

3

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 802

---

Short Title: Chapel Hill Utility Tax District. (Local)

---

Sponsors: Representatives Insko and Hackney (Primary Sponsors).

---

Referred to: Finance.

---

March 21, 2005

A BILL TO BE ENTITLED  
AN ACT TO ALLOW THE TOWN OF CHAPEL HILL TO CREATE SPECIAL TAX  
DISTRICTS TO UNDERGROUND ELECTRIC UTILITY LINES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Authorization to Create Utility Districts. – The governing board of a municipality may create one or more utility districts for the purpose of raising and expending funds to underground electric utility lines in the district.

**SECTION 2.** Procedure. – The governing board of a municipality may by resolution signify its determination to create a utility district under the provisions of this act. The resolution shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the municipality. The notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the boundaries of the district, and shall state the time and place of the public hearing. No other publication of the resolution is required under the provisions of any other law.

**SECTION 3.** Resolution. – The resolution shall set forth:

- (1) The name of the district;
- (2) A statement that the district is organized under this act; and
- (3) A description of the boundaries, which may include any territory designated by the municipal governing board that is within the corporate limits of that municipality.

**SECTION 4.** Territory. – No territory may be in more than one district.

**SECTION 5.** Municipality. – All territory of a district shall be within the municipality.

**SECTION 6.** Filing Resolution. – A certified copy of the resolution signifying the determination to organize a district under the provisions of this act shall be filed with the Secretary of State, together with proof of publication of the notice of hearing on the resolution. If the Secretary of State finds that the resolution conforms to the provisions of this act and that the notice of hearing was properly published, the Secretary of State shall file the resolution and proof of publication in the records of that office. The filing of the resolution in the office of the

(4)

Secretary of State shall be conclusive evidence of the fact that the district has been duly created and established under the provisions of this act.

**SECTION 7. Annexation.** – By adoption of a resolution, the governing board of a municipality may annex any area within that municipality to a utility district, but no area may be in more than one district. The resolution shall be adopted by the governing board of the municipality after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the municipality. The notice shall contain a brief statement of the substance of the proposed resolution and the boundaries of the proposed annexation and shall state the time and place of the public hearing. No other publication of the resolution is required under the provisions of any other law.

**SECTION 8. Governing Board.** – The governing board of the municipality shall serve as the governing board of each utility district established pursuant to this act.

**SECTION 9. Powers.** – By resolution the governing board of the municipality may levy a tax of up to one dollar (\$1.00) per month on each residential electric power customer bill for service within the district and up to five dollars (\$5.00) per month on each commercial or industrial electric power customer bill within the district.

**SECTION 10.** The utility district may receive contributions from the State of North Carolina, a local government, and the private sector for corporate purposes authorized by this act.

**SECTION 11.** The municipality may contract with the State of North Carolina, a local government, or a private entity for carrying out the projects authorized by this act.

**SECTION 12. Use of Funds.** – The taxes levied under this act, after being expended for the necessary administrative expenses of the utility district, shall be used only for undergrounding of electric utility lines within the district. The budget for the utility district shall be adopted by the governing board of the municipality each year as part of the annual budget for the municipality.

**SECTION 13. Corporate Existence.** – A municipal governing board that creates a utility district under this act shall have the power granted by this act and may do all acts reasonably necessary to fulfill this purpose. In acting for the utility district, a municipal governing board shall follow the same procedures regarding quorum and voting that are applicable for the governing board when it is performing other governmental purposes on behalf of the municipality.

**SECTION 14.** In creating and operating a utility district established under this act, a municipality shall follow the applicable provisions of Chapter 159 of the General Statutes.

**SECTION 15. Levy.** – A tax authorized by this act may be levied only by resolution, after not less than 10 days' public notice, and after a public hearing held pursuant thereto. A tax authorized by 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 third month after the date the resolution is adopted. In establishing the effective date, the municipal governing board shall consult with any utility that will be collecting the tax to determine any administrative lead times that might be desirable.

**SECTION 16. Collection.** – Every electric utility subject to a tax authorized by this act shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing electric power. The tax shall be stated and charged separately and shall be paid by the purchaser to the utility as trustee for and on account of the utility district. The tax shall be added to the sales price and shall be passed on to the purchaser

⑤

instead of being borne by the utility. The utility district shall design, print, and furnish to all appropriate utilities in the district the necessary forms for filing returns and instructions to ensure the full collection of the tax. A utility who collects a tax authorized by this act may deduct from the amount remitted to the utility district a discount equal to the discount the State allows the utility for State sales and use tax. For the purpose of this act, a utility includes a government entity providing electric service, a cooperative, and any other electric utility. A utility shall have the same right to suspend or terminate service for nonpayment of the tax that it has to suspend or terminate service for payment of any other part of the utility bill. The obligation of the utility to pay the tax if the customer has not paid the bill is the same as its liability under G.S. 105-164.4(a)(4a).

**SECTION 17. Administration.** – The municipality shall administer a tax it levies under this act. A tax authorized by this act is due and payable to the municipal finance officer in monthly installments on or before the last 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 15th day of each month, prepare and render a return on a form prescribed by the municipality. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A tax return filed with the municipal finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 as if the utility district were a county. The municipality may adopt a payment schedule keyed to the billing cycle of the utility collecting the tax rather than the calendar month, as long as there are at least 12 billing cycles per year.

**SECTION 18. Penalties.** – A person, firm, corporation, or association who fails or refuses to file a tax return or pay a tax authorized by this act as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the municipality has the same authority to waive the penalties for a tax authorized by this act that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

**SECTION 19. Increase, Repeal, or Reduction.** – A tax levied by a municipality under this act may be increased not in excess of the maximum allowed by this act, repealed, or reduced by a resolution adopted by the governing board of the municipality, acting on behalf of the utility district. Repeal or reduction of a tax authorized by this act shall become effective on the first day of a month and may not be earlier than the first day of the third month after the date the resolution is adopted. Repeal or reduction of a tax authorized by this act does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction. In establishing the effective date, the municipal governing board shall consult with any utility that will be collecting the tax to determine any administrative lead times that might be desirable.

**SECTION 20.** This act applies to the Town of Chapel Hill only.

**SECTION 21.** This act is effective when it becomes law.