

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 925

Short Title: Orange County Impact Tax.

(Local)

Sponsors: Representatives Barnes and Hackney (by request).

Referred to: Government.

March 27, 1989

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE ORANGE COUNTY TO LEVY AN EXCISE TAX ON
2 THE IMPACT OF LAND DEVELOPMENT FOR THE PURPOSE OF
3 GENERATING REVENUES TO PAY PART OF THE COSTS OF CAPITAL
4 FACILITIES REQUIRED BY GROWTH AND TO REPEAL LOCAL ACTS
5 AUTHORIZING LOCAL GOVERNMENTS IN ORANGE COUNTY TO LEVY
6 IMPACT FEES.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. (a) Except as provided in subsection (b), Orange County may
10 adopt an ordinance levying an excise tax on the impact of land development within the
11 county, except within the Town of Hillsborough, and providing for the administration,
12 enforcement, and collection of the tax.

13 (b) Orange County may not adopt an ordinance pursuant to this act if any
14 ordinance adopted pursuant to Section 2 of Chapter 357 of the 1985 Session Laws
15 (Carrboro), Section 1 of Chapter 936 of the 1985 Session Laws (Chapel Hill), or
16 Sections 17-18.1 of Chapter 460 of the 1987 Session Laws (Orange County) is in effect.

17 Sec. 2. The following definitions apply in this act:

18 (1) Person. An individual, partnership, corporation, or other legal entity.

19 (2) Land development. Land development shall mean:

20 a. Construction of any dwelling unit for which a building permit
21 was issued or should have been issued after the effective date of
22 an ordinance adopted under this act; or

23 b. Construction of any commercial building enclosed floor space
24 for which a building permit was issued or should have been

1 issued after the effective date of an ordinance adopted under
2 this act.

3 (3) Person responsible for the impact of land development. The owner of
4 any dwelling unit or commercial building enclosed floor space on the
5 date an occupancy permit is issued for the dwelling unit or commercial
6 floor space or, if no such permit is issued, the date the dwelling unit or
7 commercial floor space is occupied.

8 (4) Commercial building enclosed floor space. All enclosed floor space
9 designed or intended to be used for any purpose except:

- 10 a. Single-family, two-family, or multi-family residences and
11 accessory structures.
12 b. Recreational facilities constructed as part of a residential
13 development and used primarily by residents of the
14 development.
15 c. Governmentally owned buildings.
16 d. Buildings owned and operated by nonprofit entities for
17 noncommercial and nonresidential purposes.
18 e. Buildings designed and constructed to be used as schools or day
19 care centers.

20 Sec. 3. The purpose of the tax authorized by this act is to generate funds to
21 partially offset the cost of constructing new capital facilities or replacing, expanding, or
22 improving existing capital facilities necessitated in part by new growth within the
23 county. Accordingly, the net proceeds generated by the tax authorized by this act and
24 retained by Orange County or distributed pursuant to Section 6 to Chapel Hill or
25 Carrboro, respectively, shall be deposited by each local government in its capital reserve
26 improvements fund or funds established under Part 2 of Article 3 of Chapter 159 of the
27 General Statutes and may be expended only as follows:

28 (1) Orange County may expend these funds to the extent otherwise
29 authorized by law on capital improvements projects related to schools,
30 libraries, stormwater drainage, open space, and recreation, and on
31 emergency and public safety facilities, including jails.

32 (2) The Town of Chapel Hill and the Town of Carrboro may expend these
33 funds on capital improvements related to roads and other
34 transportation systems, stormwater drainage, open space and
35 recreation, and police and fire stations. The funds may be spent by
36 each municipality only for improvements that are located within the
37 corporate limits of that municipality or within its extra-territorial
38 planning jurisdiction or transition area(s) as established under a joint
39 planning agreement with Orange County, except that Chapel Hill and
40 Carrboro may by agreement expend funds on joint projects that
41 transcend each other's jurisdictional boundaries, such as road or
42 drainage improvement projects.

43 Sec. 4. An ordinance adopted under this act shall provide that:

- 1 (1) A person responsible for the impact of land development shall pay an
2 excess tax for each square foot of dwelling space and commercial
3 building enclosed floor space for which an occupancy permit is issued
4 or, if no such permit is issued, for each square foot of dwelling space
5 in an occupied dwelling and for each square foot of occupied enclosed
6 floor space in a commercial building.
- 7 (2) The tax shall be due on or before the date an occupancy permit is
8 issued for the dwelling unit or commercial building enclosed floor
9 space in question or, if no such permit is issued, the date the dwelling
10 unit or commercial floor space is occupied. However, no tax due shall
11 be considered delinquent until 60 days after the tax becomes due.
12 There shall be added to delinquent taxes interest at the legal rate.
- 13 (3) Taxes authorized by this act may be collected pursuant to G.S. 153A-
14 147 or G.S. 160A-207. In addition, taxes authorized by this act may
15 be recovered in a civil action in the nature of debt including an award
16 of reasonable attorney fees as part of costs.

17 Sec. 5. The Orange County Board of Commissioners, after consultation with
18 the Town of Chapel Hill and the Town of Carrboro, shall establish annually at the time
19 of the adoption of the annual budget the rate of tax to be levied per square foot of
20 dwelling space and per square foot of commercial building enclosed floor space for the
21 ensuing fiscal year. Different tax rates may be established for different types of
22 commercial construction and for dwelling units containing a different number of
23 bedrooms.

24 Sec. 6. As soon as reasonably practicable after the close of each quarter of
25 the fiscal year, Orange County shall distribute to Chapel Hill and Carrboro seventy-five
26 percent (75%) of the net proceeds of the tax received by the county due to development
27 that has taken place within each respective municipality's corporate limits, extra-
28 territorial planning jurisdiction, and transition area(s), as established in joint planning
29 agreements. As used in this act, the term "net proceeds" means the gross proceeds of the
30 tax less the cost to the county of collecting and administering the tax.

31 Sec. 7. Whenever the sale of real property located in Orange County involves
32 new construction, the seller shall prepare and sign, and the buyer shall receive and sign,
33 a disclosure statement. This disclosure statement shall fully and completely disclose
34 that the owner of the property at the time an occupancy permit is issued for the new
35 construction or, if no occupancy permit is issued, the date the new construction is
36 occupied, may be subject to an excise tax on the impact of land development. If a seller
37 fails to make such a disclosure and the buyer suffers injury as a result of the seller's
38 failure to disclose, the seller shall be liable to the buyer to the extent of the buyer's
39 injury.

40 Sec. 8. Orange County may repeal an ordinance adopted pursuant to Sections
41 17-18.1 of Chapter 460 of the 1987 Session Laws. Orange County may not adopt an
42 ordinance pursuant to Sections 17-18.1 of Chapter 460 of the 1987 Session Laws while
43 an ordinance adopted pursuant to this act is in effect. Chapel Hill may repeal an
44 ordinance adopted pursuant to Section 1 of Chapter 936 of the 1985 Session Laws.

1 Chapel Hill may not adopt an ordinance pursuant to Section 1 of Chapter 936 of the
2 1985 Session Laws while an ordinance adopted pursuant to this act is in effect.
3 Carrboro may repeal an ordinance adopted pursuant to Section 2 of Chapter 357 of the
4 1985 Session Laws. Carrboro may not adopt an ordinance pursuant to Section 2 of
5 Chapter 357 of the 1985 Session Laws while an ordinance adopted pursuant to this act
6 is in effect.

7 Sec. 9. This act shall apply only to Orange County and the municipalities
8 located therein, except for the Town of Hillsborough.

9 Sec. 10. This act is effective upon ratification.