

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SENATE BILL 575
RATIFIED BILL

AN ACT TO MAKE LEGISLATIVE CHANGES TO FACILITATE THE WORK OF THE
BOUNDARY COMMISSION IN CONFIRMING AND REESTABLISHING THE
ORIGINAL BOUNDARY EXISTING BETWEEN THE STATES OF NORTH
CAROLINA AND SOUTH CAROLINA.

The General Assembly of North Carolina enacts:

PART I. GENERAL PROVISIONS

SECTION 1.(a) Findings. – The General Assembly finds that:

- (1) North Carolina and South Carolina were created as separate British colonies.
- (2) Surveys to determine the boundary between North Carolina and South Carolina began in 1735 and concluded in 1815.
- (3) Resurveys of three sections of the boundary between North Carolina and South Carolina were performed in 1813, 1905, and 1928.
- (4) The boundary between North Carolina and South Carolina has not changed; however, over the course of time from the original survey of the boundary, some of the markers denoting the boundary from the original surveys have been lost or destroyed by the elements.
- (5) The boundary commission authorized pursuant to Chapter 141 of the General Statutes has worked with commissioners appointed by South Carolina to reestablish the boundary between North Carolina and South Carolina.

SECTION 1.(b) Intent. – It is the intent of the General Assembly to address the effects on persons or land with a situs recognized, as a result of a boundary certification, to be in this State and to avoid disputes with such persons or owners of such land. This act does not apply to persons whose property, rights, and businesses are not affected by boundary certification. For purposes of this act, "boundary certification" means the certification by the General Assembly of the boundary between North Carolina and South Carolina, as provided for in subsection (c) of this section.

SECTION 1.(c) Certification. – For purposes other than property tax, the General Assembly hereby certifies that, as of January 1, 2017, the boundary between North Carolina and South Carolina is the boundary that was established by the original survey and resurveys that were adopted through legislative and executive actions, and the reestablished boundary has been approved by the boundary commissions of North Carolina and South Carolina and proclaimed as the boundary by the Governor, pursuant to G.S. 141-5. For property tax purposes, the General Assembly hereby certifies that, as of January 1 of the year following the year this act becomes effective or the year an executive order has been issued by the Governor proclaiming the boundary between North Carolina and South Carolina, whichever is earlier, the boundary between North Carolina and South Carolina is the boundary that was established by the original survey and resurveys that were adopted through legislative and executive actions, and the reestablished boundary has been approved by the boundary commissions of North Carolina and South Carolina and proclaimed as the boundary by the Governor, pursuant to G.S. 141-5.

PART II. TAX LIABILITY

SECTION 2.(a) Taxes. – The following provisions apply to taxes affected by boundary certification:



- (1) Neither the State nor a subdivision of the State may assess a tax on a person for activities occurring prior to the date of certification where the basis of the assessment is the certification.
- (2) The State and its subdivisions may assess a tax for activities occurring on or after the date of certification subject to the following conditions:
 - a. For taxes imposed for a taxable period, the tax may not be imposed for a period beginning prior to the date of certification.
 - b. For sales and use taxes for an item that is provided and billed on a monthly or other periodic basis, the tax may not be assessed for periods beginning prior to the date of certification.
 - c. For a person subject to taxes levied under Article 2A of Chapter 105 of the General Statutes who, on the date of the certification, has on hand any tobacco products, the person must file a complete inventory of the tobacco products within 20 days after date of certification and must pay an additional tax to the Secretary of Revenue when filing the inventory. The amount of the tax due is the amount due based on the current tax rate less any tax paid on the inventory to another state.
 - d. For installments and carryforwards of tax benefits allowed by this State at the time of boundary certification for activities with a situs in South Carolina, a person may claim remaining installments and carryforwards against State tax liability.
 - e. For land that is classified under G.S. 105-277.3 at the time of boundary certification and that fails to meet the size requirements of G.S. 105-277.3 solely because of boundary certification, (i) no deferred taxes are due as a result of boundary certification, (ii) the deferred taxes remain a lien on the land located in this State, and (iii) the deferred taxes for the land in this State are otherwise payable in accordance with G.S. 105-277.3. The tax benefit provided in this sub-subdivision is forfeited if any portion of the land located in this State is sold.
 - f. For land receiving a property tax benefit other than classification under G.S. 105-277.3 at the time of boundary certification that fails to meet the requirements for the property tax benefit solely because of boundary certification, the land is not entitled to receive the property tax benefit after the time of boundary certification unless it meets the statutory requirements, but the lien on the land for the deferred taxes is extinguished as if it has been paid in full.
- (3) A person may not seek a refund for activities occurring prior to the date of certification where the basis of the refund is the certification.

SECTION 2.(b) An establishment to which permits may be issued pursuant to G.S. 18B-1006(n1), as enacted by this act, is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution, and the motor fuel sold by that establishment is taxable in accordance with this section. Notwithstanding G.S. 105-449.80, the motor fuel excise tax rate for an establishment to which permits may be issued pursuant to G.S. 18B-1006(n1), as enacted by this act, is sixteen cents (16¢) per gallon. The Revenue Laws Study Committee shall annually compare the motor fuel excise tax rate imposed by this section with the rate levied by the State of South Carolina on motor fuels and may recommend a change in the rate imposed by this section to an amount no greater than the rate then in effect for the State of South Carolina. An establishment designated as a special class of property by this section may obtain monthly refunds on the difference between the motor fuel excise tax imposed under G.S. 105-449.80 and the motor fuel excise tax imposed by this section. The Department shall calculate for each calendar year the difference between the motor fuel excise tax that would have been imposed under G.S. 105-449.80 on the motor fuel sold by an establishment classified by this section in the absence of this classification and the motor fuel excise tax that was imposed on the motor fuel sold by the establishment due to the classification. The difference in taxes, together with any interest, penalties, or costs that may accrue thereon, are a lien on the real property underlying the establishment as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the records of the Department as deferred taxes. The deferred taxes for the preceding three calendar years are due

and payable on the day this subsection becomes ineffective due to the occurrence of a disqualifying event; provided, however, the amount collected for deferred taxes pursuant to this subsection does not exceed the tax value of the property. A disqualifying event occurs when the title to the real property underlying the establishment is transferred to a new owner. A lien for deferred taxes is extinguished when the amount required by this subsection is paid.

SECTION 2.(c) For property tax purposes, this Part is effective on the date of certification applicable to property tax purposes provided in Section 1(c) of this act. For all other purposes, this Part is effective for taxable periods beginning on or after January 1, 2017.

PART III. INSTRUMENTS OF TITLE TO REAL PROPERTY

SECTION 3.(a) The North Carolina Geodetic Survey shall record the final survey of the confirmed boundary in the office of the register of deeds in every county in this State where real property has been affected by the certification of the boundary. The applicable uniform fees provided in G.S. 161-10 shall apply to the recordation of the final survey. The register of deeds shall register and index the surveys in accordance with the provisions of Article 2 of Chapter 161 of the General Statutes.

SECTION 3.(b) For parcels of real property affected by the certification of the boundary, situated in whole or in part within the boundaries of this State, the North Carolina Geodetic Survey shall record a Notice of Affected Parcel in the office of the register of deeds in the county or counties where each affected parcel is situated. The register of deeds shall register and index the Notice in accordance with the provisions of Article 2 of Chapter 161 of the General Statutes. Notwithstanding any other provision of law to the contrary, the register of deeds shall not collect any fees or taxes for the Notice recorded pursuant to this subsection. The Notice shall contain at least all of the following information:

- (1) Reference to this act.
- (2) The recording reference for the final survey of the confirmed boundary recorded pursuant to subsection (a) of this section.
- (3) The names of the record owners of the parcel.
- (4) The property address of the parcel.
- (5) A tax parcel identification number or other applicable identifier used by a county tax office, if available.
- (6) A brief description of the parcel, if available.
- (7) A source deed reference for the parcel, if available.

SECTION 3.(c) Title to real property previously treated as being subject to the jurisdiction of the State of South Carolina but that is recognized as being within the boundaries of this State as a result of the certification of the boundary is not affected by the certification of the boundary or the recognition of the real property as being within the boundaries of this State. All conveyances and instruments of title, of any sort, made prior to the certification of the boundary shall be recognized and given full faith and credit in this State according to the law, jurisdiction, and terms in effect at the time of the conveyance in the jurisdiction the property was previously treated as being subject to. For the purposes of this subsection, "instruments of title" means any instrument that affects title or constitutes the chain of title to real property, including, but not limited to, all deeds, wills, estate documents evidencing transfer of title, plats, surveys, easements, rights-of-way, outstanding mortgages and deeds of trust, judicial orders or decrees, and documents evidencing intestate succession.

SECTION 3.(d) Liens recorded prior to the date of boundary certification with the register of deeds or docketed with the clerk of superior court in the county in this State where the affected parcel is situated shall attach, as a class, to the affected parcel as of the effective date and time of the boundary certification. This class of liens shall be assigned priority as of the date of boundary certification but shall retain the same priority among themselves as if this subsection did not apply.

SECTION 3.(e) The Commissioner of Insurance shall not take any of the following actions with respect to a real estate title insurance company that previously operated only in South Carolina and issued a policy of title insurance in compliance under South Carolina law for a parcel of real estate now determined to be located wholly or partially in North Carolina:

- (1) Require a certificate of authority to do business as a real estate title insurance company under Article 26 of Chapter 58 of the General Statutes.

- (2) Take enforcement action against any title insurance company for failure to comply with the requirements of Article 26, 27, or 28 of Chapter 58 of the General Statutes applicable to real estate title insurance companies in North Carolina or any other statutory or regulatory requirements applicable to all insurance companies in North Carolina.

Nothing in this section is intended to prevent the Commissioner of Insurance from entering into a memorandum of agreement with the South Carolina Department of Insurance with respect to enforcement of South Carolina law against real estate title insurance companies subject to this section.

PART IV. FORECLOSURE OF DEEDS OF TRUST AND MORTGAGES

SECTION 4.(a) Foreclosure actions initiated on real property encumbered by a security instrument recorded in South Carolina wherein the real property is situated, in whole or in part, within the certified North Carolina boundaries shall be governed by the terms of the security instrument sought to be enforced for that portion of real property recognized as being in a different state. If the security instrument contains a power of sale clause, the party seeking to enforce the terms of the security instrument may initiate a foreclosure action in the county where the real property is situated pursuant to Chapter 45 of the General Statutes. A party seeking to enforce the terms of the security instrument may also resort to judicial foreclosure, pursuant to Article 29A of Chapter 1 of the General Statutes, in accordance with the terms within the security instrument. Judgments or orders of foreclosure entered by courts of this State are binding and effective only with respect to the portion of real property situated within this State. Prior to initiating an action to enforce a security instrument, the security instrument or a certified copy shall be recorded in the office of the register of deeds for the county where the subject property is situated. The provisions of G.S. 45-10(a) shall apply with regard to the appointment or substitution of a trustee for any mortgage or deed of trust foreclosed pursuant to this section.

SECTION 4.(b) Notwithstanding any other provision of law to the contrary, for mortgages foreclosed pursuant to subsection (a) of this section, a mortgagee or its successors or assigns shall be entitled to bid at a foreclosure sale conducted pursuant to a judgment or order of foreclosure entered by the courts of this State.

PART V. PUBLIC SCHOOL STUDENT ENROLLMENT

SECTION 5.(a) Notwithstanding any other provision of law, a student who (i) was eligible to enroll in a North Carolina local school administrative unit in accordance with G.S. 115C-366 prior to the date of the certification and (ii) loses the eligibility to enroll in a public school, including a charter school, as a result of certification may attend a North Carolina public school located within the local school administrative unit or attend a North Carolina charter school, without the payment of tuition, until that student:

- (1) Reaches the age of 21.
- (2) Obtains a high school diploma.
- (3) No longer meets the requirements of G.S. 115C-366 that were the basis for the student's eligibility for enrollment prior to the date of certification.
- (4) Loses eligibility pursuant to subsection (b) of this section.

SECTION 5.(b) A student who attends a North Carolina public school or charter school under subsection (a) of this section and the student's parent, legal guardian, or custodian shall be subject to the laws and rules governing North Carolina public schools and charter schools in accordance with Chapter 115C of the General Statutes, including meeting the requirements of the compulsory attendance law under Part 1 of Article 26 of Chapter 115C of the General Statutes.

Notwithstanding the enforcement provisions of G.S. 115C-378(f), 115C-380, 115C-381, and 115C-382, a parent, guardian, or custodian of a student enrolled in a North Carolina public school or charter school under this section who is determined by the principal of the student's public school or the charter school to be in violation of the compulsory attendance laws shall no longer be eligible to enroll the student in a North Carolina public school or charter school pursuant to subsection (a) of this section in a subsequent semester of the school year. In addition, the local school administrative unit or charter school in which the student is enrolled shall notify, based on the student's place of residence in South Carolina, the

juvenile court or such other court in the county that has jurisdiction of juveniles and, if applicable, the attendance supervisor for that county.

SECTION 5.(c) The State Board of Education shall provide that a student enrolled in a North Carolina public school or charter school in accordance with subsection (a) of this section be included in calculations for average daily membership, reporting for the Uniform Education Reporting System, and eligibility for State and federal funds.

SECTION 5.(d) Except as otherwise provided by this section or G.S. 115C-366, a student who is a legal resident of South Carolina shall not be entitled to enroll in a North Carolina public school.

PART VI. DRIVER EDUCATION ELIGIBILITY/BEGINNER LICENSE

SECTION 6.(a) Notwithstanding State Board of Education policy, GCS-R-004, or any other provision of law, if a student enrolled in a North Carolina public school or charter school under subsection (a) of Section 5 of this act obtains a beginner's permit in South Carolina, the student shall be eligible to participate in behind-the-wheel instruction as part of a driver education course offered by the local school administrative unit in which the student is enrolled.

SECTION 6.(b) Notwithstanding G.S. 20-11(b)(1), a student who (i) as a result of the boundary certification becomes a legal resident of North Carolina on the date of the certification and (ii) is enrolled in a South Carolina school district in which his or her residence was located prior to certification or in the South Carolina statewide public charter school district may meet the requirement in G.S. 20-11(b)(1) for obtaining a limited learner's permit if the student passes a course of driver education offered by the South Carolina high school in which the student is enrolled.

SECTION 6.(c) The Department of Transportation, Division of Motor Vehicles, in collaboration with the State Board of Education, shall develop a procedure for any North Carolina resident who is a student enrolled in a South Carolina school pursuant to the conditions described in subsection (b) of this section to satisfy the driver eligibility certificate requirements of G.S. 20-11 to obtain and continue to hold a limited or full provisional license under this section.

PART VII. ELIGIBILITY FOR IN-STATE TUITION

SECTION 7.(a) Notwithstanding any other provision of law, independent persons and their dependents formerly domiciled in North Carolina counties who are domiciled in South Carolina counties as a result of the North Carolina-South Carolina boundary certification may be considered eligible for in-State tuition rates for a period of up to 10 years from the effective date of the boundary change. To be eligible for in-State tuition rates, such persons must have been domiciled and reside on property in North Carolina in accordance with G.S. 116-143.1 immediately prior to the effective date of North Carolina legislation approving the North Carolina-South Carolina boundary certification and must maintain residence and domicile on that same property within South Carolina.

SECTION 7.(b) Notwithstanding any other provision of law, independent persons and their dependents previously domiciled on property in South Carolina which is located in North Carolina as a result of the North Carolina-South Carolina boundary certification may, for a period of two years from the effective date of the boundary certification, be eligible for in-State rates without the requirement of residency and domicile for 12 months in this State provided such independent persons have evidenced the intent to establish domicile in North Carolina in accordance with G.S. 116-143.1. To be eligible under this provision, such persons must reside on the same property that was in South Carolina immediately prior to the effective date of North Carolina legislation approving the certified North Carolina-South Carolina boundary. To maintain eligibility for in-State tuition rates longer than the two years permitted under this paragraph, the independent persons and their dependents must satisfy the requirements of G.S. 116-143.1.

SECTION 7.(c) The provisions established under subsections (a) and (b) of this section are not transferable to persons other than those independent persons and their dependents falling within the scope of those provisions.

SECTION 7.(d) Should the domicile and residence of independent persons and their dependents change from the property affected by the boundary certification, maintenance of eligibility for in-State rates will be determined as provided in G.S. 116-143.1.

PART VIII. ABC PERMITS

SECTION 8. G.S. 18B-1006 is amended by adding a new subsection to read:

"(n1) State Boundary Certification. – The Commission may issue permits listed in G.S. 18B-1001(2) and (4), without approval at an election, to qualified establishments defined in G.S. 18B-1000(7) that meet all of the following requirements:

- (1) The establishment is located in a county that borders on another state.
- (2) The location of the establishment was reclassified from out-of-state to North Carolina as a result of a State boundary certification.
- (3) The establishment was licensed or permitted by the previous state of record to sell malt beverages and unfortified wine."

PART IX. TITLE, REGISTRATION, AND HIGHWAY USE TAX

SECTION 9.(a) Definition. – For purposes of this section, "impacted person" shall mean any person who is the owner of a motor vehicle titled and registered in South Carolina and who has now been determined to be a resident of North Carolina as a result of a boundary certification agreed to by the states of North Carolina and South Carolina.

SECTION 9.(b) The Division of Motor Vehicles of the Department of Transportation shall require title, registration, and the payment of highway use tax from impacted persons in the same manner as it currently uses for persons moving to North Carolina from another state.

PART X. ENVIRONMENTAL COMPLIANCE SCHEDULE

SECTION 10.(a) Definition. – For purposes of this section, "impacted location" shall mean any facility or property that has now been determined to be located in North Carolina as a result of a boundary certification recognized by the states of North Carolina and South Carolina, and, as a result, either of the following applies to the facility or property:

- (1) It is required to obtain a permit, license, or approval from the North Carolina Department of Environmental Quality.
- (2) It is subject to a permit, license, or approval program that is operated by a local government and is delegated from or approved by the North Carolina Department of Environmental Quality.

SECTION 10.(b) Notwithstanding any other provision of law to the contrary, the Department of Environmental Quality, the Environmental Management Commission, or any local program delegated or approved by the Department or the Commission (collectively, the "permitting authorities"), in issuing any environmental permit, license, or approval to an impacted location, shall provide a schedule of compliance that allows the recipient of the permit, license, or approval a period of no less than five years to come into compliance with any North Carolina environmental rule or standard established by the permitting authorities that (i) has no corresponding rule or standard under South Carolina law or regulation or (ii) is more stringent than the corresponding rule or standard established under South Carolina law or regulations. The permitting authorities may include increments of progress applicable in each year of the schedule established under this subsection. The owner or operator of an impacted location may waive the schedule of compliance required by this subsection. Nothing in this section is intended to limit the applicability or employment of existing procedures under North Carolina statutes and regulations granting waivers or variances from otherwise applicable environmental rules or standards.

PART XI. UTILITIES/EXTENSION OF RURAL FIRE PROTECTION DISTRICTS, COUNTY SERVICE DISTRICTS, AND WATER AND SEWER DISTRICTS

SECTION 11.(a) The owner or occupant of a dwelling unit or commercial establishment on improved property that shall be deemed located in whole or in part in the State of North Carolina as a result of the boundary certification described in this act may continue to receive utility services from the South Carolina utility or its successor that is providing service to the dwelling unit or commercial establishment on January 1, 2017. However, the owner or occupant may, within his or her discretion, elect to have one or more of the utility services being provided to the property by a South Carolina utility on January 1, 2017, be provided by a North Carolina utility as long as the property is located within the North Carolina utility's service area. A North Carolina utility that is a city or county may require the

owner of the property to pay a periodic availability fee authorized by law only if the owner elects to have utility service provided to the dwelling unit or commercial establishment by the North Carolina utility. A South Carolina utility that provides service to the property as authorized in this section is not a public utility under G.S. 62-3(23), and is not subject to regulation by the North Carolina Utilities Commission as it relates to providing the particular utility service involved. For purposes of this subsection only, the term "South Carolina utility" has the same meaning as the term "utility" or "utilities" in the Code of Laws of South Carolina, and the term "North Carolina utility" has the same meaning as the term "public utility" which is defined in G.S. 62-3(23), and also includes a city or county that provides any of the services listed in G.S. 160A-311 or G.S. 153A-274, an authority organized under the North Carolina Water and Sewer Authorities Act, or an electric or telephone membership corporation.

SECTION 11.(b) The governing body of a county that gains territory as a result of the boundary certification described in this act shall meet as soon as practicable after the date this act becomes law to determine whether the residents of the territory (i) require the services provided by an existing rural fire protection district established under Article 3A of Chapter 69 of the General Statutes or a county service district established under Article 16 of Chapter 153A of the General Statutes or (ii) would benefit from the services provided by an existing county water and sewer district established under Article 6 of Chapter 162A of the General Statutes. If the governing body finds that the residents of the territory require or would benefit from the services of the district, the governing body shall annex the territory to the district as provided in G.S. 69-25.11(1), 153A-303, and 162A-87.1.

PART XII. SEVERABILITY AND EFFECTIVE DATE

SECTION 12.(a) If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end, the provisions of this act are severable.

SECTION 12.(b) Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of June, 2016.

s/ Robert A. Rucho
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Pat McCrory
Governor

Approved _____,m. this _____ day of _____, 2016