



Aug. 22, 2002

## Negotiations underway on budget, no resolution yet

House and Senate conferees are working on resolving differences between the House and Senate versions of the separate revenue and budget bills. We are closely involved in these negotiations, trying to maintain or improve the municipal position. Our goal is to obtain more secure local revenue sources for this fiscal year and future years. Major differences remain between both the revenue and spending plans of the two bodies. Please talk with your senators to urge them to support the following:

1. Immediate enactment of the provisions of **HB 1490 – Secure Local Revenues**. The Senate leadership has told us that the bill will be considered in the Senate Finance Committee during the week of Aug. 26.
2. Authorization of an earlier local option sales tax, or the “lion’s share” of the reimbursements for previously repealed local taxes guaranteed to all local governments, paid out early in this fiscal year.

Our message is simple: cities and towns need adequate and reliable revenues. If a revenue source is eliminated, a reliable alternative must be provided.

### Potential Cabarrus County Lawsuit Seeking Payment of Local Funds

We have received some calls about reports that the Cabarrus County Board of Commissioners retained a Raleigh law firm this week to file suit against the State (the Secretary of Revenue), seeking payment of the local funds that Gov. Mike Easley withheld during FY 2001-02. The news reports say that the law firm has sent memos to “towns, cities and counties across the state.” We want to tell you what we know.

Apparently the law firm has sent materials to some municipalities, but not all. Apparently the firm plans to file the suit on a contingency fee basis, so that their fee would be 15% of recovered funds. The suit on behalf of Cabarrus County would cover the reimbursements for previously repealed local taxes and withheld beer and wine tax revenues. If the plaintiff(s) include one or more municipalities, probably the complaint also would address the withheld municipal utility franchise tax revenues. It might be an attempted class action lawsuit that, if allowed by the court, would include all municipalities and counties, unless individual units opt out as plaintiffs.

Is it a good idea to file suit now, and why hasn’t the League sponsored a lawsuit? Those are good questions, and here are our best answers.

These withheld local revenues belong to local taxpayers and should not have been withheld. The governor believes his broad constitutional powers to manage the budget allow him to withhold these local funds if he deems it necessary. We have not, and do not now, concede that the governor has that authority. Our League legal staff has done significant research on the relevant constitutional and statutory issues, and the League Board of Directors authorized us to retain outside counsel to review our research. We concluded that although we certainly would have potentially persuasive arguments to assert in a lawsuit seeking payment of the local funds, the outcome of litigation would be uncertain.

Instead of seeking judicial relief (but specifically reserving the option of doing so later if warranted by developments), the League Board of Directors directed the staff to seek legislation to make it crystal clear that these are local revenues that are to be distributed to municipalities and counties, restrict the authority of a governor to withhold the money, and otherwise improve our legal position. That legislation is **HB 1490 – Secure Local Revenues**, which we hope the Senate will take up and pass very soon (see above). The Board also directed us to seek authority for an earlier local sales tax to replace the threatened local reimbursement funds.

Each municipal and county governing body has a right to decide what course is appropriate to try to get these essential revenues in hand now and in the future. Just as we have not encouraged or discouraged the adoption of municipal utility tax ordinances, we also do not believe it is appropriate for the League to encourage or discourage the filing of litigation to determine the scope of the governor’s authority to withhold local revenues.

In light of the delicate stage of the budget and revenue negotiations, however, now might not be the best time to roil those waters, and we urge caution. The option of seeking judicial relief will continue to be available for months to come, if we fail to achieve acceptable legislative solutions to these local revenue issues for the long term.

# 2 N.C. Counties Challenge State In Tax Lawsuit

## Claim Gov. Easley illegally impounded reimbursements

By JENNIFER SAMUELS  
Assistant State & National Editor

Commissioners in two N.C. counties voted unanimously Monday to sue the state for local revenues withheld earlier in the year by Gov. Mike Easley.

The resolution to file suit originated with Cabarrus County Commissioner Coy Privette. Alamance County has also joined the lawsuit.

It will be brought against N.C. Department of Revenue Secretary Norris Tolson and will be filed next week.

Easley announced plans Feb. 5 to withhold about \$200 million from municipal governments to help alleviate a \$1 billion state budget shortfall for the 2001-02 fiscal year.

The governor's office would not comment on pending litigation.

Privette said he introduced the resolution because Easley illegally impounded local tax revenue to fix the state's financial problem.

"It's our opinion that one person does not have the statutory authority to unbalance the budget of 100 counties and 641 towns and cities," he said.

He added that Tolson is implicated because he failed to uphold the mission of his office.

"The laws of North Carolina state very clearly and specifically that the secretary of the Department of Revenue ... shall remit to local governments that (which) belongs to them," Privette said.

The lawsuit is open to any county that wants to join, said Gene Boyce, the case's lead attorney. "We will proceed on behalf of whoever wants to go," Boyce said.

The state's 100 counties will receive a copy of Cabarrus County's resolution, Privette said. He added that the board already received calls from representatives of other counties interested in legal action.

John Patterson, chairman of the Alamance County Board of Commissioners, said the county attorney was already considering possible legal action when presented with the opportunity to join the lawsuit brought by Cabarrus County officials.

"It was my feeling when this first happened that what the governor was doing was improper and illegal," he said. "When (we) got an opportunity to participate with Cabarrus County, we jumped into that."

Orange County officials say it is unclear if their county would join the lawsuit, despite overwhelming disapproval of the governor's actions.

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"I haven't heard of it before, but it is certainly an intriguing possibility," said Barry Jacobs, chairman of the Orange County Board of Commissioners. "We are frustrated and somewhat disgusted with the lack of leadership by the governor and the state legislature in addressing the budget problems in a

sound manner."

Boyce said it is likely the counties suing the state will eventually be able to collect their lost revenue.

"The executive branch has no legal or constitutional authority to balance the state budget by unbalancing local budgets," he said. "I (think) we've got a reasonably good chance of winning."

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Gov.  
**Mike Easley**  
withheld  
\$200 million in  
revenues from local  
governments.