

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 18 July 2012

SUBJECT: Tourism Development Authority

PRESENTER: Charles Russell Burrell

ATTACHMENT(S): Session Law 2012-144 (formerly House Bill 1215)
Proposed Resolution

SUMMARY OF REQUEST:

The General Assembly as passed what is now Session Law 2012-144 (formerly House Bill 1215). Among the actions taken by this law is to create the Henderson Tourism Development Authority. By not later than September 1, 2012, this Board "shall adopt a resolution establishing the Henderson Tourism Development Authority and make the changes to its membership."¹ Should the Board fail to do so, no Occupancy Tax may be levied within Henderson County.

A draft resolution is attached. It does not address the issue, also raised by Session Law 2012-144, of the increase of the occupancy tax from the current five percent to six percent.

BOARD ACTION REQUESTED:

Approval of the draft resolution.

If the Board is so inclined, the following motion is suggested:

I move that the Board adopt the proposed resolution creating the Henderson Tourism Development Authority.

¹ S.L. 2012-144, Section 2.(b).

**RESOLUTION OF THE
BOARD OF COMMISSIONERS
OF HENDERSON COUNTY**

WHEREAS, the North Carolina General Assembly has enacted what is now North Carolina Sessions Law 2012-144, entitled "AN ACT TO AUTHORIZE THE HENDERSON COUNTY BOARD OF COMMISSIONERS TO LEVY AN ADDITIONAL ONE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND MAKE OTHER ADMINISTRATIVE CHANGES" ("SL 2012-144"); and,

WHEREAS, included in SL 2012-144 is a provision which strikes the authority for the current Henderson Travel and Tourism Committee ("the Committee") and replaces it with a new Henderson Tourism Development Authority; and,

WHEREAS, SL 2012-144 further requires certain actions be taken by the Henderson County Board of Commissioners in regard to the Authority; and,

WHEREAS, the actions taken herein are pursuant to the authority of SL 2012-144 and the laws of North Carolina;

**NOW, THEREFORE, IT IS RESOLVED BY THE BOARD OF
COMMISSIONERS OF HENDERSON COUNTY** as follows:

1. There is created the Henderson Tourism Development Authority ("the Authority"), a public authority under the North Carolina Local Government Budget and Fiscal Control Act.

2. The Authority shall be governed by shall be governed by an Authority Committee of nine (9) members. The nine members appointment, term of office, and other qualifications, shall be as follows:

Seat 1: The member holding Seat 1 shall be appointed by the Board of Commissioners of Henderson County. The first person appointed to Seat 1 shall serve a term of not more than five (5) years ending 30 June, 2017, and shall not be eligible for appointment (or reappointment) to the Authority Committee after the expiration of such term unless such person shall not be a member of the Authority Committee for a period of one year. Subsequent appointments to Seat 1 shall be for a term of not more than five (5) years, however such term always ending on June 30 of the last year of such appointment. The member holding Seat 1 shall be registered to vote in Henderson County. The member holding Seat 1 shall be affiliated with a business that collects Occupancy Tax (as defined in SL 2012-144) within Henderson County.

Seat 2: The member holding Seat 2 shall be appointed by the Board of Commissioners of Henderson County. The first person appointed to Seat 2 shall serve a term of not

more than four (4) years ending 30 June, 2016, and shall not be eligible for appointment (or reappointment) to the Authority Committee after the expiration of such term unless such person shall not be a member of the Authority Committee for a period of one year. Subsequent appointments to Seat 2 shall be for a term of not more than five (5) years, however such term always ending on June 30 of the last year of such appointment. The member holding Seat 2 shall be registered to vote in Henderson County.

Seat 3: The member holding Seat 3 shall be appointed by the Board of Commissioners of Henderson County. The first person appointed to Seat 3 shall serve a term of not more than three (3) years ending 30 June, 2015, and shall not be eligible for appointment (or reappointment) to the Authority Committee after the expiration of such term unless such person shall not be a member of the Authority Committee for a period of one year. Subsequent appointments to Seat 3 shall be for a term of not more than five (5) years, however such term always ending on June 30 of the last year of such appointment. The member holding Seat 3 shall be registered to vote in Henderson County.

Seat 4: The member holding Seat 4 shall be appointed by the City Council of the City of Hendersonville, North Carolina. The first person appointed to Seat 4 shall serve a term of not more than five (5) years ending 30 June, 2017, and shall not be eligible for appointment (or reappointment) to the Authority Committee after the expiration of such term unless such person shall not be a member of the Authority Committee for a period of one year. Subsequent appointments to Seat 4 shall be for a term of not more than five (5) years, however such term always ending on June 30 of the last year of such appointment. The member holding Seat 4 shall be registered to vote in Henderson County. The member holding Seat 4 shall be affiliated with a business that collects Occupancy Tax (as defined in SL 2012-144) within Henderson County.

Seat 5: The member holding Seat 5 shall be appointed by the City Council of the City of Hendersonville, North Carolina. The first person appointed to Seat 5 shall serve a term of not more than four (4) years ending 30 June, 2016, and shall not be eligible for appointment (or reappointment) to the Authority Committee after the expiration of such term unless such person shall not be a member of the Authority Committee for a period of one year. Subsequent appointments to Seat 5 shall be for a term of not more than five (5) years, however such term always ending on June 30 of the last year of such appointment. The member holding Seat 5 shall be registered to vote in Henderson County.

Seat 6: The member holding Seat 6 shall be appointed by the City Council of the City of Hendersonville, North Carolina. The first person appointed to Seat 6 shall serve a term of not more than three (3) years ending 30 June, 2015, and shall not be eligible for appointment (or reappointment) to the Authority Committee after the expiration of such term unless such person shall not be a member of the Authority Committee for a period of one year. Subsequent appointments to Seat 6 shall be for a term of not more than five (5) years, however such term always

ending on June 30 of the last year of such appointment. The member holding Seat 1 shall be registered to vote in Henderson County.

Seat 7: The member holding Seat 7 shall be appointed by the Town Council of the City of Fletcher, North Carolina. The first person appointed to Seat 7 shall serve a term of not more than five (5) years ending 30 June, 2017, and shall not be eligible for appointment (or reappointment) to the Authority Committee after the expiration of such term unless such person shall not be a member of the Authority Committee for a period of one year. Subsequent appointments to Seat 7 shall be for a term of not more than five (5) years, however such term always ending on June 30 of the last year of such appointment. The member holding Seat 7 shall be registered to vote in Henderson County.

Seat 8: The member holding Seat 8 shall be appointed by the Village Council of the Village of Flat Rock, North Carolina. The first person appointed to Seat 8 shall serve a term of not more than four (4) years ending 30 June, 2016, and shall not be eligible for appointment (or reappointment) to the Authority Committee after the expiration of such term unless such person shall not be a member of the Authority Committee for a period of one year. Subsequent appointments to Seat 8 shall be for a term of not more than five (5) years, however such term always ending on June 30 of the last year of such appointment. The member holding Seat 8 shall be registered to vote in Henderson County.

Seat 9: The member holding Seat 9 shall be appointed by the Board of Commissioners of Henderson County upon a recommendation from the Henderson County Chamber of Commerce. The first person appointed to Seat 9 shall serve a term of not more than three (3) years ending 30 June, 2015, and shall not be eligible for appointment (or reappointment) to the Authority Committee after the expiration of such term unless such person shall not be a member of the Authority Committee for a period of one year. Subsequent appointments to Seat 9 shall be for a term of not more than five (5) years, however such term always ending on June 30 of the last year of such appointment. The member holding Seat 9 shall be currently active in the promotion of travel and tourism in Henderson County.

3. Special provision regarding Seat 1, Seat 2, Seat 3, Seat 4, Seat 5 and Seat 6: The Board of Commissioners of Henderson County and the City Council shall confer for their appointments such that at all times at least three (3) members holding Seat 1, Seat 2, Seat 3, Seat 4, Seat 5 or Seat 6 shall be currently active in the promotion of travel and tourism in Henderson County.

4. Special provisions regarding Seat 7 and Seat 8: The Town Council of the City of Fletcher and the Village Council of the Village of Flat Rock shall confer for their appointments such that at all times at least one member holding Seat 7 or Seat 8 is affiliated with a business that collects Occupancy Tax (as defined in SL 2012-144) within Henderson County, and that at all times at least one member holding Seat 7 or Seat 8 is currently active in the promotion of travel and tourism in Henderson County.

5. The Board of Commissioners of Henderson County shall select the chair of the Authority Committee, whose term shall end each June 30.

6. The Board of Commissioners of Henderson County shall set the compensation, if any, of the Authority Committee, which compensation, if any, shall be included in the administrative expenses of the Authority, and budgeted for by the Authority Committee.

7. Vacancies: Should any Seat on the Authority Committee become vacant by death, resignation or otherwise, prior to the end of a term of appointment, the member to hold such Seat shall be appointed in the same manner as such Seat was originally appointed.

8. Powers and duties of the Authority shall be as set out in SL 2012-144.

Moved by Commissioner _____, and adopted by vote of the Board of Commissioners of Henderson County, this the 18th day of July, 2012.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: _____
THOMAS H. THOMPSON, Chairman

Attest:

TERESA L. WILSON, Clerk to the Board

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2012-144
HOUSE BILL 1215

AN ACT TO AUTHORIZE THE HENDERSON COUNTY BOARD OF COMMISSIONERS TO LEVY AN ADDITIONAL ONE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 5 of Chapter 172 of the 1987 Session Laws, as amended by Chapter 55 of the 1991 Session Laws and by Section 21(p) of S.L. 2007-527, reads as rewritten:

"**Sec. 5.** **Occupancy Tax.** (a) **Authorization and Scope.** – The Board of Commissioners of Henderson County may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy and tourism development tax of no less than three percent (3%) nor more than five percent (5%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3)~~ G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of Henderson County may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Henderson County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay an additional tax, as a penalty, of one percent (1%) of the tax due for each day's omission up to 30 days, with a minimum penalty of twenty-five dollars



~~(\$25.00). In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of ten percent (10%) of the tax and penalty due in addition to any other penalty, with an additional tax of ten percent (10%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax or penalty imposed under this act or who willfully fails to pay the tax or penalty or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.~~

~~(e) Use of Tax Revenue. – The county shall, on a quarterly basis, remit the net proceeds of the room occupancy and tourism development tax levied under this act to the Henderson County Tourism Development Authority. The Authority shall use the net proceeds as follows:~~

~~(1) First five percent (5%). – At least two-thirds of the net proceeds of the room occupancy tax levied under subsection (a) of this section shall be used to promote travel and tourism in Henderson County and the remainder shall be used for tourism-related expenditures.~~

~~(2) Additional one percent (1%). – The net proceeds of the additional one percent room occupancy tax levied under subsection (a1) of this section shall be used for the maintenance, operation, renovation, and promotion of The Vagabond School of the Drama, Inc., including the Mainstage and the Playhouse Downtown locations.~~

~~(e1) Definitions. – The following definitions apply in this act:~~

~~(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.~~

~~(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.~~

~~(3) Tourism-related expenditures. – Expenditures that, in the judgment of the entity responsible for expending the net proceeds of the tax, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.~~

~~shall place the net proceeds collected from a tax levied under this act in a special Travel and Tourism Fund. Revenue in this fund may be used only to promote travel and tourism in the county. This fund will be administered by the Henderson Travel and Tourism Committee. As used in this subsection, "net proceeds" means gross proceeds less five percent (5%) of the gross proceeds which the county may retain to defray the cost of administering and collecting the tax.~~

~~The scope of promotion of travel and tourism in the county may include the following:~~

~~(1) Contracting with any person, firm, or agency to advise and assist in travel and tourism promotion.~~

~~(2) Advertising via appropriate media.~~

~~(3) Assisting in the initial funding and possible annual subsidy of a fine arts center or other similar facility which could logically be expected to promote tourism in the county.~~

~~(4) Promoting special events which would bring tourists to the county.~~

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the board of commissioners of the county. Repeal of a tax levied under this act does not affect a~~

liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."

SECTION 2.(a) Section 6 of Chapter 172 of the 1987 Session Laws, as amended by Chapter 55 of the 1991 Session Laws and by Section 21(p) of S.L. 2007-527, reads as rewritten:

"Sec. 6. Henderson ~~Travel and Tourism Committee~~, Tourism Development Authority. (a) Appointment and Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Henderson ~~Travel and Tourism Committee~~, Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution adopted by the Board of Commissioners shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. However, no member shall serve on the Authority for more than five consecutive years. The Committee shall consist of nine voting members as follows:

- (1) ~~Four~~ Three members who are registered to vote in Henderson County, appointed by the Henderson County Board of ~~Commissioners~~; Commissioners.
- (2) ~~Four~~ Three members who are registered to vote in Henderson County, appointed by the Hendersonville City ~~Council~~; and Council.
- (3) ~~The President of the Greater Hendersonville Chamber of Commerce, or his designee, to serve ex officio.~~ One member who is registered to vote in Henderson County, appointed by the Fletcher Town Council.
- (4) One member who is registered to vote in Henderson County, appointed by the Flat Rock Village Council.
- (5) One member appointed by the Henderson County Board of Commissioners upon a recommendation of the Henderson County Chamber of Commerce.

Of these members, at least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the county.

The board of commissioners shall designate one member of the ~~Committee~~ Authority as chair and shall determine the compensation, if any, to be paid to members of the ~~Committee~~ Authority. The ~~Committee~~ Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The finance officer for Henderson County shall be the ex officio finance officer of the ~~Committee~~ Authority. ~~The Committee shall administer the Travel and Tourism Fund as provided in Section 1(e) of this act.~~

(b) **Duties.** – The Authority shall expend the net proceeds of the tax levied under subsections (a) and (a1) of Section 5 of this act for the purposes provided in Section 5 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) **Reports.** – The ~~Committee~~ Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require. The Vagabond School of the Drama, Inc., shall separately identify in its financial statements expenditures of funds that it receives pursuant to this act. The Vagabond School of the Drama, Inc., shall report annually by October 1 to the Authority expenditures of the funds received during the Authority's fiscal year pursuant to this act in such detail as required by the Authority or the Authority's Finance Officer."

SECTION 2.(b) This section is effective when it becomes law, and the board of county commissioners shall adopt a resolution establishing the Henderson Tourism Development Authority and make the changes to the membership as required by this section on or before September 1, 2012.

SECTION 3.(a) Subsection (e) of Section 5 of Chapter 172 of the 1987 Session Laws, as amended by Chapter 55 of the 1991 Session Laws, by Section 21(p) of S.L. 2007-527, and by Section 1(a) of this act, reads as rewritten:

"(e) **Use of Tax Revenue.** – The county shall, on a quarterly basis, remit the net proceeds of the room occupancy and tourism development tax levied under this act to the Henderson County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it to promote travel and tourism in Henderson County and shall use the

~~remainder for tourism-related expenditures. The Authority shall use the net proceeds as follows:~~

- ~~(1) First five percent (5%). At least two thirds of the net proceeds of the room occupancy tax levied under subsection (a) of this section shall be used to promote travel and tourism in Henderson County and the remainder shall be used for tourism-related expenditures.~~
- ~~(2) Additional one percent (1%). The net proceeds of the additional one percent room occupancy tax levied under subsection (a1) of this section shall be used for the maintenance, operation, renovation, and promotion of The Vagabond School of the Drama, Inc., including the Mainstage and the Playhouse Downtown locations."~~

SECTION 3.(b) This section becomes effective July 1, 2014, and applies to room occupancy taxes collected on or after that date.

SECTION 4. G.S. 153A-155(g) reads as rewritten:

"(g) Applicability. – Subsection (c) of this section applies to all counties and county districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of a local act, subsection (c) supersedes that provision. The remainder of this section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Henderson, Jackson, Madison, Martin, McDowell, Montgomery, Moore, Nash, New Hanover, New Hanover County District U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, Washington, and Wilson Counties, to Surry County District S, to Watauga County District U, to Wilkes County District K, to Yadkin County District Y, and to the Township of Averasboro in Harnett County and the Ocracoke Township Taxing District."

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of July, 2012.

s/ Bill Rabon
Presiding Officer of the Senate

s/ Thom Tillis
Speaker of the House of Representatives