



# SENATE BILL 575: NC/SC Original Boundary Confirmation.

2016-2017 General Assembly

<b>Committee:</b>	House Judiciary IV	<b>Date:</b>	June 15, 2016
<b>Introduced by:</b>	Sen. Tucker	<b>Prepared by:</b>	Cindy Avrette
<b>Analysis of:</b>	Fifth Edition		Staff Attorney

**SUMMARY:** *Senate Bill 575<sup>1</sup> addresses several legal and tax issues related to the reestablishment of the original boundary line existing 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 Statutes 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. 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. Nineteen homes are impacted by a change in jurisdiction and four businesses are impacted. The reestablished boundary goes through 54 homes and buildings.

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. There has been legislation introduced in South Carolina (Senate Bill 667<sup>2</sup>) and in North Carolina (Senate Bill 575 and House Bill 834).

**BILL ANALYSIS:** Under Part I of Senate Bill 575, the General Assembly certifies that, as of January 1, 2017, the boundary between NC and SC 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 NC and SC, which is earlier.

Senate Bill 575 addresses not only the tax consequences of the reestablished boundary line but other issues as well, such as public education and drivers licenses. Perhaps the most significant situation the legislation addresses is a business that will be moved from SC to NC. The business is a gas station

<sup>1</sup> As introduced, this bill was identical to H834, as introduced by Rep. Davis, which is currently in House Rules, Calendar, and Operations of the House.

<sup>2</sup> The South Carolina Legislature ratified Senate Bill 667 on June 6, 2016.

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located in York County, SC, that is allowed under SC law to sell beer, wine, and fireworks.<sup>3</sup> As a NC 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 Senate Bill 575 make the following changes:

- 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 border 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.
- 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 NC law, 35¢ per gallon, and 16¢ per gallon, which is the current per gallon motor fuel excise tax rate in SC. The Revenue Laws Study Committee must annually compare the motor fuel rate imposed in SC and recommend a change in the rate imposed by this act to an amount no greater than the rate then in effect for SC.
  - The special tax treatment allowed by this act becomes ineffective when the underlying property is sold; a change in the operator of the establishment would 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.

This act makes the following tax law changes applicable to any property impacted by the new boundary certification:

- NC taxes may not be imposed for a taxable period prior to the certification, such as income taxes and sales and use taxes.
- 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 NC from another state. (PART IX)

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<sup>3</sup> The bill does not change the law concerning the sale of fireworks; the business would not be able to sell fireworks in NC under current law.

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- 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 PUV classification and the deferred taxes for the property relocated in SC do not become due and payable until the deferred taxes on the land located in NC 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.

Senate Bill 575 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 NC 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 NC compulsory attendance laws. A student who violates the compulsory attendance laws may no longer attend a NC 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 SC 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 NC because of the boundary certification and who attends a SC public school may obtain a NC limited learner’s permit if the student passes a course of driver education offered by the SC school in which the student is enrolled.

**PART VII, Eligibility for in-State tuition.** – Persons and their dependents formerly domiciled in NC who are domiciled in SC 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 SC to be eligible for the NC in-State tuition rates. Persons and their dependents formerly domiciled in SC who are domiciled in NC as a result of the boundary 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 NC and resides on the same property that was in SC immediately prior to the boundary certification.

**PART X, Environmental compliance schedule.** – A facility or property that was located in SC but is now located in NC as a result of the boundary certification must obtain any necessary permits, licenses, or program approval from DEQ that NC 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 NC

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laws, rules, and standards if there is no corresponding law, rule, or standard in SC or if the NC law, rule, or standard is more stringent than the SC counterpart. Nothing in this Part is intended to limit the applicability or employment of existing procedures under NC 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 SC may continue to receive utility service from a provider in SC if that person was providing the service prior to January 1, 2017. A SC utility provider that provides service to a NC property under the provisions of this act is not a public utility subject to regulation by the NC Utilities Commission. The governing body of a district that gains territory because of the boundary certification must determine whether the residents of the newly gained territory would benefit from the services of the district, and if yes, must annex the territory to the district.

**EFFECTIVE DATE:** Except as otherwise provided, this act is effective when it becomes law.

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.