

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
Fourth Edition Engrossed 7/19/95

Short Title: Taxpayer Protection Act.

(Public)

Sponsors:

Referred to:

January 26, 1995

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

The General Assembly of North Carolina enacts:

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

"§ 105-1.1. Declaration of taxpayer rights.

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

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

- 1 (2) To be protected from uncontrolled growth in State government by
2 limiting increases in State spending and in the number of State
3 employees, in accordance with G.S. 143-2.1 and G.S. 143-10.2.
- 4 (3) To have the fiscal affairs of the State managed in the same prudent,
5 responsible way in which the people of the State manage their fiscal
6 affairs, in accordance with G.S. 143-2.1 through G.S. 143-2.4.
- 7 (4) To have a constitutional limit on the State income tax rate, in
8 accordance with Article V, Section 2 of the North Carolina Constitution.
- 9 (5) To have the power to determine by vote whether the State or a unit of
10 local government can issue bonds payable by tax revenue and, in order
11 to ensure a good credit rating when bonds are issued, to have repayment
12 of the bonds be the first funding priority of the State or local unit, in
13 accordance with Article V, Sections 3, 4, and 6 of the North Carolina
14 Constitution.
- 15 (6) To be told the truth in taxation, in accordance with G.S. 120-36.7, 159-
16 50, 160A-20, and 105-286.
- 17 (7) To know the costs of proposed legislation and proposed administrative
18 rules, in accordance with G.S. 120-36.7, 143-3.5, 150B-21.4, 96-4, 97-
19 80, 105-262, and 143-138.
- 20 (8) To be treated fairly and promptly in any questions regarding tax
21 liability, in accordance with G.S. 105-241.1, 105-241.2, 105-258.1, and
22 105-267.
- 23 (9) To have the people's investment in State buildings and other State
24 facilities protected through adequate funding for maintenance and
25 repairs, in accordance with G.S. 143-2.3.
- 26 (10) To be informed on how revenue is used, pursuant to G.S. 20-66(j), 105-
27 248, 105-321.1, 143-10.3, 143-10.4, and 143-10.5."

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

30 **"§ 143-2.1. General Fund expenditure limit.**

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

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

40 (b) Limit. – General Fund appropriations for a fiscal year shall not exceed the
41 General Fund expenditure limit for that fiscal year. The General Fund expenditure limit
42 for a fiscal year is the previous fiscal year's General Fund expenditure limit, decreased or
43 increased in accordance with subsections (c) and (d) of this section, and then increased by

1 a percentage rate that equals the fiscal growth factor. The General Fund expenditure
2 limit for the 1995-96 fiscal year is the total certified General Fund budget for the fiscal
3 year beginning July 1, 1995.

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

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

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

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

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

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

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

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

26 If the General Fund expenditure limit is increased under subdivision (2), (3), or (6) of
27 this subsection, the General Fund expenditure limit shall be decreased for the subsequent
28 fiscal year by the amount of the increase. If the General Assembly makes appropriations
29 for a fiscal year in excess of the expenditure limit for that year, in accordance with
30 subsection (f) of this section, the expenditure limit for that year is increased by the
31 amount of the appropriations that exceeds the limit. The General Fund expenditure limit
32 shall be decreased for the subsequent fiscal year by the amount of the increase.

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

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

43 **"§ 143-2.2. Compliance with General Fund expenditure limit; use of excess revenue.**

1 (a) Governor. – In preparing the General Fund budget for a fiscal year, the
2 Governor shall not propose expenditures from the General Fund for the ensuing fiscal
3 period in excess of the projected General Fund expenditure limit for that fiscal year
4 established in a fiscal report under G.S. 143-2.1.

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

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

15 **"§ 143-2.3. Use of General Fund credit balance.**

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

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

20 (2) The Rainy Day Account, in accordance with subsection (c) of this
21 section.

22 (3) The Tax Relief and Critical Needs Account, in accordance with
23 subsection (d) of this section.

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

26 (b) Repairs and Renovations Account. – The Repairs and Renovations Account is
27 established as a restricted reserve in the General Fund. Interest and other investment
28 income earned by this Account accrues to the General Fund. The State Controller shall
29 reserve to the Repairs and Renovations Account at the end of each fiscal year either one-
30 fourth of any credit balance remaining in the General Fund at the end of that fiscal year
31 or three percent (3%) of the replacement value of all State buildings supported from the
32 General Fund at the end of that fiscal year, whichever is greater.

33 The funds in the Repairs and Renovations Reserve Account shall be used only for the
34 repair and renovation of State facilities and related infrastructure that are supported from
35 the General Fund. Funds from the Repairs and Renovations Reserve Account shall be
36 used only for the following types of projects:

37 (1) Roof repairs and replacements.

38 (2) Structural repairs.

39 (3) Repairs and renovations to meet federal and State standards.

40 (4) Repairs to electrical, plumbing, and heating, ventilating, and air-
41 conditioning systems.

42 (5) Improvements to meet the requirements of the Americans with
43 Disabilities Act, 42 U.S.C. § 12101 et seq., as amended.

- 1 (6) Improvements to meet fire safety needs.
- 2 (7) Improvements to existing facilities for energy efficiency.
- 3 (8) Improvements to remove asbestos, lead paint, and other contaminants,
4 including the removal and replacement of underground storage tanks.
- 5 (9) Improvements and renovations to improve use of existing space.
- 6 (10) Historical restoration.
- 7 (11) Improvements to roads, walks, drives, utilities infrastructure.
- 8 (12) Drainage and landscape improvements.

9 Funds from the Repairs and Renovations Reserve Account shall not be used for new
10 construction or the expansion of the footprint of an existing facility unless required in
11 order to comply with federal or State codes or standards. The Director of the Budget
12 shall not use funds in the Repairs and Renovations Reserve Account unless the use has
13 been approved by an act of the General Assembly.

14 (c) Rainy Day Account. – The Rainy Day Account is established as a restricted
15 reserve in the State treasury. Interest and other investment income earned by this
16 Account accrues to the General Fund. After making the allocation to the Repairs and
17 Renovations Account under subsection (b) of this section, the State Controller shall
18 reserve to the Rainy Day Account at the end of each fiscal year the lesser of the
19 following:

- 20 (1) One-fourth of the remaining credit balance in the General Fund at the
21 end of that fiscal year.
- 22 (2) The amount needed to increase the amount of revenue in the Account to
23 an amount that equals eight percent (8%) of the total General Fund
24 appropriation for the prior fiscal year.

25 (d) Tax Relief and Critical Needs Account. – The amount of General Fund tax and
26 nontax revenue collected in a fiscal year that exceeds the expenditure limit for that fiscal
27 year, less the amounts allocated under subsections (b) and (c) of this section at the end of
28 the fiscal year, shall be credited to the Tax Relief and Critical Needs Account. If more is
29 allocated under subsections (b) and (c) of this section at the end of a fiscal year than was
30 collected in excess of the expenditure limit, no part of the remaining credit balance is
31 required to be credited to the Tax Relief and Critical Needs Account for that fiscal year.

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

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

38 **"§ 143-2.4. Uses of Rainy Day Account.**

39 The Director of the Budget shall not use revenue in the Rainy Day Fund unless the
40 use has been approved in an appropriation by the General Assembly. The General
41 Assembly shall appropriate revenue in the Rainy Day Fund only by the affirmative vote
42 of two-thirds of the members of each house."

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

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

5 **"§ 143-10.2. Limit on number of State employees.**

6 The total number of permanent State-funded employees, including permanent
7 employees in the Department of Transportation but excluding employees in the State's
8 public school system funded by way of State aid to local public school units, shall not be
9 increased by the end of any State fiscal year by a greater percentage than the percentage
10 rate of the residential population growth for the State of North Carolina. The percentage
11 rates shall be computed by the Office of State Budget and Management. The population
12 growth shall be computed by averaging the rate of residential population growth in each
13 of the preceding 10 fiscal years as stated in the annual estimates of residential population
14 in North Carolina made by the United States Census Bureau. The growth rate of the
15 number of employees shall be computed by averaging the rate of growth of State
16 employees in each of the preceding 10 fiscal years as of July 1 of each fiscal year as
17 stated in the State Budget."

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

19 **"§ 143-15.1. Current Operations Appropriations Act; General Fund Financial**
20 **Model.**

21 (a) Act. – The General Assembly shall enact the Current Operations
22 Appropriations Act by June 15 of odd-numbered years and by June 30 of even-numbered
23 years in which a Current Operations Appropriations Act is enacted. The Current
24 Operations Appropriations Act shall state the amount of General Fund appropriations
25 availability upon which the General Fund budget is based. The statement of availability
26 shall list separately the beginning General Fund credit balance, General Fund revenues,
27 and any other components of the availability amount.

28 ~~The General Fund operating budget appropriations, including appropriations for local~~
29 ~~tax reimbursements and local tax sharing, for the second year in a Current Operations~~
30 ~~Appropriations Act that contains a biennial budget shall not be more than two percent~~
31 ~~(2%) greater than the General Fund operating budget appropriations for the first year of~~
32 ~~the biennial budget.~~

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

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

40 "(e) Proposed Bond Authorizations. – Every bill introduced in the General
41 Assembly proposing the issuance of any note or bond shall have attached to it at the time
42 of its consideration by the General Assembly a fiscal note prepared by the Fiscal

1 Research Division. The fiscal note shall estimate the debt service of the proposed bonds
2 over the life of the bonds."

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

5 "**§ 159-50. Notice of intent to make application for issuance of voted bonds;**
6 **objection by citizens and taxpayers.**

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

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

14 (2) In brief and general terms the purpose of the proposed issue, ~~(iii) the~~
15 issue.

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

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

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

25 The Commission may prescribe the form of the notice.

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

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

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

37 "(g) Before entering into a contract under this section that includes the issuance of
38 certificates of participation, a unit of local government shall publish notice of its intent to
39 enter the contract and hold a public hearing on the contract. The notice shall state the
40 time and date of the public hearing, identify the revenue that will be used to make the
41 projected annual payments under the contract, and state the amount of any property tax
42 increase required to make these payments. Before entering into a contract under this
43 section ~~involving that includes the acquisition of real property, property but does not~~

1 include the issuance of certificates of participation, a unit of local government shall hold
2 a public hearing on the contract. A notice of ~~the~~ a public hearing required by this
3 subsection shall be published once at least 10 days before the date fixed for the hearing."

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

5 **"§ 105-286. Time for general reappraisal of real ~~property.~~ property; notice of**
6 **revenue-neutral property tax rate."**

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

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

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

15 **"§ 105-241.1. ~~Additional taxes; Taxpayer rights and assessment procedure.~~ procedure**
16 **when additional taxes assessed."**

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

18 **"§ 105-267. Taxes to be paid; suits for recovery of taxes.**

19 No court of this State shall entertain a suit of any kind brought for the purpose of
20 preventing the collection of any tax imposed in this Subchapter. Whenever a ~~person~~
21 taxpayer shall have a valid defense to the enforcement of the collection of a tax assessed
22 or charged against ~~him or his~~ the taxpayer or the taxpayer's property, ~~such person~~ the
23 taxpayer shall pay ~~such~~ the tax to the proper officer, and ~~such~~ the payment shall be
24 without prejudice to any defense of rights ~~he~~ the taxpayer may have in the premises. At
25 any time within ~~30~~ 180 days after payment, the taxpayer may demand a refund of the tax
26 paid in writing from the Secretary of Revenue and if the ~~same shall not be~~ tax is not
27 refunded within 90 days thereafter, the taxpayer may sue the Secretary of Revenue in the
28 courts of the State for the amount ~~so~~ demanded. ~~Such~~ The suit may be brought in the
29 Superior Court of Wake County, or in the county in which the taxpayer resides at any
30 time within three years after the expiration of the 90-day period allowed for making the
31 refund. If upon the trial it shall be determined that ~~such a~~ the tax or any part thereof of the
32 tax was levied or assessed for an illegal or unauthorized purpose, or that the tax was for
33 any reason invalid or excessive, judgment shall be rendered ~~therefor~~, for the taxpayer with
34 interest, and the same shall be collected as in other cases. ~~and the tax shall be refunded, with~~
35 interest, to the taxpayer. The amount of taxes for which judgment shall be rendered in
36 ~~such~~ the action shall be refunded by the State; provided, nothing in this section shall be
37 construed to conflict with or supersede the provisions of G.S. 105-241.2."

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

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

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

1 **"§ 105-248. Purpose of and information on State taxes.**

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

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

12 **"§ 105-321.1. Information on use of property tax revenue.**

13 A taxing unit, other than a special district, must inform the public about the taxes
14 imposed under this Subchapter by the unit by including in the annual notice of taxes due
15 a brief explanation of the use of property tax revenue and the percentage of total unit
16 revenue that comes from property taxes. The explanation must be presented in the form
17 of a chart or another means that is easily understandable. The explanation may be
18 presented in a separate document that accompanies the notice of taxes due. A county that
19 collects taxes on behalf of a unit that is required to provide information under this section
20 must include the information for that unit in the annual notice of taxes sent by the county.
21 Information for a unit whose taxes are collected by a county must be prepared by that unit
22 and given to the collecting county for inclusion in the notice."

23 Sec. 16. The General Assembly recognizes the burden an unfunded State
24 mandate places on a unit of local government and also recognizes the complexity of the
25 issue of unfunded mandates. The General Assembly therefore intends to consider
26 legislation on this issue after a careful and comprehensive study of the issue has been
27 made.

28 Sec. 17. (a) The Legislative Research Commission is authorized to study the
29 issue of State mandates to local governments to determine what items are unfunded
30 mandates and what items are not unfunded mandates. The study shall review past
31 legislation that has required local governments to assume financial responsibility for
32 items and the appropriate role of State and local governments in providing services. The
33 study shall consider the following:

- 34 (1) Due process mandates that require notice of proposed local government
35 actions directed by the State.
- 36 (2) Entitlement mandates that provide that certain classes of citizens are
37 entitled to receive a specific benefit.
- 38 (3) Personnel mandates that relate to fringe benefits, retirement benefits,
39 and other terms or conditions of local government employment.
- 40 (4) Record-keeping mandates that relate to accounting standards, financial
41 statements, or other local governmental operations.
- 42 (5) Regulatory mandates that require that local governments comply with
43 State environmental, health, and other governmental regulations.

1 (6) Service level mandates that require that local services meet certain
2 minimum standards.

3 (7) Tax base mandates that grant exemptions from the local tax base.

4 (b) In reviewing existing State mandates to local governments, the study shall
5 identify those that have required local government funding to implement and determine
6 what local revenue sources and what amounts have been used to fund these mandates.
7 The Commission shall then determine which mandates should be financed by the State
8 and which mandates may properly be funded by the local governments. In reviewing
9 State mandates to local government, the Commission's inquiry shall relate to the
10 following:

11 (1) Whether the mandate prescribes an activity that the local government
12 ought to be doing whether mandated to do so or not.

13 (2) If the activity is a reasonable one for local government, whether the
14 prescribed level of the activity is excessive and whether differing
15 economies of scale affect the reasonableness of the activity.

16 (3) Whether the State should pay for some or all of the cost of the activity.

17 (4) Whether the benefits of a State mandate accrue only to local citizens or
18 to residents of a broader area.

19 (5) Whether the benefits of a State mandate exceed the costs of complying
20 with it or impose an unreasonable burden on some local governments.

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

25 (d) The Commission may make an interim report of its recommendations to the
26 1996 Regular Session of the 1995 General Assembly and shall make a final report of its
27 recommendations to the 1997 General Assembly.

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