

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

**SESSION LAW 2023-59
SENATE BILL 299**

AN ACT TO INCREASE COMPLIANCE BY COUNTIES AND MUNICIPALITIES THAT
FAIL TO TIMELY SUBMIT AN ANNUAL AUDIT REPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-34 is amended by adding four new subsections to read:

"(e) The secretary shall provide a notice of noncompliance to each county or municipality that fails to submit an annual audit report as required under subsection (a) of this section within nine months of the county or municipality's fiscal year end. The notice shall be sent to the governing board by first-class mail at the county or municipality's primary mailing address. The notice shall be issued within 30 days following nine months after the county or municipality's fiscal year end. A county or municipality that fails to comply with the notice of noncompliance and to complete the annual audit required under subsection (a) of this section within 12 months of its fiscal year end shall be deemed to have given consent to the withholding of a portion of its sales tax distributions, as provided in subsection (g) of this section.

(f) Upon receiving a notice of noncompliance under subsection (e) of this section, a county or municipality may notify the secretary in writing that it plans to appeal the action and the county or municipality will be scheduled to appear before the Commission at its next regularly scheduled meeting. The written notice shall state the basis for the appeal and include any evidence to support the appeal. The Commission shall establish guidelines outlining specific criteria that would warrant a successful appeal. If a county or municipality appeals prior to the secretary taking action to withhold under subsection (g) of this section, the secretary must delay withholding if the Commission determines that the county or municipality has provided sufficient evidence that the failure to provide a copy of their annual audit report is due to circumstances within the guidelines established by the Commission. If the county or municipality appeals after the secretary takes action to withhold under subsection (g) of this section, the secretary must notify the Secretary of Revenue to release any funds withheld under subsection (g) of this section if the Commission determines that the county or municipality has provided sufficient evidence that the failure to provide a copy of their annual audit report is due to circumstances within the guidelines established by the Commission.

(g) A county or municipality that fails to file a copy of its annual audit report with the secretary within 12 months of its fiscal year end may have a portion of its sales tax distributions withheld. The total cumulative amount that may be withheld is an amount equal to one hundred fifty percent (150%) of the cost of the required annual audit as indicated in the audit contract between the county or municipality and its external auditor for the audit report, if such a contract has been executed, or one hundred fifty percent (150%) of the actual fee for the most recently filed audit report if a contract has not been executed for the current year audit.

The Secretary of Revenue must withhold from the county or municipality's distribution under G.S. 105-486, and from the county or municipality's distribution under G.S. 105-501 if necessary, the amount required to be withheld upon written notification to do so from the secretary. The notifications must be made on a quarterly basis. The amount to be withheld is five percent (5%) of one-twelfth of the county or municipality's annual general fund budget as it was



adopted at the beginning of the fiscal year in which the withholding begins until the total cumulative withholding amount is reached. The total cumulative amount to be withheld and any schedule of withholding shall be provided by the secretary in its notification to the Secretary of Revenue. The Secretary of Revenue shall begin withholding from the county or municipality's first distribution of sales and use tax that is at least 45 days after they receive notification from the secretary.

(h) When the report required under subsection (a) of this section has been filed with the secretary, reviewed to ensure compliance with the requirements of this section, and accepted by the secretary or an appeal was successful under subsection (f) of this section, the secretary must notify the Secretary of Revenue within 30 days to release the funds. The Department of Revenue must release the funds in the county or municipality's first scheduled distribution of sales tax that is at least 45 days after the earlier of the following:

- (1) Two years from the date of notification for the funds to be withheld.
- (2) The date the Secretary of Revenue receives notification from the secretary that either (i) a report complying with the requirements of this section was filed and accepted by the secretary or (ii) the county or municipality has successfully appealed action taken under subsection (g) of this section."

SECTION 2. The Local Government Commission must establish and make available the guidelines required under G.S. 159-34(f) prior to the Secretary of the Local Government Commission sending out a notice of noncompliance under G.S. 159-34(e). The Commission may establish the guidelines required under G.S. 159-34(f) prior to January 1, 2024, however, the guidelines may not become effective until on or after that date.

SECTION 3. Section 1 of this act becomes effective January 1, 2024, and applies to audits for fiscal years ending on or after June 30, 2023. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of June, 2023.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

VETO Roy Cooper
Governor

Became law notwithstanding the objections of the Governor at 1:42 p.m. this 27th day of June, 2023.

s/ Mr. James White
House Principal Clerk