

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 658*

Short Title: Orange Impact Tax.

(Local)

Sponsors: Senators Kinnaird and Lee.

Referred to: Finance.

March 22, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ORANGE COUNTY TO LEVY AN IMPACT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Definitions. – The following definitions apply to this act:

(1) Commercial building enclosed floor space. – All enclosed floor space used for any purpose except:

- a. Dwelling units and accessory structures to dwelling units.
- b. Recreational facilities constructed as part of a residential development and used primarily by residents of the development.
- c. Buildings owned by the United States, the State of North Carolina, any county, or any municipal corporation.
- d. Buildings owned and operated by nonprofit entities for noncommercial and nonresidential purposes.
- e. Schools and day care centers.

(2) Dwelling unit. – An enclosure containing sleeping, kitchen, and bathroom facilities designed for and used or held ready for use as a permanent residence by one family.

(3) Land development. –

a. Land development includes any of the following:

1. Construction of any dwelling unit, other than one excluded under sub-subdivision b. of this subdivision, for which a building permit was issued or should have been issued after the effective date of an ordinance adopted under this act.

2. Construction of any commercial building enclosed floor space for which a building permit was issued or should

- 1 have been issued after the effective date of an ordinance
2 adopted under this act.
- 3 3. Conversion of a building that adds one or more new
4 dwelling units or that creates new commercial building
5 enclosed floor space.
- 6 4. The initial location of a manufactured home or other
7 dwelling or commercial structure within Orange County.
- 8 b. For purposes of determining the impact of land development for
9 this act, land development does not include:
- 10 1. Construction of an addition to a dwelling unit.
- 11 2. The relocation within Orange County of any structure
12 located within the county on the effective date of an
13 ordinance adopted pursuant to this act or any structure
14 with respect to which an impact tax pursuant to this act
15 has been paid.
- 16 3. Within the county, the reconstruction or replacement of
17 one dwelling unit by another or the replacement or
18 reconstruction of commercial building enclosed floor
19 space that was in existence on the effective date of an
20 ordinance adopted pursuant to this act or of any such
21 floor space with respect to which an impact tax adopted
22 pursuant to this act has been paid.
- 23 (4) Net proceeds. – The gross proceeds of the tax less the cost to the
24 county of collecting and administering the tax.
- 25 (5) Person. – An individual, a partnership, a corporation, or another legal
26 entity.
- 27 (6) Person responsible for the impact of land development. – The owner of
28 any dwelling unit or commercial building enclosed floor space on the
29 date an occupancy permit is issued for the dwelling unit or commercial
30 floor space or, if no occupancy permit is issued, the date the dwelling
31 unit or commercial floor space is occupied.

32 **SECTION 2.** Authorization. – Except as provided in Section 6 of this act,
33 Orange County may adopt an ordinance levying a tax on the impact of land
34 development within the county and provide for the administration, enforcement, and
35 collection of the tax. Orange County may not adopt an ordinance pursuant to this act if
36 any ordinance pertaining to a system of impact fees to provide for capital improvements
37 to public schools within Orange County, adopted pursuant to Sections 17 through 18.1
38 of Chapter 460 of the 1987 Session Laws and Chapter 324 of the 1991 Session Laws, is
39 in effect.

40 **SECTION 3.** Use of tax proceeds. – The purpose of the tax authorized by
41 this act is to generate funds to partially offset the cost of constructing new school capital
42 facilities or replacing, expanding, or improving existing school capital facilities
43 necessitated in part by new growth within Orange County. Accordingly, the net
44 proceeds generated by the tax authorized by this act shall be deposited by Orange

1 County in its capital reserve improvements fund or funds established under Part 2 of
2 Article 3 of Chapter 159 of the General Statutes and may be expended, to the extent
3 otherwise authorized by law, only for capital improvements projects related to public
4 schools.

5 **SECTION 4.** Liability; administration. – An ordinance adopted pursuant to
6 this act shall provide that:

- 7 (1) A person responsible for the impact of land development shall pay an
8 impact tax for each square foot of dwelling space and commercial
9 building enclosed floor space for which an occupancy permit is issued
10 or, if no occupancy permit is issued, for each square foot of dwelling
11 space in an occupied dwelling and for each square foot of occupied
12 enclosed floor space in a commercial building.
- 13 (2) The tax shall be due on or before the date an occupancy permit is
14 initially issued for the dwelling unit or commercial building enclosed
15 floor space in question or, if no occupancy permit is issued, the date
16 the dwelling unit or commercial floor space is initially occupied.
17 However, no tax due shall be considered delinquent until 60 days after
18 the tax becomes due. Delinquent taxes shall bear interest at the legal
19 rate.
- 20 (3) Taxes authorized by this act may be collected pursuant to G.S.
21 153A-147 or G.S. 160A-207. In addition, taxes authorized by this act
22 may be recovered in a civil action in the nature of debt including an
23 award of reasonable attorneys' fees as part of costs.

24 **SECTION 5.** Rates. – Orange County shall establish annually at the time it
25 adopts its annual budget the tax rate to be levied per square foot of dwelling space and
26 per square foot of commercial building enclosed floor space for the ensuing fiscal year.
27 Different tax rates may be established for different types of dwelling units and different
28 types of commercial building enclosed floor space.

29 **SECTION 6.** Effect on other local acts. – Orange County may repeal all or
30 part of an ordinance pertaining to a system of impact fees to provide for capital
31 improvements to public schools within Orange County, adopted pursuant to Sections 17
32 through 18.1 of Chapter 460 of the 1987 Session Laws and Chapter 324 of the 1991
33 Session Laws. With respect to an ordinance pertaining to a system of impact fees to
34 provide for capital improvements to public schools within Orange County, Orange
35 County may not adopt an ordinance pursuant to Sections 17 through 18.1 of Chapter
36 460 of the 1987 Session Laws and Chapter 324 of the 1991 Session Laws while an
37 ordinance adopted pursuant to this act is in effect.

38 **SECTION 7.** Disclosure. – Whenever the sale of real property located in
39 Orange County involves new construction, the seller shall prepare and sign, and the
40 buyer shall receive and sign, a disclosure statement. The disclosure statement shall
41 either be included in a contract for sale or contained in a separate document executed
42 prior to the execution of a sales contract. This disclosure statement shall fully and
43 completely disclose that the owner of the property at the time an occupancy permit is
44 issued for the new construction or, if no occupancy permit is issued, the date the new

1 construction is occupied, may be subject to a tax levied by the county on the impact of
2 land development. If a seller fails to make this disclosure and the buyer suffers injury
3 as a result of the seller's failure to disclose, the seller is liable to the buyer to the extent
4 of the buyer's injury.

5 **SECTION 8.** Refunds. – If any provision of this act or an ordinance adopted
6 under this act is held invalid by a final decision of a court of competent jurisdiction,
7 then any impact taxes collected under this act shall be refunded with interest at the rate
8 established in G.S. 105-241.1(i).

9 **SECTION 9.** Limitation on actions. – Any action contesting the validity of
10 an ordinance adopted under this act must be commenced not later than nine months after
11 the effective date of the ordinance. Any action seeking to recover an impact tax must be
12 commenced not later than nine months after the impact tax is paid.

13 **SECTION 10.** This act applies only to Orange County.

14 **SECTION 11.** This act is effective when it becomes law.