This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 1224:
Local Sales Tax Options/Econ. Devpt. Changes

2013-2014 General Assembly

Committee:	Rules, Calendar, and Operations of the House	**Date:**	August 18, 2014
Introduced by:	Rep. Presnell	**Prepared by:**	Finance Team
Analysis of:	Conference Report		

SUMMARY: The Conference Committee Substitute makes the following changes to the 4th Edition of the House Bill 1224; the CCS does not make any changes to the economic development Parts:

- ***It would allow Mecklenburg County to proceed with a special election this November on the question of whether to approve a ¼% local sales and use tax that may be used for general purposes. In June of 2014, the board of county commissioners approved placing the question on the November ballot, but the 4th edition of the bill would have prevented Mecklenburg from considering the question because it caps the maximum local sales and use tax rate at 2.5%, which is Mecklenburg's current rate. If the measure passes, Mecklenburg would be permitted to maintain a rate of 2¾%. If the measure fails, Mecklenburg would become subject to a 2.5% cap. Since the county is at that rate currently, it would not be able to levy the new tax for education unless it repeals the transit tax.***
- ***It would allow Forsyth, Guilford, and Wake Counties to have a maximum local sales and use tax rate of 2¾% if a majority of voters approve in a special election this November a ¼% sales tax that may be used for general purposes. Under the 4th edition of the bill, these counties would have been subject to a 2.5% cap and, therefore, precluded from levying both a ¼% general purpose tax and a ½% transit tax, which they are currently authorized to levy. Under the CCS, if the county holds a successful referendum this November, then it would have the option, at some point in the future, to levy the ½% transit tax. If the measure fails, the county would become subject to a 2.5% cap. The Wake County board of commissioners may consider at its August 4, 2014, meeting whether to place the question of the ¼% sales tax on the November ballot. Guilford County has already approved putting the ¼% on the November ballot.***
- ***It would specifically provide that counties and cities may use any funds not otherwise restricted by law for grants or loans for the rehabilitation of underutilized mills, other industrial structures, or historic structures. Generally speaking, local governments currently have broad authority with regard to appropriating funds for economic development as long as the use satisfies constitutional public purpose requirements.***
- ***It directs the Revenue Laws Study Committee to conduct an economic impact analysis of subsidies or incentives for historic rehabilitation, including mill property.***
- ***It adds the contents of SB 42 (the same contents were in HB 1069, the Unemployment Insurance legislation the Governor vetoed on June 24, 2014). The substance of this provision has passed both houses in different vehicles. It would clarify that unemployment insurance (UI) claim information is confidential unless the disclosure is permitted by federal regulation, and it would exempt UI information from the public records disclosure requirements of Chapter 132 of the General Statutes.***

- ***It adds technical changes to the revenue laws that were contained in SB 763; these changes are purely technical or clarifying; most of the changes have been requested by the Department of Revenue.***

PART I: LOCAL SALES TAX OPTIONS

CURRENT LAW & BILL ANALYSIS: Part I establishes one new local sales and use tax option of up to ½%-cent for education, increases from ¼% to ½% the rate at which 94 counties may levy the public transportation tax, increases from ¼% to ½% the rate at which counties may levy a tax for general purposes, and caps the overall local sales and use tax rate at two and one-half percent (2½%). Under the bill, a county may levy any combination of the three local option sales and use taxes so long as the total local sales and use tax rate in the county does not exceed two and one-half percent (2 ½%).

Despite the cap, it would allow the 6 counties that are currently authorized to levy a tax at the rate of 2¾% to retain that maximum if those counties hold a referendum in November 2014 in which a majority of voters approve a ¼-cent tax for general purposes. If the ¼-cent tax is approved, a county would be able to levy the ½-cent for transit at some future date (unless it is already being levied). Once the maximum rate is being levied, the ¾% tax that is over and above the first 2 cents, must be made up of the ½-cent transit tax and a ¼-cent general purpose tax in order to retain the 2¾% cap. This precludes any of the 6 counties from levying the sales tax for education as part of that rate. Once levied, if a county's rate falls below 2¾%, the county would become subject to the 2.5% cap and would be able to levy the education tax.

New Article 43A: County Sales Tax for Public Education

Section 1.1 would give counties the authority to levy a local sales and use tax at a rate of up to one-half percent (1/2/%) if the majority of voters approve the levy of the tax in a referendum. The rate of tax must be in an increment of ¼% and must be at a rate that, if levied, would not result in a total local rate in the county in excess of two and one-half percent (2 1/2%). There is no limitation on a county's ability to also levy a local sales and use tax under Article 43 as long as the total local rate in the county does not exceed 2 ½%.

The proceeds of the tax are not shared with the cities and may only be used as follows:

- Public school capital outlay purposes or to retire any indebtedness incurred by the county for these purposes.
- Salaries of classroom teachers, salaries of classroom teacher assistants, and supplements of classroom teacher salaries. A classroom teacher is an employee of a local board of education employed as a teacher who spends at least seventy percent (70%) of his or her work time in classroom instruction and a classroom teacher assistant is an employee of a local board of education employed as a teacher assistant who spends at least seventy percent (70%) of his or her work time assisting in a classroom.
- Financial support of community colleges, including funds to supplement State financial support of community colleges.

Changes to Article 43: Local Government Sales and Use Tax for Public Transportation

Under current law, counties may levy, upon referendum, a local sales and use tax to be used only for public transportation if the county or at least one unit of local government in the county operates a public transportation system. "Public transportation system" is broadly defined as any combination of real and personal property established for purposes of public transportation, but specifically excludes streets, roads, and highways (except to the extent they are dedicated to public transportation vehicles).

The rate of tax is ½% for the following six counties: Durham, Forsyth, Guilford, Mecklenburg, Orange, and Wake.[1] The rate of tax is ¼% for all other counties. Currently, the only counties levying a tax under this Article are Mecklenburg,[2] Durham,[3] and Orange[4] Counties. None of the 94 counties levy the 1/4¢ tax under this Article.

Section 1.4 would give all counties the ability to levy the public transit tax at the same rate by increasing from 1/4¢ to 1/2¢ the maximum rate of tax that the 94 counties under Part 6 of Article 43 may levy for public transit. It would also allow the other six counties to levy the tax at the rate of ¼% or 1/2% depending on what the total local rate is at the time of the referendum. If a county chooses to hold a referendum to levy the public transit tax, the rate must be at a rate that, if levied, would not result in a total local rate in the county that exceeds two and one-half percent (2 1/2%). There is no limitation on a county's ability to also levy a local sales and use tax under new Article 43A as long as the total local rate in the county does not exceed 2 ½%.

Under Article 43, Durham, Orange, and Wake Counties are authorized to create a special taxing district as a regional public transportation authority and levy a tax at ½% to be used to finance a public transportation system. At this time, Durham and Orange are the only counties that make up the district. If Wake County decides to join the district, then it must do so at the ½% rate because, constitutionally, a tax rate must be uniform within a single taxing district. Under this bill, Wake County retains the ability the join the district at ½% or it could levy a tax at ¼% or ½% for public transportation separate and apart from Durham and Orange.

Changes to Article 46: One-Quarter Cent (1/4¢) County Sales and Use Tax

In 2007, the General Assembly gave counties a local-option, quarter-cent sales tax. The tax must be approved by voters in a referendum before it can be adopted. The proceeds of the tax are not shared with the cities and may be used for any general purpose.

Since the enactment of the authorization, 94 referendums have been held in 59 counties; of those, 27 were approved.

Section 1.6 modifies the current Article 46 as follows:

- It increases from ¼% to ½% the maximum rate of tax that may be levied under this Article.
- For referenda held on or after January 1, 2015, the proceeds of this tax may not be used for public transportation systems as that term is defined in Article 43.
- The counties that currently levy the Article 46 tax may continue to levy the tax alone or they could opt to increase the rate to ½% or pair it with the public transportation tax or the public education tax, but only at the rate of ¼%.
- This bill does not impact a county's ability to have the 1/4% tax on the November 2014 ballot unless the county is already at a rate of 2.5% or higher. There are four counties that have voted to put this issue on the November 2014 ballot: Bladen, Guilford, Mecklenburg, and Richmond.

---

[1] Of these six counties, Durham and Orange are the only ones that also levy the quarter-cent tax under Article 46. Guilford and Mecklenburg have the quarter-cent on the November 2014 ballot.

[2] Mecklenburg County passed a one-half cent sales tax for transit, with 58% of the voters in favor, in November 1998. The county began levying the tax April 1, 1999.

[3] Durham County passed a one-half cent sales tax for transit, with 60% of the voters in favor, in November 2011. The county began levying the tax April 1, 2013.

[4] Orange County passed a one-half cent sales tax for transit, with 59% of the voters in favor, in November 2012. The county began levying the tax April 1, 2013.

All but Mecklenburg have a total rate of local sales and use tax that is less than two and one-half percent (2 ½%), which means that Mecklenburg would be prohibited from holding a referendum in November on this tax. Wake, Rockingham, and Carteret are also considering whether to add this issue to the November ballot.

Rate Cap for all Local Sales and Use Taxes

The local sales and use tax rate varies among the counties, ranging from 2% to 2.75%.[5] Under current law, there are 6 counties that *could* have a total local sales and use tax rate of two and three-quarters (2.75%), for a total State and local rate of 7.5%. Those counties are: Durham, Forsyth, Guilford, Mecklenburg, Orange, and Wake. To reach the maximum, a county would have to levy the first cent, the first one-half cent, the second one-half cent, the one-half cent public transportation tax, and the one-quarter cent tax. To date, only 2 of the 6 counties levy the maximum: Durham and Orange. That rate became effective in those counties in April of 2013.

The maximum that could be levied in the other 94 counties is two and one-half percent (2½%). The reason for the difference is that those 94 counties may only levy a one-quarter cent (1/4%) tax for public transportation. The remaining local taxes for those counties are the same.

Under the bill, the total local sales and use tax rate that a county may levy would be two and one-half percent (2½%). The bill carves out an exception for the six counties that are authorized to levy a 2.75% local tax. In order for one of those counties to retain the 2.75% rate, it must hold a referendum in November 2014 in which a majority of voters approve a ¼-cent tax for general purposes. If the ¼-cent tax is approved, a county would be able to levy the ½-cent for transit at some future date (unless it is already being levied). Once levied, ¾% tax that is over and above the first 2 cents, must be made up of the ½-cent transit tax and a ¼-cent general purpose tax in order to retain the 2.75% cap. This precludes any of the 6 counties from levying the sales tax for education as part of that rate. If a county repeals any of the local sales and use taxes bringing the rate below 2.75%, that county would become subject to the 2.5% cap.

Allocation of Article 43B Proceeds by County Commissioners

Section 1.2 of the bill would authorize a board of county commissioners to direct the amount of funds derived from the tax levied under Article 43A to be used for salaries of classroom teachers, salaries of classroom teacher assistants, and supplements of classroom teacher salaries. Without this language, the board could allocate funds to instructional services generally, but it could not allocate funds more specifically within that category of expenditures. In addition, a board of education would need approval from the board of county commissioners before it could decrease the amount of funds that were allocated by the board of county commissioners. **Section 1.3** has similar provisions with regard to allocating funds for community colleges.

Under current law, local board of education is required to prepare a budget using the uniform budget format and submit that budget to the board of county commissioners no later than May 15 of each year. The board of county commissioners must then determine the amount of county revenues to be appropriated in the county budget to the local board of education and may "in its discretion, allocate part or all of its appropriation by purpose, function, or project as defined in the uniform budget format." Once the board of county commissioners makes its appropriation, the board of education adopts its budget resolution subject to certain requirements found in G.S. 115C-432. Amendments to the budget resolution are allowed after adoption, but are subject to certain limitations found in G.S. 115C-433.

[5]See table in the **BACKGROUND** section for this Part of the Bill Analysis.

For community colleges, a similar process is followed.[6] The board of trustees of a community college prepares a budget using forms developed by the State Board of Community Colleges. Community college budgets are broken into different parts requiring approval by different groups as follows:

- State Current Fund Budget – Approved by the board of trustees and State Board of Community Colleges.
- County Current Fund Budget - Approved by the board of trustees and the local tax-levying authority.
- Institutional Fund Budget - Approved by the board of trustees.
- Plant Fund Budget - Approved by the board of trustees, partly by the local tax-levying authority and partly by the State Board of Community Colleges.

G.S. 115D-55 requires the tax-levying authority to determine the amount of county revenues to be appropriated in the county budget to the community college and allows the authority to "allocate part or all of an appropriation by purpose, function, or project as defined in the budget manual as adopted by the State Board of Community Colleges." Once the tax-levying authority has made its appropriation, the budget is submitted to the State Board of Community Colleges for approval. G.S. 115D-56 requires that, once approved, the board of trustees must adopt a final budget resolution, and permits under G.S. 115D-58 that amendments be made to the budget subject to rules and regulations adopted by the State Board of Community Colleges and certain limits on amendments to local appropriations established in statute.

BACKGROUND: The following table identifies the current total local sales and use tax rate in the counties.

Local Rate of Sales & Use Tax	Counties	
2.75%	Durham Orange	
2.50%	Mecklenburg	
2.25%	Alexander Buncombe Cabarrus Catawba Cumberland Duplin Edgecombe Greene Halifax Harnett Haywood Hertford	Lee Martin Montgomery New Hanover Onslow Pitt Randolph Robeson Rowan Sampson Surry Wilkes
2.00%	Remaining 73 counties	

[6] Article 4A of Chapter 115D establishes the budget process for community colleges.

The following table sets out how the local sales and use taxes may be used, how they are distributed, and whether their enactment required a referendum.

<table>
<tr><th>Statutory Authority</th><th colspan="2">Use of Proceeds</th><th>Distribution Method</th><th>Referendum Requirement</th></tr>
<tr><td>1st 1-cent (Article 39)</td><td colspan="2">Any lawful purpose</td><td>Point of collection</td><td>Permitted, but not required</td></tr>
<tr><td>1st ½-cent (Article 40)</td><td colspan="2">Counties – 30% school capital</td><td>Per capita * Adjustment formula</td><td>Permitted but not required</td></tr>
<tr><td>2nd ½-cent (Article 42)</td><td colspan="2">Counties – 60% school capital</td><td>Point of collection</td><td>Permitted, but not required</td></tr>
<tr><td rowspan="2">½-cent or ¼-cent (Article 43)</td><td colspan="2">Counties/Transportation Authorities – public transportation systems only</td><td rowspan="2">Per capita among county and units of local government in county that operate public transportation system</td><td rowspan="2">Required</td></tr>
<tr><td><u>½-cent</u>
Part 2: Mecklenburg
Part 4: Triangle (Wake, Durham, Orange)
Part 5: Triad (Forsyth, Guilford)</td><td><u>¼-cent</u>
Part 6 – All other counties</td></tr>
<tr><td>¼-cent (Article 46)</td><td colspan="2">Any lawful purpose</td><td>Point of collection – distributed to county only</td><td>Required</td></tr>
</table>

PART II: JMAC MODIFICATIONS

CURRENT LAW: The General Assembly created JMAC in 2007 as a non-reverting account in the Department of Commerce.[7] The purpose of JMAC is to maintain jobs in the State. Three companies have received a grant from JMAC. The Department may not enter more than five agreements, and this act does not change that limitation. The total aggregate cost of all agreements for grants from JMAC is limited to $69 million, and the annual cost of any one agreement is $6 million. A grant agreement obligates the State to make a series of grant payments over a period of time, but it does not authorize the taxing power of the State to be pledged.

BILL ANALYSIS: The bill expands eligibility for a JMAC grant for large manufacturing employers in four ways. First, the bill allows eligibility for a large manufacturing employer if it is investing in its manufacturing process by enhancing pollution controls or transitioning from use of coal to natural gas for efficiency or emissions purposes. Previously, the conversion had to be for the purpose of changing the product it manufactures. Second, the bill lowers the investment threshold from $65 million to $50 million. Third, the bill increases the time for the investment from three to five years. Finally, the bill allows the large manufacturing employer to be in an area that is tier 2, instead of a tier 1, if the area has a population of less than 60,000 as of 7/1/13, the manufacturer employs at least 800 FTEs at the project, and the manufacturer maintains that level of employment throughout the term of the grant.

The bill also increases the total aggregate cost limitation of all JMAC agreements from $69 million to $79 million.

[7] S. L. 2007-552, G.S. 143B-437.11; S. L. 2008-187 recodified the statute as G.S. 143B-437.012.

PART III: JOB CATALYST FUND[8]

BILL ANALYSIS: Part III of the bill creates the Job Catalyst Fund (JCF), a new special, non-reverting account in the Department of Commerce, for the purpose of providing funds to local governmental units for certain manufacturing projects. The guidelines and administration of the Fund is vested solely in the Secretary of Commerce, subject to the following minimum requirements that apply to each grant from the JCF:

1. A business at a project must agree, for the greater of 10 years or the term of the grant plus five years, to the following:
    a. To create 500, 800, or 1,200 full-time jobs for development tier one, two, or three areas, respectively.
    b. To invest at the project $20M, $35M, or $50M in real and/or personal property for development tier one, two, or three areas, respectively.
    c. To satisfy a wage requirement equal to a percentage of the average wage for all insured private employers in the county. If tiers one or two, the percentage is 100%. If tier three, the percentage is 110%.
    d. To provide health insurance.
    e. To avoid notices of overdue tax debts and citations under OSHA for willful serious violations or failing to abate serious violations.
2. The local governmental unit agrees to match State funds at a rate of 3%, 6%, or 9% for tier one, two, or three areas, respectively.
3. The funds are used to acquire/improve land or infrastructure, for facility development, or for capital investment and used for manufacturing projects.
4. Funds are not used in favor of jobs created or property investments for which a tax credit under Article 3J was given and are not used for retail facility development or for semiprofessional sports teams/clubs.

Local governmental units must provide a means to recapture from the business at a project an amount equal to that disbursed from the Fund in the event the business fails to satisfy any of the requirements for the disbursement, and the local governmental unit must, in turn, reimburse the Fund. The Department must report annually on each grant awarded, the status of each project, the number and development tier area of created positions, a listing of employment levels at projects and changes to employment levels from the preceding year, wage levels, number of awards for new/existing businesses, environmental impact, geographic distribution, and developed guidelines/changes to guidelines.

For purposes of guidelines for and administration of the program, the Secretary is exempt from the APA and must, instead, allow 20 days' notice before the effective date of guidelines (via publication) and 15 additional days for comment.

PART IV: JDIG MODIFICATIONS

BILL ANALYSIS: In the 2013 budget, the annual cap for JDIG commitments was modified from a calendar year basis to a fiscal biennium basis for the 2013-15 fiscal biennium only. This modification brought forward from the 2015 fiscal year an additional $7.5M in JDIG commitment availability.

[8] The Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets for Senate Bill 744 provided $20 million for the Job Catalyst Fund. See Item 66 on page H-15.

Subsection 4(a) of the bill would increase the cap for JDIG commitment by an additional $14M for the 2013-15 fiscal biennium.

Subsection 4(b) concerns the requirement in JDIG to conduct a cost/benefit analysis to determine whether a JDIG award is appropriate. Currently, all costs are considered for purposes of determining whether a JDIG award is appropriate. Until July 1, 2015, the bill would allow disregarding of costs associated with an award from the newly created Job Catalyst Fund if, absent that award, the cost/benefit analysis would affirm the propriety of making a JDIG grant. After July 1, 2015, the analysis would consider all costs, including JCF awards for purposes of determining whether a JDIG award is appropriate.[9]

Subsection 4(c) would add a monthly reporting requirement for JDIG to the Finance committees (when in session) or RLSC (when not in session) and the Fiscal Research Division on (i) the total liability, remaining availability under the cap, and maximum amount of possibility liability for JDIG grants in an applicable period and (ii) a listing of each grant awarded by business, including the grant term, withholdings used to determine grant amount, maximum annual and total liabilities and jobs, wages, investments, and Utility Account transfers anticipated from the project.[10]

PART V: CROWD FUNDING

Part V of the bill would add a new exemption to the list of transactions that are exempt from the registration and filing requirements for the offer or sale of securities. Specifically, the bill creates the Invest NC exemption that requires:

- **NC Issuer** – The issuer must be a North Carolina business entity formed under the laws of the State and registered with the Secretary of State.
- **Intrastate Offering** – The transaction must meet the federal exemption for an intrastate offering, which means that the issuer and all purchasers must be located in NC, that purchasers cannot transfer the securities for a period of time, that a certain percentage of the proceeds must be used in the State, and that the issuer cannot sell or have an economic impact outside the state.
- **$1/$2 Million Maximum Per Offering** – If the issuer has not undergone a financial audit, the maximum amount of cash raised under the exemption must not exceed $1 million minus the amount received in the 12 months before the exemption. If the issuer has undergone a financial audit, the maximum amount allowed is $2 million minus the amount received in the 12 months before the exemption. Offers and sales to controlling persons of the issuer are exempt from the funding cap. The funding cap will be adjusted for inflation every fifth year.
- **$2,000 Maximum Per Purchaser –** The issuer has not accepted more than $2,000 from a single purchaser, unless the purchaser is an accredited investor.
- **Notice to Secretary of State** – The issuer must file a notice with the Secretary of State no less than 10 days before beginning to offer securities under the exemption. The notice must include a disclosure statement with specified financial information that will be provided to investors and an escrow agreement between the issuer and a NC bank providing that funds received from investors will be held until the minimum target offering amount is reached and that investors may cancel their purchase if the target is not reached.
- **Issuer Not Investment Company** – The issuer may not be an investment company.

[9] The one-year disregarding of costs provision was added to the bill by Senate floor amendment.

[10] This subsection was added to the bill by a Senate floor amendment.

- **Notice of Unregistered Securities and Limitations on Resale** – The issuer must conspicuously display on the cover of the disclosure document a notice to investors that the securities being offered have not been registered under federal or State law, that the investor bears the risk of the investment, and that the securities are subject to limitations on resale.
- **Written Acknowledgement by Purchaser** – The issuer shall require each purchaser to certify in writing that the purchaser understands and acknowledges the securities are a high-risk speculative business venture; no state or federal governmental authority has reviewed the offering; the securities are illiquid; and the purchaser may be subject to tax on a share of the taxable income and losses of the company whether or not the purchaser sold or otherwise disposed of the securities.
- **Registration and Recordkeeping by Internet Web Sites** – If the offer and sale are made through an internet web site, the issuer and the website must provide certain information to the Secretary of State, including evidence that both are NC businesses and that all purchasers are NC residents.
- **Notice and Recordkeeping by Escrow Holder** – The bank holding the escrow funds shall notify the Secretary of State of the receipt of payments for securities and the identity and residence of the investors.
- **Registration Exemption for Web Site** – The web site is exempt from the requirement to register as a dealer or salesperson if the web site meets specified conditions.
- **Registration Exemption for Issuer's Employees** – The executives and management of the issuer are exempt from the requirement to register as a dealer or salesperson as long as they do not receive any remuneration or commission for offering and selling securities under the exemption.
- **Quarterly Reporting** – The issuer must provide a quarterly report to investors until no securities issued under the exemption are outstanding.
- **Disqualification** – The exemption does not apply if the issuer or someone affiliated with the issuer is subject to any disqualification under State or federal law.
- **Rules** – The Secretary of State may adopt rules to implement the exemption and protect investors.

The bill authorizes the Secretary of State to charge a nonrefundable filing fee of $150 for filing the exemption notice. The bill also authorizes the Secretary of State to adopt rules to implement the exemption on an expedited basis for the first year.

PART VI: CONFIDENTIALITY OF UC RECORDS

CURRENT LAW: The Employment Security Law, Chapter 96, currently provides for disclosure of UI information only as permitted or required by Federal regulations. UI information is not specifically exempted from the public records disclosure requirements of Chapter 132 of the General Statutes.

BILL ANALYSIS: Part VI of the bill would define "confidential information" in G.S. 96-4(x) to mean:

- Any information in the records of the Division of Employment Security (DES) relating to the administration of the UI Law that is confidential under Federal regulations.
- Claim information as defined in the Federal regulations, including any information that might identify a claimant, employer, or employing unit in an UI matter.

It would also exempt confidential information from the public records disclosure requirements of G.S. Chapter 132. Finally, this section would amend G.S. 96-4(x) to authorize DES to disclose final decisions of appeals proceedings and the records of those hearings that led to the final decisions.

EFFECTIVE DATE: This section would become effective when it becomes law.

BACKGROUND: DES generates notices of hearing to inform claimants and employers in UI cases of the date and time of scheduled appeals before an Appeals Referee. In 2004, DES received a request under the Public Records Law for access to those notices, and DES began making the notices available on a daily basis to those who requested them and paid a fee as allowed under Chapter 132 of the General Statutes.

In February 2014, DES announced that the hearing notices would be made available only three times monthly and that the fee would be increased. A lawsuit[11] was filed in Wake County Superior Court, alleging that the agency's practice violated the Public Records Law. Subsequently, a temporary restraining order and preliminary injunction were issued, ordering DES to continue providing the notices of hearing until the case could be tried. The NC Court of Appeals has stayed the preliminary injunction issued by the Superior Court.

Confidentiality of UI information is governed by Federal regulations at 20 C.F.R. Part 603. After learning of the agency's practice, in a letter dated March 7, 2014, the US Department of Labor (USDOL) officially notified DES that it must cease providing the hearing notices.[12] USDOL stated that such disclosure constitutes a failure to comply with Federal laws and regulations relating to confidentiality of UI information. The USDOL letter states that State law conforms to Federal requirements, but that the DES practices did not comply with Federal law. The letter also stated that continuing to provide the notices would jeopardize the State's receipt of Title III grant funds, which funds the administrative operations of the State's UI program.

USDOL sent a follow-up letter to DES on April 25, 2014,[13] reiterating its position that DES practice of providing notices of UI appeals hearings raises "several issues of substantial compliance with Federal law requirements," and again instructing DES to immediately cease that practice. The USDOL letter stated that "[t]o be in substantial compliance with Federal law, DES must cease the practice of providing notice of appeals hearings to attorneys who do not already represent a claimant or an employer, and provide assurances that the practice has stopped and will not be resumed," and that DES must request that recipients of confidential UI information either destroy that information or return it to DES. The USDOL made clear that "DES has an affirmative duty to explore all avenues to comply with Federal law, including through the court system with the current proceedings, but also potentially via legislative remedy…." USDOL recommended that although the provisions of G.S. 96-4(x) conform to Federal law and regulations, the State's Public Records Law should be amended to exempt UI information from public records disclosures. The letter includes a paragraph on the consequences of failing to comply substantially with federal law. The possible consequences included the loss of administrative grant funds, the ineligibility of the State to administer the agreements with USDOL for other federal

---

[11] Monica Wilson and Wilson Law Group PLLC v. North Carolina Department of Commerce; NC Department of Commerce, Division of Employment Security; Sharon Allred Decker, in her capacity as Secretary of Commerce; and Dale R. Folwell, in his capacity as Assistant Secretary of Employment Security, Wake County General Court of Justice 14 CvD 2499 (filed Feb 28, 2014).

[12] Letter dated March 7, 2014, from Gay M. Gilbert, Administrator, Office of Unemployment Insurance, U.S. Department of Labor.

[13] Letter dated April 25, 2014, from Gay M. Gilbert, Administrator, Office of Unemployment Insurance, U.S. Department of Labor.

unemployment compensation programs, and the loss of the credit North Carolina employers receive against the FUTA rate when the State administers a program consistent with federal law.

PART VII: REVENUE LAWS TECHNICAL AND CLARIFYING CHANGES

This Part makes technical corrections and clarifying changes to the tax statutes largely based on recommendations of the Department of Revenue. The changes included in this Part were originally included in Senate Bill 763. These provisions are the technical and clarifying changes in Senate Bill 763 that are not roll call changes.

Section	Explanation and Effective Date
7.1	This section does two things. First, it clarifies that the changes related to retailer-contractors, which become effective January 1, 2015, are not to be construed to affect the interpretation of any statute that is the subject of a State tax audit for taxable years beginning prior to the effective date of the changes. The prior language referred to "audit pending," which the Department indicated was unclear. The changes made by Part VII of S.L. 2014-3 are not intended to be retroactive, and therefore any audit or litigation resulting derived from an audit for taxable years prior to January 1, 2015 is subject to the statutes and interpretations of the Department for those years. Second, it clarifies the effective date by providing that the changes apply to withdrawals from inventory on or after that date as well as sales since retailer-contractors do both; they make retail sales of items and they withdraw items from inventory that are used in the performance of a real property contract.
7.2	This section clarifies the conditions under which a retailer is or is not liable for the collection of tax on the rental of private residences rented for fewer than 15 days and listed with a real estate broker during the period in which the Department's Important Notice was in effect and during the 30-day period following the effective date of S.L. 2014-3. The original provision was not specific to the private residence changes but generically referred to the entire section, which could have been interpreted to affect the liability of retailers required to collect tax on the rental of accommodations generally. This section becomes effective June 1, 2014.
7.3	This section repeals an unnecessary provision; Section 14.1 of S.L. 2014-3 made the same change.
7.4	S.L. 2014-3 enacted a new tax on vapor products as part of the current tax on other tobacco products (OTP). This section makes a technical change that allows North Carolina manufacturers of vapor products to collect the new vapor tax on internet retail sales, while allowing the manufacturers to continue to the current practice of applying to the Secretary of Revenue to be relieved of the tax for vapor products shipped to wholesale and retail dealers. The Secretary allows manufacturers to be relieved of paying the tax on OTP when the tax is paid by the wholesale or retail dealer. This section becomes effective June 1, 2015.
7.5	This section clarifies that the credit may be taken when the property is placed into service in this State. When a renewable energy project is put together, there are

	usually two sets of investors, those that want the federal credit and those that want the State credit. If the lessee is to get the federal credit, it must "place it into service". However, if the lessor wants the State credit, it must "place it into service". As clarified by this section, the lessor may claim the State credit. as long as somebody (the lessee) places the property into service.
7.6	This section incorporates a revision made to G.S. 15-130.5(b)(4) made by Section 14.3 of S.L. 2014-3 so that the changes engross correctly in the codification process.
7.7	This section clarifies that the phrase "subject to tax under Part 2 or 3 of Article 4" applies to a beneficiary of a transferor. Subsection (a) becomes effective for the 2013 taxable year; subsection (b) becomes effective for the 2014 taxable year.
7.8	This section provides that neither an individual nor a withholding agent may be penalized for underpayment of income tax for the 2014 taxable year if the reason for the underpayment is the clarification of the law in S.L. 2014-3. S.L. 2014-3 clarified that a person who is not eligible for a federal standard deduction is not eligible for a State standard deduction. A nonresident alien individual is not allowed a standard deduction. This section does not change the effective date of the substantive law change or the amount of tax due and payable.
7.9	This section clarifies that the term "retailer" is any person required to collect sales tax imposed under G.S. 105-164.4, other than a facilitator. The current definition does not reflect the expansion of the sales tax base to prepaid meal plans, admission charges, piped natural gas, and service contracts.
7.10	This section makes technical and conforming changes.
7.11	This section clarifies that the exemption provisions applicable to fuel also include piped natural gas. PNG is considered fuel, but since the imposition of the combined rate of tax for PNG is separate from the general tax imposed on fuel, the Department of Revenue requested this clarifying change.
7.12	Subsection (a) of this section makes a similar clarifying change as made in Section 11 of this bill for the farm exemption for fuel and piped natural gas. It also makes other technical changes suggested by the Department of Revenue. Subsection (b) of this section allows farmers to use exemption certificates issued prior to July 1, 2014, until January 1, 2015. Currently, they may not use the previously issued certificates past October 1, 2014.
7.13	This section does two things: • It provides that a retailer who has an agreement with a food service contractor to collect and remit the sales tax on gross receipts derived from a prepaid meal plan is not liable for the tax that the retailer remits to the food service contractor. • It requires a retailer to report gross receipts derived from a prepaid meal plan on an accrual basis of accounting for purposes of reporting sales tax.
7.14	This section provides that for sales tax purposes, a retailer must report its gross receipts derived from sales of piped natural gas and prepaid meal plans on an accrual basis, and it states that a sale is considered to accrue when the retailer bills its

	customers for the sale.
7.15	This section makes a change as to who may apply for a certificate of registration for legal entity so that it is consistent with the changes made in Section 14.18 of S.L. 2014-3 as to who may be liable for unpaid sales tax for a legal entity.
7.16	This section changes a statute that was not codified as it was intended to be amended by Section 47 of S.L. 2013-414. The section does not change the substance of the subdivision. The change made last session codified the Department's administrative practice of allowing protective refund claims to be filed when an event prevented a taxpayer from having the information necessary to file a request for refund, such as pending litigation or an ongoing income tax audit in another state that may affect the taxpayer's NC tax liability.[14]
7.17	Part XI of S.L. 2014-3 established a procedure for the central assessment of mobile telecommunications property. The intent of this Part was to shift the responsibility for conducting the valuations of this particular kind of property from the individual counties to the Department of Revenue without creating any "winners" or "losers" in terms of the values allocated to the counties. This section makes minor modifications to that Part to ensure that there is no shifting of value among counties as a result of the change. The Department appraises this property at its "true value," which includes consideration of its original cost but with deductions made for all forms of depreciation to arrive at the property's fair market value. However, under S.L. 2014-3, the allocation of the value among the counties in which the property is located would have been based only on original cost. Using original cost would have had the effect of overinflating the value allocated to a particular county and decreasing the value allocated to other counties. This section provides that once the Department determines the value of the property, it will be allocated among the counties based on where the property is located.
7.18	Cities have historically been prohibited from imposing a license, franchise, or privilege tax on certain utility-related businesses, such as telecommunications, video programming, and electricity. With the repeal of G.S. 160A-211, effective July 1, 2015, the specific prohibition language would also be repealed. While cities only have the power to tax or charge a fee to the extent the legislature has granted them the authority to do so, and the repeal of this prohibition is not necessarily a grant of authority otherwise, the utilities industry has concerns about the deletion of the prohibition as it relates to rights-of way and has requested that the language be kept in the statutes. This section recodifies the language in a more appropriate place in the statutes.
7.19	S.L.2013-316, included electricity and piped natural gas in the State sales tax base while repealing the utility franchise tax on electricity and the excise tax on piped natural gas. A portion of both of the repealed taxes was shared with the cities. The

[14] Generally speaking, there is a time limit within which a taxpayer may file a claim for refund. If the claim for refund is not timely filed, it will be barred. The Department has administratively allowed for a taxpayer in these circumstances to file a timely but incomplete claim for refund, known as a "protective refund claim," and then later perfect the claim when the essential information becomes available.

	tax-sharing revenue under the repealed taxes was replaced with a distribution of part of the sales tax on electricity and piped natural gas. This section clarifies that funds from the sales tax may be used for the final distribution of the repealed franchise tax on electricity and repealed excise tax on piped natural gas.
7.20	This section conforms to federal law, and codifies the current practice, of providing the same standard deduction amount for a surviving spouse as for a married couple filing jointly. Subsections (a) and (b) make the necessary changes to the tax statutes effective for taxable years beginning on or after January 1, 2014. Subsections (c) and (d) make the same change for taxable years 2012 and 2013. When North Carolina used federal taxable income as its starting point, a specific reference to "surviving spouse" was not necessary because the amount of the standard deduction was automatically a part of that calculation. However, with the change in the 2012 taxable year to federal adjusted gross income, this conforming provision was inadvertently omitted.
7.21	This section removes a reference to a repealed statute, and incorporates the definition that was referenced in the repealed statute.

EFFECTIVE DATE: Part I is effective when it becomes law. Part II of the act becomes effective July 1, 2014. Parts III, IV, and VI of the act are effective when they become law. Part V is effective when it becomes law and expires on July 1, 2017. Part VII has various effective dates.