

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**HOUSE BILL 1490  
Committee Substitute Favorable 6/12/02  
Third Edition Engrossed 6/13/02  
Senate Finance Committee Substitute Adopted 8/29/02**

Short Title: Secure Local Revenues.

(Public)

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Sponsors:

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Referred to:

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May 30, 2002

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR  
2 IMPOUNDED BY THE GOVERNOR AND TO CLARIFY THE FRANCHISE  
3 TAX ON ELECTRIC POWER COMPANIES.  
4

5 The General Assembly of North Carolina enacts:

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

7 "(d) Time. – The revenue shall be distributed to cities and counties within 60 days  
8 after March 31 of each year. The General Assembly finds that the revenue distributed  
9 under this section is local revenue, not a State expenditure, for the purpose of Section  
10 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not  
11 reduce or withhold the distribution."

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

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

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

24 "(b) Distribution. – Within 75 days after the end of each calendar quarter, the  
25 Secretary must distribute to the cities part of the tax proceeds collected under this  
26 Article during that quarter. The amount to be distributed to a city is one-half of the  
27 amount of tax attributable to that city for that quarter under subsection (a) of this

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

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

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

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

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

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

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

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

29 **"§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to**  
30 **support them.**

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

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

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

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

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

37 **SECTION 8.** G.S. 105-116 is amended by adding a new subsection to read:

38 "(e1) An electric power company engaged in the business of furnishing electricity,  
39 electric lights, current, or power that collects the annual franchise or privilege tax  
40 pursuant to subsection (a) of this section and remits the tax collected to the Secretary  
41 shall not be subject to any additional franchise or privilege tax imposed upon it by any  
42 city or county."

1           **SECTION 9.** The provisions of this act are severable. If any provision of  
2 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect  
3 other provisions of the act that can be given effect without the invalid provision.

4           **SECTION 10.** This act is effective when it becomes law.