

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 1234

Short Title: Local Financial Security/Breach. (Public)

Sponsors: Senators Webster; Allran, Ballantine, Berger, Bingham, Carpenter, Carrington, Forrester, Foxx, Garwood, Hartsell, Moore, Rucho, and Shaw of Guilford.

Referred to: Rules and Operations of the Senate.

June 6, 2002

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR
2 IMPOUNDED BY THE GOVERNOR, TO CLARIFY THAT THE GOVERNOR IS
3 PERSONALLY LIABLE FOR FUNDS SO WITHHELD, AND TO CLARIFY THE
4 CRIMINAL PENALTY FOR WITHHOLDING THESE FUNDS.

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

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

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

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

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

17 **SECTION 6.** G.S. 143-25 reads as rewritten:

18 "**§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to**
19 **support them.**

20 (a) All maintenance appropriations now or hereafter made are hereby declared to
21 be maximum, conditional and proportionate appropriations, the purpose being to make
22 the appropriations payable in full in the amounts named herein if necessary and then
23 only in the event the aggregate revenues collected and available during each fiscal year
24 of the biennium for which such appropriations are made, are sufficient to pay all of the
25 appropriations in full; otherwise, the said appropriations shall be deemed to be payable
26 in such proportion as the total sum of all appropriations bears to the total amount of
27 revenue available in each of said fiscal years. ~~The~~ Except as provided in subsection (b)
28 of this section, the Director of the Budget is hereby given full power and authority to
29 examine and survey the progress of the collection of the revenue out of which such
30 appropriations are to be made, and to declare and determine the amounts that can be,
31 during each quarter of each of the fiscal years of the biennium properly allocated to
32 each respective appropriation. In making such examination and survey, ~~he~~ the Director
33 of the Budget shall receive estimates of the prospective collection of revenues from the
34 Secretary of Revenue and every other revenue collecting agency of the State. The
35 Director of the Budget may reduce all of said appropriations pro rata when necessary to
36 prevent an overdraft or deficit to the fiscal period for which such appropriations are
37 made. The Governor may also reduce all of said appropriations pursuant to Article III,
38 Section 5(3) of the Constitution in accordance with subsection (b) of this section, after
39 consulting with the Joint Legislative Commission on Governmental Operations under
40 G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy
41 of this Article are to provide and insure that there shall be no overdraft or deficit in the
42 general fund of the State at the end of the fiscal period, growing out of appropriations
43 for maintenance and the Director of the Budget is directed and required to so administer
44 this Article as to prevent any such overdraft or deficit. Prior to taking any action under

1 this section to reduce appropriations pro rata, the Governor may consult with the
2 Advisory Budget Commission.

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

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

22 If the Governor withholds any funds from distribution in violation of this subsection,
23 the Governor has violated G.S. 143-32 and is subject to the civil and criminal penalties
24 provided in that section."

25 **SECTION 7.** This act is effective when it becomes law.