



SENATE BILL 575: North Carolina/South Carolina Original Boundary Confirmation.

2015-2016 General Assembly

Committee:		Date:	July 26, 2016
Introduced by:		Prepared by:	Cindy Avrette Legislative Analyst
Analysis of:	S.L. 2016-23		

OVERVIEW: *S.L. 2016-23 addresses several legal and tax issues related to the reestablishment of the original boundary line existing between North Carolina and South Carolina. North Carolina and South Carolina created a Joint Boundary Commission to relocate and reestablish their 334-mile common boundary. The Commission began its work in 1995 and completed the technical part of its work by May of 2013. For the last three years, efforts have been underway to reduce or eliminate the impact of the work on property owners whose residency or business would be moved from South Carolina to North Carolina, or vice versa, because of the reestablished boundary line. This act addresses not only the tax consequences of the reestablished boundary line but also other issues, such as public education enrollment and drivers licenses. South Carolina enacted similar legislation in June 2016: Act 270, Ratified 292, and Senate Bill 667.*

This act became effective June 22, 2016. It is anticipated that the process to complete the reestablishment of the boundary line will be completed by the end of this calendar year. The boundary must be approved by the Governor and the Council of State before the Governor may issue a proclamation declaring the reestablished line as the true boundary line between North Carolina and South Carolina.

CURRENT LAW AND BACKGROUND: The Governor is charged with causing the boundaries of the State to be established with its contiguous states. Those boundary lines may, from time to time, need to be reestablished. Chapter 141 of the General Assembly directs the Governor to appoint commissioners and surveyors to remark the boundary. When the boundary lines have been agreed upon, the Governor submits the survey to the Council and State and, upon its approval, issues a proclamation declaring the boundary lines.

North Carolina and South Carolina created a Joint Boundary Commission to relocate and reestablish their 334-mile common boundary. The Commission began its work in 1995 and completed the technical part of its work by May of 2013. Nineteen homes are impacted by a change in jurisdiction and four businesses are impacted. During the two-decade long process, the Commission sent letters to 173 potentially impacted landowners and asked for comments. These comments helped shape the legislation introduced in the two states to minimize the impact of the boundary line on these property owners.

BILL ANALYSIS: Under Part I of S.L. 2016-23, the General Assembly certifies that, as of January 1, 2017, the boundary between North Carolina and South Carolina is the boundary that was reestablished by the Joint Boundary Commission and proclaimed as the boundary by the Governor. For property tax purposes, the boundary becomes effective as of January 1 of the year following the year this act becomes effective or the year an executive order has been issued by the Governor proclaiming the boundary between North Carolina and South Carolina, whichever occurs first.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

Senate Bill 575

Page 2

PARTS II and VIII, Address a specific business that will be moved from South Carolina to North Carolina.

The business is a gas station located in York County, South Carolina, that is allowed under South Carolina law to sell beer, wine, and fireworks.¹ As a North Carolina business located in Gaston County, it would not be allowed to sell any of those products. In addition, the differential in the motor fuel excise tax between the two states would cause the price of the gasoline sold by this business to increase. To help alleviate the financial impact of this change, Parts II and VIII of S.L. 2016-23 make the following changes:

- **Part II** allows the motor fuel excise tax rate at this establishment to be the same rate as the rate imposed by South Carolina. It accomplishes this result as follows:
 - Designates an establishment to which a State boundary certification permit may be issued to be designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and allowed a monthly motor fuel tax refund.
 - The amount of the refund is the difference between the amount of motor fuel excise tax paid under North Carolina law, 35¢ per gallon, and 16¢ per gallon, which is the current per gallon motor fuel excise tax rate in South Carolina. The Revenue Laws Study Committee must annually compare the motor fuel rate imposed in South Carolina and recommend a change in the rate imposed by this act to an amount no greater than the rate then in effect for South Carolina.
 - The special tax treatment allowed by this act becomes ineffective when the underlying property is sold; a change in the operator of the establishment does not trigger the sunset.
 - The difference in taxes is carried forward in the records of the Department of Revenue, together with interest and penalties, as deferred taxes and is a lien on the real property underlying the establishment. When the title to the real property underlying the establishment is transferred to a new owner, the deferred taxes for the preceding three calendar years become due and payable; however, in no event may the amount of the deferred taxes collected exceed the tax value of the property.
- **Part VIII** creates a new “State boundary certification” ABC permit that will allow an establishment to be permitted to sell off-premises beer and unfortified wine, without the necessity of voter approval, if the establishment meets all of the following conditions:
 - Is located in a county that borders another state.
 - Whose location is reclassified from out-of-state to North Carolina as a result of a State boundary certification.
 - Who was licensed and permitted by the previous state of record to sell beer and unfortified wine.

S.L. 2016-23 makes the following tax law changes applicable to any property impacted by the new boundary certification:

PART II, Tax Liability

¹ The act does not change the law concerning the sale of fireworks; the business would not be able to sell fireworks in North Carolina under current law.

Senate Bill 575

Page 3

- North Carolina taxes may not be imposed for a taxable period prior to the certification, such as income taxes and sales or use taxes.
- The tobacco products tax is due for products inventoried on or after the date of certification. The person is allowed a credit for any tax paid to the previous state of residence.
- Property that no longer meets the size requirements for present-use value solely because of the boundary certification may continue to qualify under the present-use value classification and the deferred taxes for the property relocated in South Carolina do not become due and payable until the deferred taxes on the land located in North Carolina otherwise become due and payable.
- Property that no longer qualifies for a property tax benefit because of the boundary certification is no longer entitled to the property tax benefit, but the lien on the land for the deferred taxes is extinguished as if it has been paid in full.

PART IX, Title, Registration, and Highway Use Tax

Vehicle title, registration, and payment of highway use tax is required from impacted persons in the same manner as it currently is required from persons moving to North Carolina from another state.

S.L. 2016-23 also addresses the following issues unrelated to tax law:

PART III, Instruments of title to real property. – The final survey of the confirmed boundary must be filed in every county affected by the boundary certification. Any parcels of land impacted by the survey must be registered and indexed in the county or counties where the affected parcel is situated. All conveyances and instruments of title of affected parcels are recognized and given full faith and credit, including outstanding mortgages and deeds of trusts, judicial orders, title insurance, and documents evidencing intestate succession.

PART IV, Foreclosure of deeds of trust and mortgages. – Prior to initiating an action to enforce a security instrument, the instrument must be recorded in the county where the property is situated. The laws of the state where the property is situated apply to the portion of the property located in that particular state.

PART V, Public school student enrollment. – A student who was eligible to enroll in a North Carolina public school or charter school prior to the date of certification may attend school in this state without payment of tuition. That student is included in calculating average daily membership and is subject to North Carolina compulsory attendance laws. A student who violates the compulsory attendance laws may no longer attend a North Carolina public school or charter school under the provisions of this act.

PART VI, Driver education eligibility/Beginner license. – A student who attends a public school under the provisions of this act and obtains a beginner's permit in South Carolina is eligible to participate in behind-the-wheel instruction as part of a driver education course offered by the school in which the student is enrolled. A student who is a legal resident of North Carolina because of the boundary certification and who attends a South Carolina public school may obtain a North Carolina limited learner's permit if the student passes a course of driver education offered by the South Carolina school in which the student is enrolled.

PART VII, Eligibility for in-State tuition. – Persons and their dependents formerly domiciled in NORTH CAROLINA who are domiciled in South Carolina as a result of the boundary certification may be considered eligible for in-State tuition rates for a period of up to 10 years from the effective date of the boundary change. The person must maintain residence and domicile on that same property within South Carolina to be eligible for the North Carolina in-State tuition rates. Persons and their dependents formerly domiciled in South Carolina who are domiciled in North Carolina as a result of the boundary

Senate Bill 575

Page 4

certification may, for a period of two years from the effective date of the certification, be eligible for in-State tuition rates without the requirement of residency and domicile for 12 months in this State provided the person evidences an intent to establish domicile in North Carolina and resides on the same property that was in South Carolina immediately prior to the boundary certification.

PART X, Environmental compliance schedule. – A facility or property that was located in South Carolina but is now located in North Carolina as a result of the boundary certification must obtain any necessary permits, licenses, or program approval from the North Carolina Department of Environmental Quality (DEQ) that North Carolina law requires. However, DEQ must provide a schedule of compliance that allows the recipient a period of no less than five years to come into compliance with North Carolina laws, rules, and standards if there is no corresponding law, rule, or standard in South Carolina or if the North Carolina law, rule, or standard is more stringent than the South Carolina counterpart. Nothing in this Part is intended to limit the applicability or employment of existing procedures under North Carolina law granting waivers or variances from otherwise applicable environmental rules or standards.

PART XI, Utilities/Extension of rural fire protection districts, county service districts, and water and sewer districts. – Property formerly in South Carolina may continue to receive utility service from a provider in South Carolina if that provider was providing the service prior to January 1, 2017. A South Carolina utility provider that provides service to a North Carolina property under the provisions of this act is not a public utility subject to regulation by the North Carolina Utilities Commission. The governing body of a district that gains territory because of the boundary certification may annex the newly gained territory to the district if the governing body determines the residents of that territory would benefit from the services of the district.

EFFECTIVE DATE: Except as otherwise provided, this act became effective June 22, 2016.

The act also contains a severability clause so that if any provision of the act or its application is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application.