

§ 159-34. Annual independent audit; rules and regulations.

(a) Each unit of local government and public authority shall have its accounts audited as soon as possible after the close of each fiscal year by a certified public accountant or by an accountant certified by the Commission as qualified to audit local government accounts. When specified by the secretary, the audit shall evaluate the performance of a unit of local government or public authority with regard to compliance with all applicable federal and State agency regulations. This audit, combined with the audit of financial accounts, shall be deemed to be the single audit described by the "Federal Single Audit Act of 1984". The auditor shall be selected by and shall report directly to the governing board. The audit contract or agreement shall (i) be in writing, (ii) include the entire entity in the scope of the audit, except that an audit for purposes other than the annual audit required by this section should include an accurate description of the scope of the audit, (iii) require that a typewritten or printed report on the audit be prepared as set forth herein, (iv) include all of its terms and conditions, and (v) be submitted to the secretary for his approval as to form, terms, conditions, and compliance with the rules of the Commission. As a minimum, the required report shall include the financial statements prepared in accordance with generally accepted accounting principles, all disclosures in the public interest required by law, and the auditor's opinion and comments relating to financial statements. The audit shall be performed in conformity with generally accepted auditing standards. The finance officer shall file a copy of the audit report with the secretary, and shall submit all bills or claims for audit fees and costs to the secretary for his approval. Before giving his approval the secretary shall determine that the audit and audit report substantially conform to the requirements of this section. It shall be unlawful for any unit of local government or public authority to pay or permit the payment of such bills or claims without this approval. Each officer and employee of the local government or local public authority having custody of public money or responsibility for keeping records of public financial or fiscal affairs shall produce all books and records requested by the auditor and shall divulge such information relating to fiscal affairs as he may request. If any member of a governing board or any other public officer or employee shall conceal, falsify, or refuse to deliver or divulge any books, records, or information, with an attempt thereby to mislead the auditor or impede or interfere with the audit, he is guilty of a Class 1 misdemeanor.

(b) The Local Government Commission has authority to issue rules and regulations for the purpose of improving the quality of auditing and the quality and comparability of reporting pursuant to this section or any similar section of the General Statutes. The rules and regulations may consider the needs of the public for adequate information and the performance that the auditor has demonstrated in the past, and may be varied according to the size, purpose or function of the unit, or any other criteria reasonably related to the purpose or substance of the rules or regulation.

(c) Notwithstanding any other provision of law, except for Article 5A of Chapter 147 of the General Statutes pertaining to the State Auditor, all State departments and agencies shall rely upon the single audit accepted by the secretary as the basis for compliance with applicable federal and State regulations. All State departments and agencies which provide funds to local governments and public authorities shall provide the Commission with documents that the Commission finds are in the prescribed format describing standards of compliance and suggested audit procedures sufficient to give adequate direction to independent auditors retained by local governments and public authorities to conduct a single audit as required by this section. The secretary shall be responsible for the annual distribution of all such standards of compliance and suggested audit procedures proposed by State departments and agencies and any amendments thereto. Further, the Commission with the cooperation of all affected State departments and agencies shall be responsible for the following:

- (1) Procedures for the timely distribution of compliance standards developed by State departments and agencies, reviewed and approved by the Commission to auditors retained by local governments and public authorities.
- (2) Procedures for the distribution of single audits for local governments and public authorities such that they are available to all State departments and agencies which provide funds to local units.
- (3) The acceptance of single audits on behalf of all State departments and agencies; provided that, the secretary may subsequently revoke such acceptance for cause, whereupon affected State departments and agencies shall no longer rely upon such audit as the basis for compliance with applicable federal and State regulations.

(d) Notwithstanding the requirement that the auditor is selected by and reports directly to the governing board in subsection (a) of this section, the Commission may require the governing board of a local government or public authority that has been the subject of an investigative audit with findings by the State Auditor, upon receipt of the investigative audit report in accordance with G.S. 147-64.6(c)(14), to select the certified public accountant to conduct the annual audit required by this section from a list of three certified public accountants provided by the Commission. The Commission may instruct the Secretary to issue a request for proposals when selecting a certified public accountant under this subsection. Upon exercise of this authority granted by this subsection, the certified public accountant shall report directly to the Commission and governing board, shall comply with all rules of the Commission, and shall be paid by the governing board. The Commission may exercise the authority granted by this subsection for up to three fiscal years after the release of the investigative report with findings by the State Auditor.

(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. (1971, c. 780, s. 1; 1975, c. 514, s. 15; 1979, c. 402, s. 9; 1981, c. 685, ss. 8, 9; 1987, c. 287; 1993, c. 257, s. 20; c. 539, s. 1081; 1994, Ex. Sess., c. 24, s. 14(c); 2001-160, s. 1; 2021-191, s. 1(b); 2023-59, s. 1.)