

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 3*
Committee Substitute Favorable 2/28/95
Senate Finance Committee Substitute Adopted 7/13/95

Short Title: Taxpayer Protection Act.

(Public)

Sponsors:

Referred to:

January 26, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT THE TAXPAYERS OF NORTH CAROLINA BY LIMITING
3 INCREASES IN THE GENERAL FUND BUDGET, PROHIBITING UNFUNDED
4 STATE MANDATES, AND ESTABLISHING OTHER TAXPAYER RIGHTS.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 105 of the General Statutes is amended by adding a new
7 section immediately before Article 1 to read:

8 "**§ 105-1.1. Declaration of taxpayer rights.**

9 By means of the United States Constitution and the North Carolina Constitution, the
10 people have bestowed upon the General Assembly the power to obtain a regular and
11 adequate supply of revenue to serve the public good. In exercising this power, the
12 General Assembly pledges to be ever mindful that the Assembly is the embodiment of the
13 people and guarantees to the people the following rights:

14 (1) To have a balanced State budget, in accordance with Article III, Section
15 5 of the North Carolina Constitution.

16 (2) To be protected from uncontrolled growth in State government by
17 limiting increases in State spending and in the number of State
18 employees, in accordance with G.S. 143-2.1 and G.S. 143-10.2.

- 1 (3) To have the fiscal affairs of the State managed in the same prudent,
2 responsible way in which the people of the State manage their fiscal
3 affairs, in accordance with G.S. 143-2.1 through G.S. 143-2.4.
- 4 (4) To have a constitutional limit on the State income tax rate, in
5 accordance with Article V, Section 2 of the North Carolina Constitution.
- 6 (5) To have the power to determine by vote whether the State or a unit of
7 local government can issue bonds payable by tax revenue and, in order
8 to ensure a good credit rating when bonds are issued, to have repayment
9 of the bonds be the first funding priority of the State or local unit, in
10 accordance with Article V, Sections 3, 4, and 6 of the North Carolina
11 Constitution.
- 12 (6) To be told the truth in taxation, in accordance with G.S. 120-36.7, 159-
13 50, 160A-20, and 105-286.
- 14 (7) To know the costs of proposed legislation and proposed administrative
15 rules, in accordance with G.S. 120-36.7, 143-3.5, 150B-21.4, 96-4, 97-
16 80, 105-262, and 143-138.
- 17 (8) To be treated fairly and promptly in any questions regarding tax
18 liability, in accordance with G.S. 105-241.1, 105-241.2, 105-258.1, and
19 105-267.
- 20 (9) To have the people's investment in State buildings and other State
21 facilities protected through adequate funding for maintenance and
22 repairs, in accordance with G.S. 143-2.3.
- 23 (10) To be informed on how revenue is used, pursuant to G.S. 20-66(j), 105-
24 248, 105-321.1, 143-10.3, 143-10.4, and 143-10.5."

25 Sec. 2. Article 1 of Chapter 143 of the General Statutes is amended by adding
26 the following sections to read:

27 **"§ 143-2.1. General Fund expenditure limit.**

28 (a) Definitions. – The following definitions apply in this section:

- 29 (1) Fiscal growth factor. – The average of the sum of inflation and
30 population change for each of the preceding three calendar years. If
31 either inflation or the population change for the preceding three calendar
32 years is negative, then that change shall be counted as zero.
- 33 (2) Inflation. – The percentage change in the federal Consumer Price Index
34 for All Urban Consumers for a calendar year.
- 35 (3) Population change. – The percentage change in State population for a
36 calendar year as reported by the Office of State Planning.

37 (b) Limit. – General Fund appropriations for a fiscal year shall not exceed the
38 General Fund expenditure limit for that fiscal year. The General Fund expenditure limit
39 for a fiscal year is the previous fiscal year's General Fund expenditure limit, decreased or
40 increased in accordance with subsections (c) and (d) of this section, and then increased by
41 a percentage rate that equals the fiscal growth factor. The General Fund expenditure
42 limit for the 1995-96 fiscal year is the total certified General Fund budget for the fiscal
43 year beginning July 1, 1995.

1 (c) Decreases. – If, on or after June 30, 1996, the cost of any State program or
2 function is shifted from the General Fund to another source of funding, such as counties
3 or other units of local government, or if moneys are transferred from the General Fund to
4 another fund or account outside the General Fund, the General Fund expenditure limit
5 shall be reduced by a like amount.

6 (d) Increases. – The General Fund expenditure limit for a fiscal year shall be
7 increased by the following:

8 (1) The amount of General Fund appropriations that were funded by federal
9 revenue in the previous fiscal year but are to be funded by State revenue
10 in the current fiscal year because of a reduction in the federal funds.

11 (2) The amount required to comply with an existing or new mandate
12 imposed by any court or by federal law.

13 (3) The amount required for incarceration of persons in the State prison
14 system or other State or local confinement facilities.

15 (4) The amount required to fund increases in average daily membership in
16 the public schools and thereby fulfill the mandate of the North Carolina
17 Constitution to provide a uniform system of public schools.

18 (5) The amount required to fund enrollment increases at community
19 colleges or at The University of North Carolina.

20 (6) The amount required to pay for community college courses that provide
21 literacy instruction, job training, or job retraining, as identified by the
22 General Assembly in the current Operations Appropriations Act.

23 If a mandate is a one-time expenditure, such as payment of an award in a case, and
24 therefore does not affect the General Fund operating budget, the General Fund
25 expenditure limit shall be decreased for the subsequent fiscal year by the amount of the
26 one-time increase. If the General Assembly makes appropriations for a fiscal year in
27 excess of the expenditure limit for that year, in accordance with subsection (f) of this
28 section, the expenditure limit for that year is increased by the amount of the
29 appropriations that exceeds the limit. The General Fund expenditure limit shall be
30 decreased for the subsequent fiscal year by the amount of the increase.

31 (e) Determination of Limit. – On or before March 15 of each year, the Fiscal
32 Research Division and the Office of State Budget and Management shall issue a
33 determination of the General Fund expenditure limit for the fiscal year beginning July 1
34 of that year and a projection of the General Fund expenditure limit for the next fiscal
35 year. If the Fiscal Research Division and the Office of State Budget and Management do
36 not agree on the General Fund expenditure limit, the lower determination and projection
37 shall be used.

38 (f) Spending in Excess of Limit. – The General Assembly may, by an affirmative
39 vote of two-thirds of the members of each house, make General Fund appropriations for a
40 fiscal year in excess of the General Fund expenditure limit for that fiscal year.

41 **"§ 143-2.2. Compliance with General Fund expenditure limit; use of excess revenue.**

42 (a) Governor. – In preparing the General Fund budget for a fiscal year, the
43 Governor shall not propose expenditures from the General Fund for the ensuing fiscal

1 period in excess of the projected General Fund expenditure limit for that fiscal year
2 established in a fiscal report under G.S. 143-2.1.

3 (b) General Assembly. – In enacting a General Fund budget for a fiscal year, the
4 General Assembly shall not make appropriations from the General Fund in excess of the
5 General Fund expenditure limit for that fiscal year established in a fiscal report under
6 G.S. 143-2.1.

7 (c) Excess Revenue. – The Tax Relief and Critical Needs Fund is established in
8 the State treasury. Interest and other investment income earned by this Fund accrues to
9 the General Fund. General Fund tax and nontax revenue collected in a fiscal year in
10 excess of the General Fund expenditure limit for that fiscal year shall be credited to this
11 Fund in accordance with G.S. 143-2.3. Revenue in this Fund may be used only for one-
12 time tax relief or critical needs.

13 **"§ 143-2.3. Use of General Fund credit balance.**

14 (a) Allocations. – The General Fund credit balance at the end of each fiscal year
15 shall be applied to the following Funds, Accounts, and purposes in the order listed:

16 (1) The Repairs and Renovations Account, in accordance with subsection
17 (b) of this section.

18 (2) The Rainy Day Fund, in accordance with subsection (c) of this section.

19 (3) The Tax Relief and Critical Needs Fund, in accordance with subsection
20 (d) of this section.

21 (4) Capital and other nonrecurring expenditures, in accordance with
22 subsection (e) of this section.

23 (b) Repairs and Renovations Account. – The Repairs and Renovations Reserve
24 Account is established as a restricted reserve in the General Fund. Interest and other
25 investment income earned by this Account accrues to the General Fund. The State
26 Controller shall reserve to the Repairs and Renovations Reserve Account at the end of
27 each fiscal year the greater of the following:

28 (1) One-fourth of any credit balance remaining in the General Fund at the
29 end of that fiscal year.

30 (2) Three percent (3%) of the replacement value of all State buildings
31 supported from the General Fund at the end of that fiscal year.

32 (c) Rainy Day Fund. – The Rainy Day Fund is established in the State treasury.
33 Interest and other investment income earned by this Fund accrues to the General Fund.
34 After making the allocation to the Repairs and Renovations Reserve Account under
35 subsection (b) of this section, the State Controller shall reserve to the Rainy Day Fund at
36 the end of each fiscal year the lesser of the following:

37 (1) One-fourth of the remaining credit balance in the General Fund at the
38 end of that fiscal year.

39 (2) The amount needed to increase the amount of revenue in the Fund to an
40 amount that equals eight percent (8%) of the total General Fund
41 appropriation for the prior fiscal year.

42 (d) Tax Relief and Critical Needs Fund. – The amount of General Fund tax and
43 nontax revenue collected in a fiscal year that exceeds the expenditure limit for that fiscal

1 year, less the amounts allocated under subsections (b) and (c) of this section at the end of
2 the fiscal year, shall be credited to the Tax Relief and Critical Needs Fund. If more is
3 allocated under subsections (b) and (c) of this section at the end of a fiscal year than was
4 collected in excess of the expenditure limit, no part of the remaining credit balance is
5 required to be credited to the Tax Relief and Critical Needs Fund for that fiscal year.

6 (e) Remaining Credit Balance. – The General Assembly may appropriate that part
7 of the anticipated General Fund credit balance that is not allocated under subsections (b)
8 through (d) of this section only for capital improvements, one-time tax relief, or other
9 nonrecurring expenditures.

10 (f) Determination. – The State Controller shall determine the General Fund credit
11 balance.

12 **"§ 143-2.4. Uses of Rainy Day Fund.**

13 (a) Deficit. – If the Director of the Budget determines, pursuant to Article III,
14 Section 5(3) of the North Carolina Constitution, that receipts during a fiscal year when
15 added to the surplus remaining in the State treasury at the beginning of the fiscal year will
16 not be sufficient to meet budgeted expenditures, the Director may transfer funds from the
17 Rainy Day Fund to cover the expenditures. If the Director of the Budget decides not to
18 transfer funds from the Rainy Day Fund under this section, the Director shall proceed as
19 provided in G.S. 143-25 or Article III, Section 5(3) of the Constitution of North Carolina
20 to administer the budget so as to prevent any overdraft or deficit.

21 (b) By Two-Thirds Vote. – The General Assembly may appropriate revenue in the
22 Rainy Day Fund only by the affirmative vote of two-thirds of the members of each house.

23 Sec. 3. G.S. 143-15.2, 143-15.3, 143-15.3A, and 143-15.4 are repealed. The
24 funds in the Savings Reserve Account are transferred to the Rainy Day Fund established
25 by G.S. 143-2.3, as enacted by Section 2 of this act.

26 Sec. 4. G.S. 143-10.2 reads as rewritten:

27 **"§ 143-10.2. Limit on number of State employees.**

28 The total number of permanent State-funded employees, including permanent
29 employees in the Department of Transportation but excluding employees in the State's
30 public school system funded by way of State aid to local public school units, shall not be
31 increased by the end of any State fiscal year by a greater percentage than the percentage
32 rate of the residential population growth for the State of North Carolina. The percentage
33 rates shall be computed by the Office of State Budget and Management. The population
34 growth shall be computed by averaging the rate of residential population growth in each
35 of the preceding 10 fiscal years as stated in the annual estimates of residential population
36 in North Carolina made by the United States Census Bureau. The growth rate of the
37 number of employees shall be computed by averaging the rate of growth of State
38 employees in each of the preceding 10 fiscal years as of July 1 of each fiscal year as
39 stated in the State Budget."

40 Sec. 5. G.S. 143-15.1 reads as rewritten:

41 **"§ 143-15.1. Current Operations Appropriations Act; General Fund Financial**
42 **Model.**

1 (a) Act. – The General Assembly shall enact the Current Operations
2 Appropriations Act by June 15 of odd-numbered years and by June 30 of even-numbered
3 years in which a Current Operations Appropriations Act is enacted. The Current
4 Operations Appropriations Act shall state the amount of General Fund appropriations
5 availability upon which the General Fund budget is based. The statement of availability
6 shall list separately the beginning General Fund credit balance, General Fund revenues,
7 and any other components of the availability amount.

8 ~~The General Fund operating budget appropriations, including appropriations for local~~
9 ~~tax reimbursements and local tax sharing, for the second year in a Current Operations~~
10 ~~Appropriations Act that contains a biennial budget shall not be more than two percent~~
11 ~~(2%) greater than the General Fund operating budget appropriations for the first year of~~
12 ~~the biennial budget.~~

13 (b) Model. – The General Assembly shall review the results of the General Fund
14 Financial model, a computer-based financial model used to project long-term expenditure
15 and revenue trends under various simulations, in its budget deliberations. The model shall
16 be maintained and, from time to time, updated by the Fiscal Research Division of the
17 General Assembly."

18 Sec. 6. [State General Obligation Bonds] G.S. 120-36.7 is amended by adding
19 a new subsection to read:

20 "(e) Proposed Bond Authorizations. – Every bill introduced in the General
21 Assembly proposing the issuance of State general obligation bonds shall have attached to
22 it at the time of its consideration by the General Assembly a fiscal note prepared by the
23 Fiscal Research Division. The fiscal note shall estimate the debt service of the proposed
24 bonds over the life of the bonds."

25 Sec. 7. [Local Government General Obligation Bonds] G.S. 159-50 reads as
26 rewritten:

27 "**§ 159-50. Notice of intent to make application for issuance of voted bonds;**
28 **objection by citizens and taxpayers.**

29 (a) When a unit of local government proposes to issue bonds that must be
30 approved by a vote of the people, it shall first publish a notice of its intent to make
31 application to the Commission for approval of the issue. The notice shall be published
32 once not less than 10 days before the application is filed. The notice shall state ~~(i) that all~~
33 of the following:

34 (1) That the board intends to file an application with the Commission for
35 approval of a bond issue, (ii) in issue.

36 (2) In brief and general terms the purpose of the proposed issue, (iii) the
37 issue.

38 (3) The maximum amount of bonds to be issued, and (iv) that issued.

39 (4) The projected average annual debt service on the maximum amount of
40 bonds to be issued, an identification of the revenue that will be used to
41 pay the debt service on the bonds, and the amount of any property tax
42 increase required to pay the debt service.

1 (5) That any citizen or taxpayer of the issuing unit may, within seven days
2 after the date of the publication, file with the governing board and the
3 Commission a statement of any objections ~~he~~ that person may have to
4 the issue. ~~The~~

5 The Commission may prescribe the form of the notice.

6 (b) Any citizen or taxpayer of the issuing unit who objects to the proposed bond
7 issue in whole or in part may, within seven days from the date of publication of the
8 notice, file a written statement of ~~his~~ objections with the board and the Commission. The
9 statement shall set forth each objection to the proposed bond issue and shall contain the
10 name and address of the person filing it. The Commission shall consider the statement of
11 objections along with the application and shall notify the objector and the board of its
12 disposition of each objection.

13 (c) Failure to comply with this section shall not affect the validity of any bonds
14 otherwise issued in accordance with the law. This section shall not apply to bonds that
15 need not be submitted to a vote of the people."

16 Sec. 8. [Certificates of Participation] G.S. 160A-20(g) reads as rewritten:

17 "(g) Before entering into a contract under this section that includes the issuance of
18 certificates of participation, a unit of local government shall publish notice of its intent to
19 enter the contract and hold a public hearing on the contract. The notice shall state the
20 time and date of the public hearing, identify the revenue that will be used to make the
21 projected annual payments under the contract, and state the amount of any property tax
22 increase required to make these payments. Before entering into a contract under this
23 section involving that includes the acquisition of real property, property but does not
24 include the issuance of certificates of participation, a unit of local government shall hold
25 a public hearing on the contract. A notice of ~~the~~ a public hearing required by this
26 subsection shall be published once at least 10 days before the date fixed for the hearing."

27 Sec. 9. The catch line to G.S. 105-286 reads as rewritten:

28 "**§ 105-286. Time for general reappraisal of real ~~property.~~ property; notice of**
29 **revenue-neutral property tax rate.**"

30 Sec. 10. G.S. 105-286 is amended by adding a new subsection to read:

31 "(d) Revenue-Neutral Rate. – When a county completes a reappraisal of real
32 property or a horizontal adjustment of real property, it must publish in a newspaper
33 having general circulation in the county a notice of the revenue-neutral property tax rate
34 for the reappraisal or readjustment. The 'revenue-neutral property tax rate' is the rate that
35 will generate the same amount of revenue that was generated by the property tax in the
36 year before the reappraisal or readjustment became effective."

37 Sec. 11. The catch line to G.S. 105-241.1 reads as rewritten:

38 "**§ 105-241.1. ~~Additional taxes; Taxpayer rights and assessment procedure.~~ procedure**
39 **when additional taxes assessed.**"

40 Sec. 12. G.S. 105-267 reads as rewritten:

41 "**§ 105-267. Taxes to be paid; suits for recovery of taxes.**

42 No court of this State shall entertain a suit of any kind brought for the purpose of
43 preventing the collection of any tax imposed in this Subchapter. Whenever a ~~person~~

1 taxpayer shall have a valid defense to the enforcement of the collection of a tax assessed
2 or charged against ~~him or his~~ the taxpayer or the taxpayer's property, ~~such person~~ the
3 taxpayer shall pay such the tax to the proper officer, and ~~such the~~ payment shall be
4 without prejudice to any defense of rights ~~he the taxpayer~~ may have in the premises. At
5 any time within ~~30~~ 180 days after payment, the taxpayer may demand a refund of the tax
6 paid in writing from the Secretary of Revenue and if the ~~same shall not be~~ tax is not
7 refunded within 90 days thereafter, the taxpayer may sue the Secretary of Revenue in the
8 courts of the State for the amount ~~so~~ demanded. ~~Such~~ The suit may be brought in the
9 Superior Court of Wake County, or in the county in which the taxpayer resides at any
10 time within three years after the expiration of the 90-day period allowed for making the
11 refund. If upon the trial it shall be determined that ~~such a~~ the tax or any part thereof of the
12 tax was levied or assessed for an illegal or unauthorized purpose, or that the tax was for
13 any reason invalid or excessive, judgment shall be rendered ~~therefor~~ for the taxpayer with
14 interest, and the same shall be collected as in other cases ~~and the tax shall be refunded, with~~
15 interest, to the taxpayer. The amount of taxes for which judgment shall be rendered in
16 ~~such the~~ action shall be refunded by the State; provided, nothing in this section shall be
17 construed to conflict with or supersede the provisions of G.S. 105-241.2."

18 Sec. 13. G.S. 20-66 is amended by adding a new subsection to read:

19 "(j) Information on Use of Revenue. – The Division must include in each notice of
20 registration renewal a brief explanation of the source and use of revenue in the Highway
21 Fund and the Highway Trust Fund. The explanation must be presented in the form of a
22 chart or another means that is easily understandable."

23 Sec. 14. G.S. 105-248 reads as rewritten:

24 "**§ 105-248. Purpose of and information on State taxes.**

25 The taxes levied in this Subchapter are for the expenses of the State government, the
26 appropriations to its educational, charitable, and penal institutions, the interest on the debt
27 of the State, the public schools, and other specific appropriations made by law, and shall
28 be collected and paid into the General Fund. The Secretary must inform the public about
29 the taxes imposed by this Subchapter by including in the instructions for filing an
30 individual income tax return a brief explanation of the source and use of revenue in the
31 General Fund. The explanation must be presented in the form of a chart or another
32 means that is easily understandable."

33 Sec. 15. Article 20 of Chapter 105 of the General Statutes is amended by
34 adding a new section to read:

35 "**§ 105-321.1. Information on use of property tax revenue.**

36 The assessor must inform the public about the taxes imposed by this Subchapter by
37 including in the annual notice of taxes due a brief explanation of the use of property tax
38 revenue and the percentage of total unit revenue that comes from property taxes. The
39 explanation must be presented in the form of a chart or another means that is easily
40 understandable. The explanation may be presented in a separate document that
41 accompanies the notice of taxes due."

42 Sec. 16. The General Assembly recognizes the burden an unfunded State
43 mandate places on a unit of local government and also recognizes the complexity of the

1 issue of unfunded mandates. The General Assembly therefore intends to consider
2 legislation on this issue after a careful and comprehensive study of the issue has been
3 made.

4 Sec. 17. (a) The Legislative Research Commission is authorized to study the
5 issue of State mandates to local governments to determine what items are unfunded
6 mandates and what items are not unfunded mandates. The study shall review past
7 legislation that has required local governments to assume financial responsibility for
8 items and the appropriate role of State and local governments in providing services. The
9 study shall consider the following:

- 10 (1) Due process mandates that require notice of proposed local government
11 actions directed by the State.
- 12 (2) Entitlement mandates that provide that certain classes of citizens are
13 entitled to receive a specific benefit.
- 14 (3) Personnel mandates that relate to fringe benefits, retirement benefits,
15 and other terms or conditions of local government employment.
- 16 (4) Record-keeping mandates that relate to accounting standards, financial
17 statements, or other local governmental operations.
- 18 (5) Regulatory mandates that require that local governments comply with
19 State environmental, health, and other governmental regulations.
- 20 (6) Service level mandates that require that local services meet certain
21 minimum standards.
- 22 (7) Tax base mandates that grant exemptions from the local tax base.

23 (b) In reviewing existing State mandates to local governments, the study shall
24 identify those that have required local government funding to implement and determine
25 what local revenue sources and what amounts have been used to fund these mandates.
26 The Commission shall then determine which mandates should be financed by the State
27 and which mandates may properly be funded by the local governments. In reviewing
28 State mandates to local government, the Commission's inquiry shall relate to the
29 following:

- 30 (1) Whether the mandate prescribes an activity that the local government
31 ought to be doing whether mandated to do so or not.
- 32 (2) If the activity is a reasonable one for local government, whether the
33 prescribed level of the activity is excessive and whether differing
34 economies of scale affect the reasonableness of the activity.
- 35 (3) Whether the State should pay for some or all of the cost of the activity.
- 36 (4) Whether the benefits of a State mandate accrue only to local citizens or
37 to residents of a broader area.
- 38 (5) Whether the benefits of a State mandate exceed the costs of complying
39 with it or impose an unreasonable burden on some local governments.

40 (c) The Commission may call upon the Governor, the Council of State, the
41 Institute of Government, the North Carolina Association of County Commissioners, and
42 the North Carolina League of Municipalities to cooperate with it in the study of State
43 mandates.

1 (d) The Commission may make an interim report of its recommendations to the
2 1996 Regular Session of the 1995 General Assembly and shall make a final report of its
3 recommendations to the 1997 General Assembly.

4 Sec. 18. G.S. 143-2.3, as enacted by Section 2 of this act, is effective for fiscal
5 years beginning on or after July 1, 1995. Section 12 of this act becomes effective
6 October 1, 1995, and applies to taxes paid on or after that date. The remaining sections
7 of this act and the remaining provisions of Section 2 of this act are effective upon
8 ratification.