  
12          ~~a refund of a tax that accrued before the effective date of the repeal.~~

13          "**Sec. 6.** ~~Henderson Travel and Tourism Committee.~~Tourism Development Authority. (a)  
14          Appointment and Membership. – When the board of commissioners adopts a resolution levying  
15          a room occupancy tax under subsection (a1) of this Section 5 of this act, it shall also adopt a  
16          resolution creating the Henderson Travel and Tourism Committee, Tourism Development  
17          Authority, which shall be a public authority under the Local Government Budget and Fiscal  
18          Control Act. The resolution adopted by the Board of Commissioners shall provide for the  
19          membership of the Authority, including the members' terms of office, and for the filling of  
20          vacancies on the Authority. At least one-third of the members shall be individuals who are  
21          affiliated with businesses that collect the tax in the county, and at least one-half of the members  
22          shall be individuals who are currently active in the promotion of travel and tourism in the  
23          county.

24          ~~The Committee shall consist of nine voting members as follows:~~

25               (1) ~~Four members who are registered to vote in Henderson County, appointed~~  
26               ~~by the Henderson County Board of Commissioners;~~

27               (2) ~~Four members who are registered to vote in Henderson County, appointed~~  
28               ~~by the Hendersonville City Council; and~~

29               (3) ~~The President of the Greater Hendersonville Chamber of Commerce, or his~~  
30               ~~designee, to serve ex officio.~~

31          The board of commissioners shall designate one member of the ~~Committee~~Authority as chair  
32          and shall determine the compensation, if any, to be paid to members of the  
33          ~~Committee~~Authority. The ~~Committee~~Authority shall meet at the call of the chair and shall  
34          adopt rules of procedure to govern its meetings. The finance officer for Henderson County shall  
35          be the ex officio finance officer of the ~~Committee~~Authority. ~~The Committee shall administer~~  
36          ~~the Travel and Tourism Fund as provided in Section 1(e) of this act.~~

37          (b) Duties. – The Authority shall expend the net proceeds of the tax levied under  
38          subsections (a) and (a1) of Section 5 of this act for the purposes provided in Section 5 of this  
39          act. The Authority shall promote travel, tourism, and conventions in the county, sponsor  
40          tourist-related events and activities in the county, and finance tourist-related capital projects in  
41          the county.

42          (c) Reports. – The Committee~~Authority~~ shall report quarterly and at the close of the  
43          fiscal year to the board of commissioners on its receipts and expenditures for the preceding  
44          quarter and for the year in such detail as the board may require."

45          **SECTION 2.** G.S. 153A-155(g) reads as rewritten:

46          "(g) Applicability. – Subsection (c) of this section applies to all counties and county  
47          districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of  
48          a local act, subsection (c) supersedes that provision. The remainder of this section applies only  
49          to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell,  
50          Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin,  
51          Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Henderson, Jackson, Madison,

1 Martin, McDowell, Montgomery, Moore, Nash, New Hanover, New Hanover County District  
2 U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham,  
3 Rowan, Rutherford, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance,  
4 Washington, and Wilson Counties, to Surry County District S, to Watauga County District U,  
5 to Wilkes County District K, to Yadkin County District Y, and to the Township of Averagesboro  
6 in Harnett County and the Ocracoke Township Taxing District."

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