



SENATE BILL 363: Wage & Hour/Local Gov't Assessments/Parks.

2016-2017 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	June 2, 2016
Introduced by:	Sen. Hartsell	Prepared by:	Trina Griffin Staff Attorney
Analysis of:	PCS to Third Edition S363-CSSVxr-50		

SUMMARY: *The Proposed Committee Substitute for S363 contains three unrelated provisions as follows:*

- *Provides that employees of a seasonal amusement or recreational establishment are not subject to overtime or record keeping requirements of the North Carolina Wage and Hour Act.*
- *Authorizes counties and cities to fund a critical infrastructure project with funds from private parties that may be reimbursed through the imposition of assessments.*
- *Removes several small tracts from the State Nature and Historic Preserve and from the State Parks System to resolve deed overlaps, to allow for minor road relocations and utility easements, and to improve park management. This provision will require that the bill be approved by a three-fifths vote of the members of each house of the General Assembly.*

WAGE AND HOUR ACT CHANGES

CURRENT LAW: Employees who work for employers with at least two employees and that meet either of the following conditions are covered by the federal Fair Labor Standards Act (FLSA):

- They have an annual dollar volume of sales or business of at least \$500,000.
- They are hospitals, businesses providing medical or nursing care for residents, schools and preschools, and government agencies.

The FLSA requires that covered employers pay their employees at least the federal minimum wage and overtime pay at time and one-half the regular rate of pay after 40 hours in a workweek. However, the Act provides some specific exemptions for employees employed by certain establishments and in certain occupations. Specifically, there is an exemption for "any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center."¹

The North Carolina Wage and Hour Act applies to employees who are not covered by the FLSA. States may, but are not required to, recognize or permit the application of the federal exemptions. Under North Carolina law, an employer of seasonal amusement or recreational establishment employees is required to pay those employees overtime pay for hours worked in excess of 45 hours per workweek. However,

¹ The establishment qualifies for the exemption only if either (i) it does not operate for more than 7 months in a calendar year, or (ii) during the preceding calendar year, its average receipts for any 6 months were not more than 33.33% of its average receipts for the other 6 months of the year.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

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employees of a seasonal religious or nonprofit education conference center are specifically exempt from minimum wage, overtime, and record keeping requirements.

SECTION ANALYSIS:

Section 1(a) would provide that employees of a seasonal amusement or recreational establishment are not subject to the overtime or record keeping requirements of the North Carolina Wage and Hour Act, but they would be subject to the minimum wage requirements. Under this bill, the same rules will apply to all seasonal and recreational establishment employees with respect to overtime and record keeping, whether the employer falls under the FLSA or not.

Section 1(b) would remove the authority of the Commissioner of Labor to adopt a regulation which would allow a wage rate of not less than 85% of the minimum wage for employees of a seasonal amusement or recreational facility.

Section 1(c) is a conforming change. It deletes language in the overtime statute that requires employers of seasonal amusement or recreational establishment employees to pay overtime for hours exceeding 45 per work week.

EFFECTIVE DATE: This section would become effective when it becomes law and applies to wages earned after that date and after notice has been given to employees in accordance with G.S. 95-13(3).

LOCAL GOVERNMENT ASSESSMENTS

SECTION ANALYSIS: Section 2 of the bill would allow counties and cities to fund a critical infrastructure project with funds from private parties that may be reimbursed through the imposition of assessments.

CURRENT LAW: Counties and cities have the ability to impose assessments against benefitted property to pay for certain public infrastructure improvements, such as sidewalks. As a general rule, the assessment must be paid in full at the time it is assessed, but in no event may the assessment period exceed 10 years. In 2008, the General Assembly created a new financing tool that allowed counties and cities to impose special assessments to help finance long-term public infrastructure projects. Under this assessment-based financing tool, the assessments are paid in annual installments over a period not to exceed 25 years.

The assessment-based financing may be used for any purpose for which project development financing may be used. Those purposes include water and sewer systems, public transportation facilities, school facilities, gas systems, electric systems, industrial parks, parks and recreation facilities, and streets and sidewalks. Special assessments may be pledged as additional security for project development financing debt instruments as well as revenue bond financing debt instruments. If the assessment is pledged to secure financing, the city or county must covenant to enforce the payment of assessments.²

A county or city may only use special assessment-based financing if it receives a petition for the project to be financed through assessments that meets a two-prong test:

- The petition must be signed by a majority of the owners of the property assessed. For purposes of determining a majority, each parcel of property is given one vote. The sole owner of a parcel is given one vote. Multiple owners of a parcel are given a percentage vote equal to one vote multiplied by a fraction, the numerator of which is one and the denominator of which is the total number of owners of the parcel.

² Unpaid assessments bear interest at a rate fixed in the assessment resolution. A county or city may foreclose assessment liens under procedures provided by law for the foreclosure of property tax liens.

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- And those owners must represent ownership of at least 66% of the assessed value of the property to be assessed.³ For purposes of determining whether the assessed value represented by those signing the petition constitute at least 66% of the assessed value of all real property to be assessed, 100% of the assessed value of property owned by one person is included in the calculation. For property owned by more than one person, that person's proportionate share of the assessed value of that property is included in the calculation.

The county board of commissioners or city must adopt a preliminary assessment resolution that describes the project, the proposed basis for making the assessment, and information concerning the cost of the work and the terms of payment of the assessment. The proposed basis for making the assessment method must assess property according to the benefits conferred upon it by the project for which the assessment is made. In making that determination, it is permissible to measure benefits by how the property is used. If the use of the property changes, the assessment on that property may be adjusted over time so long as the total amount of all the assessments is sufficient to pay the cost of the project after the adjustment is made. The county or city must hold a public hearing on the matter, prepare a preliminary assessment roll, and publish a confirmation of the assessment roll once it is adopted. An owner of property against which an assessment is made may file a notice of appeal to the General Court of Justice if the owner is dissatisfied with the amount of the assessment.

EFFECTIVE DATE: This section would become effective June 30, 2016, and apply to assessments made on or after that date.

DELETIONS FROM STATE NATURE AND HISTORIC PRESERVE/STATE PARKS

CURRENT LAW: Section 5 of Article XIV of the Constitution of North Carolina provides for addition of properties to and removal of properties from the State Nature and Historic Preserve by a law enacted by a three-fifths vote of the members of each house of the General Assembly. The Preserve is intended to insure that lands and waters acquired and preserved for public park, recreation, conservation, and historic preservation purposes continue to be used for these purposes. Upon inclusion in the Preserve, these lands may not be used for other purposes except as authorized by a law enacted by a vote of three-fifths of the members of each house. G.S. 143-260.10 lists the current components of the Preserve.

G.S. 143B-135.54 provides conditions and procedures for additions to, and deletions from, the State Parks System that must be authorized by the General Assembly. The State Parks Act requires a majority vote of the General Assembly to remove a park or any part from the State Parks System. Most of the land within the State Parks System is included in the State Nature and Historic Preserve.

BILL ANALYSIS: Section 3 would delete several small tracts from the State Nature and Historic Preserve and/ or delete these small tracts from the State Parks System. The proposed deletions will resolve deed overlaps, allow for minor road relocations and utility easements, and improve park management. Specifically, the bill would:

- Delete a 4.2 acre parcel from **Gorges State Park** from the Preserve and the State Parks System to facilitate an exchange of land with an adjacent property owner.
- Delete a .6 acre parcel from **Jockey's Ridge State Park** from the Preserve to allow a buried power transmission cable that crosses Jockey's Ridge and provides a power source between Nags Head and Roanoke Island to remain permanently.

³ For example, if there are 21 owners involved and 10 hold 67% of the assessed value of the property to be assessed, at least one of the other 11 owners would have to sign the petition for the county or city to be able to impose the special assessments. Likewise, if 21 owners are involved and one owner owns 67% of the assessed value of the property, that one owner would have to be one of the signatures on the petition for the county or city to impose the special assessments.

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- Delete a .008 acre parcel from **Mitchell's Mill State Natural Area** from the Preserve and the State Parks System to provide the Department of Transportation a right-of-way needed for a bridge replacement project over Cedar Fork Creek in eastern Wake County.
- Delete a 2.63 acre parcel from **Hanging Rock State Park** to correct several issues revealed by a boundary survey.

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