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HOUSE BILL 1490
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Short Title: Secure Local Revenues.

(Public)

Sponsors:

Referred to:

May 30, 2002

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR
IMPOUNDED BY THE GOVERNOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.82(d) reads as rewritten:

"(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 2. G.S. 105-116.1(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 3. G.S. 105-187.44(b) reads as rewritten:

"(b) Distribution. – Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of

1 the North Carolina Constitution. Therefore, the Governor may not reduce or withhold
2 the distribution."

3 **SECTION 4.** G.S. 105-164.44F is amended by adding a new subsection to
4 read:

5 "(f) Nature. – The General Assembly finds that the revenue distributed under this
6 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of
7 Article III of the North Carolina Constitution. Therefore, the Governor may not reduce
8 or withhold the distribution."

9 **SECTION 5.** G.S. 136-41.1 is amended by adding a new subsection to read:

10 "(d) Nature. – The General Assembly finds that the revenue distributed under this
11 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of
12 Article III of the North Carolina Constitution. Therefore, the Governor may not reduce
13 or withhold the distribution."

14 **SECTION 6.** G.S. 159B-27(d) reads as rewritten:

15 "(d) The State shall distribute to cities and towns which receive electric power and
16 energy from their ownership share of a project or to which electric power and energy is
17 sold by a joint agency an amount equal to a tax of three and nine hundredths percent
18 (3.09%) of all moneys expended by a municipality on account of its ownership share of
19 a project, including payment of principal and interest on bonds issued to finance such
20 ownership share, or an amount equal to a tax of three and nine hundredths percent
21 (3.09%) of the gross receipts from all sales of electric power and energy to such city or
22 town by a joint agency, as the case may be. The General Assembly finds that the
23 revenue distributed under this section is local revenue, not a State expenditure, for the
24 purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the
25 Governor may not reduce or withhold the distribution."

26 **SECTION 7.** G.S. 143-25 reads as rewritten:

27 "**§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to**
28 **support them.**

29 (a) All maintenance appropriations now or hereafter made are hereby declared to
30 be maximum, conditional and proportionate appropriations, the purpose being to make
31 the appropriations payable in full in the amounts named herein if necessary and then
32 only in the event the aggregate revenues collected and available during each fiscal year
33 of the biennium for which such appropriations are made, are sufficient to pay all of the
34 appropriations in full; otherwise, the said appropriations shall be deemed to be payable
35 in such proportion as the total sum of all appropriations bears to the total amount of
36 revenue available in each of said fiscal years. The Except as provided in subsection (b)
37 of this section, the Director of the Budget is hereby given full power and authority to
38 examine and survey the progress of the collection of the revenue out of which such
39 appropriations are to be made, and to declare and determine the amounts that can be,
40 during each quarter of each of the fiscal years of the biennium properly allocated to
41 each respective appropriation. In making such examination and survey, ~~he~~ the Director
42 of the Budget shall receive estimates of the prospective collection of revenues from the
43 Secretary of Revenue and every other revenue collecting agency of the State. The
44 Director of the Budget may reduce all of said appropriations pro rata when necessary to

1 prevent an overdraft or deficit to the fiscal period for which such appropriations are
2 made. The Governor may also reduce all of said appropriations pursuant to Article III,
3 Section 5(3) of the Constitution in accordance with subsection (b) of this section, after
4 consulting with the Joint Legislative Commission on Governmental Operations under
5 G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy
6 of this Article are to provide and insure that there shall be no overdraft or deficit in the
7 general fund of the State at the end of the fiscal period, growing out of appropriations
8 for maintenance and the Director of the Budget is directed and required to so administer
9 this Article as to prevent any such overdraft or deficit. Prior to taking any action under
10 this section to reduce appropriations pro rata, the Governor may consult with the
11 Advisory Budget Commission.

12 (b) The General Assembly recognizes that it has required units of local
13 government to adopt and maintain annual balanced budgets and take other steps to
14 assure financially sound operations under the Local Government Budget and Fiscal
15 Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly,
16 the General Assembly finds that in order to satisfy those statutory requirements and
17 provide adequate services to their citizens, units of local government must be able to
18 rely on the funds and local revenue sources the General Assembly has provided.

19 It is the intent of the General Assembly that funds that have been collected by the
20 State on behalf of local governments and funds that the General Assembly has
21 appropriated or otherwise committed to local governments shall not be reduced except
22 as provided in this section. In exercising the powers contained in Section 5(3) of Article
23 III of the Constitution, the Governor shall not withhold from distribution funds that have
24 been collected by the State on behalf of local governments or funds that the General
25 Assembly has appropriated or otherwise committed to local governments unless, after
26 making adequate provision for the prompt payment of principal of and interest on bonds
27 and notes of the State according to their terms, the Governor has exhausted all other
28 sources of revenue of the State including surplus remaining in the treasury at the
29 beginning of the fiscal period and has been authorized to withhold the funds by an act of
30 the General Assembly.

31 This subsection does not authorize the Governor to withhold revenues from taxes
32 levied by units of local governments and collected by the State. The General Assembly
33 recognizes that under Section 19 of Article I of the North Carolina Constitution and
34 under the Due Process Clause of the United States Constitution, the State is prohibited
35 from taking local tax revenue."

36 **SECTION 8.** The provisions of this act are severable. If any provision of
37 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect
38 other provisions of the act that can be given effect without the invalid provision.

39 **SECTION 9.** This act is effective when it becomes law.