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SENATE BILL DRS45146-MCf-101

Short Title:	Reimburse Late Audit Costs with Sales Tax Rev. (Public)
Sponsors:	Senators Barnes and Johnson (Primary Sponsors).
Referred to:	

1   A BILL TO BE ENTITLED
2 AN ACT TO INCREASE COMPLIANCE BY COUNTIES AND MUNICIPALITIES THAT
3   FAIL TO TIMELY SUBMIT AN ANNUAL AUDIT REPORT.
4 The General Assembly of North Carolina enacts:
5   **SECTION 1.** G.S. 159-34 is amended by adding four new subsections to read:
6   "(e)   The secretary shall provide a notice of noncompliance to each county or municipality
7 that fails to submit an annual audit report as required under subsection (a) of this section within
8 nine months of the county or municipality's fiscal year end. The notice shall be sent to the
9 governing board by first-class mail at the county or municipality's primary mailing address. The
10 notice shall be issued within 30 days following nine months after the county or municipality's
11 fiscal year end. A county or municipality that fails to comply with the notice of noncompliance
12 and to complete the annual audit required under subsection (a) of this section within 12 months
13 of its fiscal year end shall be deemed to have given consent to the withholding of a portion of its
14 sales tax distributions, as provided in subsection (g) of this section.
15   (f)   Upon receiving a notice of noncompliance under subsection (e) of this section, a
16 county or municipality may notify the secretary in writing that it plans to appeal the action and
17 the county or municipality will be scheduled to appear before the Commission at its next
18 regularly scheduled meeting. The written notice shall state the basis for the appeal and include
19 any evidence to support the appeal. The Commission shall establish guidelines outlining specific
20 criteria that would warrant a successful appeal. If a county or municipality appeals prior to the
21 secretary taking action to withhold under subsection (g) of this section, the secretary must delay
22 withholding if the Commission determines that the county or municipality has provided sufficient
23 evidence that the failure to provide a copy of their annual audit report is due to circumstances
24 within the guidelines established by the Commission. If the county or municipality appeals after
25 the secretary takes action to withhold under subsection (g) of this section, the secretary must
26 notify the Secretary of Revenue to release any funds withheld under subsection (g) of this section
27 if the Commission determines that the county or municipality has provided sufficient evidence
28 that the failure to provide a copy of their annual audit report is due to circumstances within the
29 guidelines established by the Commission.
30   (g)   A county or municipality that fails to file a copy of its annual audit report with the
31 secretary within 12 months of its fiscal year end may have a portion of its sales tax distributions
32 withheld. The total cumulative amount that may be withheld is an amount equal to one hundred
33 fifty percent (150%) of the cost of the required annual audit as indicated in the audit contract
34 between the county or municipality and its external auditor for the audit report, if such a contract
35 has been executed, or one hundred fifty percent (150%) of the actual fee for the most recently
36 filed audit report if a contract has not been executed for the current year audit.

1 The Secretary of Revenue must withhold from the county or municipality's distribution under
2 G.S. 105-486, and from the county or municipality's distribution under G.S. 105-501 if
3 necessary, the amount required to be withheld upon written notification to do so from the
4 secretary. The notifications must be made on a quarterly basis. The amount to be withheld is five
5 percent (5%) of one-twelfth of the county or municipality's annual general fund budget as it was
6 adopted at the beginning of the fiscal year in which the withholding begins until the total
7 cumulative withholding amount is reached. The total cumulative amount to be withheld and any
8 schedule of withholding shall be provided by the secretary in its notification to the Secretary of
9 Revenue. The Secretary of Revenue shall begin withholding from the county or municipality's
10 first distribution of sales and use tax that is at least 45 days after they receive notification from
11 the secretary.
12 (h) When the report required under subsection (a) of this section has been filed with the
13 secretary, reviewed to ensure compliance with the requirements of this section, and accepted by
14 the secretary or an appeal was successful under subsection (f) of this section, the secretary must
15 notify the Secretary of Revenue within 30 days to release the funds. The Department of Revenue
16 must release the funds in the county or municipality's first scheduled distribution of sales tax that
17 is at least 45 days after the earlier of the following:
18   (1) Two years from the date of notification for the funds to be withheld.
19   (2) The date the Secretary of Revenue receives notification from the secretary that
20   either (i) a report complying with the requirements of this section was filed
21   and accepted by the secretary or (ii) the county or municipality has
22   successfully appealed action taken under subsection (g) of this section."
23 **SECTION 2.** The Local Government Commission must establish and make available
24 the guidelines required under G.S. 159-34(f) prior to the Secretary of the Local Government
25 Commission sending out a notice of noncompliance under G.S. 159-34(e). The Commission may
26 establish the guidelines required under G.S. 159-34(f) prior to January 1, 2024, however, the
27 guidelines may not become effective until on or after that date.
28 **SECTION 3.** Section 1 of this act becomes effective January 1, 2024, and applies to
29 audits for fiscal years ending on or after June 30, 2023. The remainder of this act is effective
30 when it becomes law.