



# SENATE BILL 561: Violate Tax Law/Venue/Property Tax/DWI.

2017-2018 General Assembly

<b>Committee:</b>	House Finance	<b>Date:</b>	June 13, 2018
<b>Introduced by:</b>	Sens. J. Jackson, Britt, B. Jackson	<b>Prepared by:</b>	Trina Griffin
<b>Analysis of:</b>	Second Edition		Committee Co-Counsel

**OVERVIEW:** *Senate Bill 561 has three parts, which do the following:*

- *Change venue for the prosecutions of criminal tax violations from Raleigh to the county where the charged offense occurs.*
- *Exempt from property tax leasehold interests in exempt property.*
- *Provide that the statute of limitations for misdemeanors is satisfied if charged within 2 years of the offense and provide that the results of HGN tests are admissible when given by a person who has successfully completed HGN training and the test is administered in accordance with the person's training.*

## CURRENT LAW & BILL ANALYSIS:

### Part I. Prosecution of Tax Laws

**CURRENT LAW:** The North Carolina Department of Revenue's Criminal Investigation Division investigates tax evasion, false tax returns, and failure to file and pay employee withholding taxes. For purposes of legal jurisdiction, a violation of State tax law is committed in part at the office of the secretary of the Department of Revenue in Raleigh. In civil matters, the Revenue Division of the Office of the Attorney General represents the Department of Revenue. In criminal matters, typically the Wake County District Attorney's Office prosecutes the case on behalf of the Department of Revenue; the Attorney General's Office provides staff to Wake County for this purpose.

**BILL ANALYSIS:** Part I of the bill would change the venue for prosecutions of criminal tax violations to the county where the charged offense occurs. It further provides that the Attorney General shall have concurrent jurisdiction if the District Attorney requests, in writing, that the Attorney General prosecute the violation.

**EFFECTIVE DATE:** This section becomes effective December 1, 2018, and applies to offenses committed on or after that date.

### Part II. Conform Treatment of Leasehold Interests in Exempt Property

**BILL ANALYSIS:** Part II of the bill would exempt from property tax a leasehold interest in exempt property.

**CURRENT LAW:** North Carolina imposes a property tax on a leasehold interest in real property where the real property is exempt from property tax. The property tax on a leasehold interest in exempt real property applies when a unit of government leases property to a private business and when the payments

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under the lease are below the value of the interest in the real estate.<sup>1</sup> Most county assessors value these leasehold interests as the difference between the fair market value of the leasehold interest and the rent paid under the lease. For example, if the private tenant is paying market rate for the exempt real property owned by a local government, then the leasehold interest has no value because similar leases can be obtained at the same price. If the tenant is paying a bargain rate under the lease, the leasehold interest has value because a similar lease would cost more.

**EFFECTIVE DATE:** This section is effective for taxes imposed for taxable years beginning on or after July 1, 2018.

## Part III. Amend Various DWI Statutes

### Section 3.1(a)

**CURRENT LAW:** G.S. 15-1 currently requires misdemeanors be presented or found by the grand jury within 2 years of the commission of the offense. In 1956, the Supreme Court opinion recognized an extension of this requirement by holding in *State v. Underwood* that a defendant may also be tried upon a misdemeanor charged by a warrant within 2 years of the offense. Thus, to satisfy the statute of limitations for misdemeanors, an indictment, presentment, or warrant must have been issued within two years of the date of the offense.

**BILL ANALYSIS:** Section 3.1(a) of the bill would amend the statute of limitations for misdemeanors to change the phrase requiring that the misdemeanor be "presented or found by the grand jury" within two years after commission of the offense to state that the misdemeanor must be "charged" within two years of the offense in order to encompass the charging methods that are sufficient under current law, as well as any other methods of charging misdemeanors such as by magistrate's order or citation.

### Section 3.1(b)

**CURRENT LAW:** Pursuant to North Carolina Rule of Evidence (NCRE) 702(a), in order to qualify as an expert witness for the purpose of giving expert opinion on a matter during a trial, all of the following must apply:

- The testimony must be based upon sufficient facts of data.
- The testimony is the product of reliable principles and methods.
- The witness has applied the principles and methods reliably to the facts of the case.

NCRE 702(a1) provides that as long as a witness has been qualified under the above criteria in subsection (a), the witness may give an expert opinion on the issue of impairment relating to the following:

- The results of a Horizontal Gaze Nystagmus (HGN) Test when the test is administered by a person who has successfully completed training in HGN.
- Whether a person was under the influence of one or more impairing substances. A witness who has received training and holds a current certification as a Drug Recognition Expert, issued by the State Department of Health and Human Services is qualified to give testimony in this area.

**ANALYSIS:** Section 3.1(b) would, for opinions on the issue of impairment, remove the preliminary requirements that the witness be qualified under the typical foundational requirements for expert witness testimony established in NCRE 702(a) before providing expert witness testimony relating to the two matters described in NCRE 702(a1). The bill would amend the phrase allowing for expert witness testimony about the results of a Horizontal Gaze Nystagmus (HGN) test to require that the test must have

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<sup>1</sup> The only other form of intangible property subject to property tax is certain computer software.

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been administered in accordance with the person's training, as opposed to the current law requiring only that the person testifying must have completed training in HGN.

**EFFECTIVE DATE:** The provision regarding the statute of limitations becomes effective December 1, 2018, and applies to offenses committed on or after that date. The remainder is effective when it becomes law.