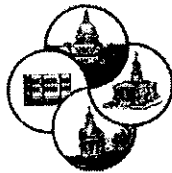


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FINANCING GROWTH IN TENNESSEE: LOCAL DEVELOPMENT TAXES AND IMPACT FEES

by Harry A. Green and Leah Eldridge

OVERVIEW

Beginning in the late 1980's, cities and counties in Tennessee began to look for new ways of meeting the rising infrastructure costs associated with new development. Often, these costs could not be adequately funded through property taxes or local option sales taxes. Local governments began to look for alternative means of raising revenue that would tend not to saddle existing residents with the fiscal burden generated by new development. In 1987, Williamson County and the cities of Brentwood, Fairview and Franklin were the first local governments in Tennessee to be authorized by the state legislature to enact impact fees and adequate facilities/development taxes. Today, there are 14 counties and 84 cities¹ which have been authorized to enact adequate facilities/development taxes and/or fees. The number of local governments enacting development related taxes or fees or debating the issue seems to rise each year.

CURRENT ISSUE

In 2004, four local bills were introduced in the General Assembly which would allow counties to implement impact fees or adequate facilities/development taxes or raise the maximum amount of adequate facilities/development taxes the county could charge on new development. Two of these

local bills passed: SB3462/HB3555 (S:Kurita; H: Head) and SB3524/HB3615 (S: Beavers; H: Buck). Two of the bills did not pass in the House but passed in the Senate: SB3482/HB3582 (S: Ketron; H: Hood) and SB3523/HB3614 (S: Wilder; H: Gresham).

The two bills which did not pass were supported by the local legislative bodies of the counties where the adequate facilities/development taxes would have been implemented or increased. These counties sought to find a way to help pay for the additional infrastructure costs associated with growth. However, these local efforts were frustrated by legislators who had no connection to the communities in question. This is an issue which could be faced by other cities or counties in the future. It is not readily apparent why the House of Representatives would respond differently to similar proposals.

DIFFERENCES BETWEEN IMPACT FEES AND ADEQUATE FACILITIES/ DEVELOPMENT TAXES

New developments create a demand for additional public services and infrastructure. Local governments may have difficulty financing the services and infrastructure through traditional means such as the local option sales tax and property tax. Some local governments utilize adequate facilities/development taxes and impact fees to help finance the additional public services and infrastructure needed by new developments.

¹This includes the 71 cities incorporated under the Mayor-Aldermanic Charter and Modified City-Manager Charter authorized to enact impact fees under TCA § 6-2-201(15) and TCA § 6-33-101.

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Adequate facilities taxes, also known as development taxes or construction taxes, are privilege taxes on the development industry that are intended to raise revenue for general government purposes. Revenue raised is deposited into the general fund.

Impact fees are one time user fees on new development. They must be reasonably related to the actual additional costs of serving a new development. They are based on a standard formula and a pre-determined fee schedule. Virtually every impact fee ordinance is preceded by a study to determine the actual additional costs of providing services to new residents. The funds raised from impact fees are usually put into a separate fund and are not deposited into the local government's general fund.

Adequate facilities/development taxes differ from impact fees in the following ways:

- Taxes are used as a tool for raising revenue instead of financing facilities for specific developments;
- Tax revenues do not have to be earmarked or accounted for separately;
- Revenues are not restricted - they can be for pre-existing deficiencies or for operations and maintenance;
- The fee schedule need not be based upon studies to document burdens and benefits;
- Legal authority for development taxes come from general municipal taxing powers not police powers.

HISTORY OF IMPACT FEES AND ADEQUATE FACILITIES/DEVELOPMENT TAXES IN TENNESSEE

Local governments have been authorized to implement impact fees and adequate facilities/development taxes in three ways: public acts, private acts and municipal charter provisions.

- 2 Public Acts: TN Cooperative Public Facilities Financing Act applicable to Davidson County (never implemented) and Mount Juliet;²

²This is a general bill of local application.

- 25 Private Acts: Cheatham County- Ashland City, Kingston Springs, Pegram; Dickson County; Fayette County-Piperton; Hickman County; Marshall County; Macon County; Maury County - Columbia, Spring Hill; Montgomery County; Robertson County; Rutherford County - Smyrna, Gatlinburg; Sumner County; Trousdale County; Williamson County- Brentwood, Fairview, Franklin and Nolensville;
- 2 Municipal Charters: La Vergne and White House have enacted impact fees. All cities incorporated under the Mayor-Aldermanic Charter (TCA § 6-2-201(15)) or the Modified City Manager-Council Charter (TCA § 6-33-101) have the authority to impose an impact fee. These statute sections outline the powers of the cities. Included in the list of powers is a general grant of authority to assess impact fees. Cities incorporated under the City Manager-Commission Charter do not have the authority to enact an impact fee without a local bill. There is no similar language in the law giving cities the authority to impose adequate facilities/development taxes.

The following timeline shows when local governments first became authorized to implement impact fees or adequate facilities taxes:

1987

Williamson County
Brentwood
Fairview
Franklin

1988

Davidson County (Never used authority to enact impact fee.)
Spring Hill

1989

Gatlinburg

1991

Maury County

Changes to language in Tennessee Code allow cities chartered under Mayor-Aldermanic Charter and Modified City Manager-Council Charter to enact impact fees. County governments were not affected.

1994

Columbia

1996

Marshall County

Robertson County

Rutherford County

White House (City chartered under Mayor-Aldermanic charter enacts impact fee.)

1997

Cheatham County

Ashland City

Kingston Springs

Pegram

Nolensville

1998

Mount Juliet

La Vergne (City chartered under Mayor-Aldermanic charter enacts impact fee.)

1999

Smyrna

Sumner County

2000

Dickson County

Piperton

Hickman County

Trousdale County

2001

Fayette County

2002

Macon County (adequate facilities tax)

2004

Montgomery County

Macon County (impact fees)

2004 LOCAL BILLS

In the 2004 legislative session, 14 local bills³ dealing with tax issues were introduced. Almost all of these bills were passed without objection by the Senate.⁴ In the House, only 2 bills passed on the Consent Calendar: SB2049/HB2130 and SB3524/HB3615. Representatives objected to the other 12 bills being placed on the Consent Calendar. Ultimately, 10 of these bills that were placed on the Regular Calendar passed with a constitutional majority. (See page 7 for a list of the local tax related bills passed this year by the General Assembly.) Two adequate facilities/development tax bills did not pass: SB3482/HB3582 and SB3523/HB3614.

SB3482/HB3582 (S: Ketron; H: Hood)

SB3482/HB3582 would have authorized Rutherford County to raise the maximum amount of development tax that the county could impose on new development. SB3482/HB3582 was held on the desk in the Senate after passing first and second consideration. It passed first and second consideration in the House and was then placed on the Consent Calendar. A Representative objected to it being on the Consent Calendar. It was placed on the Regular Calendar for consideration. SB3482/HB3582 was scheduled to be considered on 5/13/2004.

The bill failed to get a constitutional majority. 42 Representatives voted in favor of SB3482/HB3582, 10 voted against it and 46 did not vote.

SB3482/HB3582 was re-referred back to Calendar and Rules on 5/13/04 and placed on the Regular calendar for reconsideration on 5/19/04. Again, it failed to get a constitutional majority. 32 Representatives voted in favor of the bill. 20 voted against it and 43 did not vote. The bill was re-referred back to the Calendar and Rules Committee on 5/19/04.

SB3523/HB3614 (S: Wilder; H: Gresham)

SB3523/HB3614 would have authorized Fayette County to impose an adequate facilities tax.

³General bills of local application are not included in this list.

⁴SB3482/HB3582 was held on the desk in the Senate after passing first and second consideration.

SB3523/HB3614 passed in the Senate. The bill passed first and second consideration in the House and was placed on the House Consent Calendar. A Representative objected to it being on the Consent Calendar. It was placed on the Regular Calendar for consideration. SB3523/HB3614 was scheduled to be considered on 5/20/04.

The bill failed to get a constitutional majority. 15 Representatives voted in favor SB3523/HB3614. 28 voted against it and 45 did not vote. SB3523/HB3614 was re-referred back to Calendar and Rules on 5/20/04.

SUMMARY

The failure of these two local bills was unusual. TACIR staff was able to check bills going back to 1987 but was unable to find any other local bills (besides SB3482/HB3582 and SB3523/HB3614) that failed to pass because of a lack of a constitutional majority. (See below for additional information on the requirements for the passage of a Private Act.)

Other impact fee and adequate facilities/development tax bills were passed by the legislature in the past. Two local bills authorizing impact fees and adequate facilities/development taxes were passed this year. SB3523/HB3614 and SB3523/HB3614 had the support of their respective county legislative bodies. It is not apparent why the House of Representatives would pass two impact fee/adequate facilities tax bills and then choose not to pass two other adequate facilities/development tax bills in the same year. An important issue that this raises is whether there is a need for a general statute enabling local governments to adopt development taxes, and change them as needed.

REQUIREMENTS FOR THE PASSAGE OF A LOCAL BILL

1. After introduction, all local bills must pass first and second consideration.

The constitutional requirements for the passage of a bill are contained in Article II, § 18 of the Tennessee Constitution. It provides that

“A bill shall become law when it has been considered and passed on three different

days in each House and on third and final consideration has received the assent of a majority of all the members to which each House is entitled under this Constitution, when the respective speakers have signed the bill with the date of such signing appearing in the journal, and when the bill has been approved by the Governor or otherwise passed under the provisions of this Constitution.”

All bills, general and local, must pass first, second and third consideration after introduction in order to pass in the General Assembly.

2. After a local bill has passed second consideration, it is usually placed on the Consent Calendar. In the House, the bill must receive authorization from the local legislative delegation before the bill may be placed on the Consent Calendar although in the House the Speaker has the option of sending the local bill to a standing committee. In the Senate, $\frac{3}{4}$ of the Senators who represent the affected local government must be present or must have agreed in writing before a local bill can be passed on third consideration.

Procedures for Handling Local Bills in the House

After a local bill passes first and second consideration, the procedure for handling of the bill in the House is governed by Rule 48 of the House Rules of Procedure. This rule provides that

“Local bills may be referred by the Speaker to appropriate committees if, in the discretion of the Speaker, the nature and effect of said local bills shall require it. Other local bills, after having received the authorization of the local legislative delegation shall automatically be placed on the Consent Calendar in accordance with Rule No. 50.”

Pursuant to Rule 48, the Speaker of the House may choose to send a local bill to a standing committee. After the bill has been referred to a committee, it follows the normal steps in the committee system. However, the common practice is for a local bill to be placed on the Consent Calendar after the bill has received the authorization of the local legislative delegation.

Rule 50 of the House Rules outlines the procedures governing the Consent Calendar.

“Any bills or resolutions which are not controversial in nature shall be placed on the Consent Calendar by the officers of the Committee on Calendar and Rules, except for those resolutions placed on the Consent Calendar pursuant to Rule No. 17. The Consent Calendar shall be printed and posted in a regular place in the House Chamber at least seventy-two (72) hours in advance of the time for such consideration.

Any member may object in writing to a bill or resolution on the Consent Calendar and if objection is raised, the bill or resolution shall be removed from the Consent Calendar and placed at the foot of the regular calendar for consideration on the day following removal from the Consent Calendar; provided, however, that any bill or resolution objected to and removed from the Consent Calendar on the final day of a session shall be placed at the foot of the regular calendar on that day.”

Upon a motion for passage of the Consent Calendar pursuant to Rule 50, the appropriate language shall be spread in the Journal:

“All House bills having companion Senate bills and are on the Clerk’s desk be conformed and substituted for the appropriate House bill, all Senate and House bills on the Consent Calendar be passed on third and final consideration, all House Resolutions and House Joint Resolutions be adopted and all Senate Joint Resolutions on the Consent Calendar be concurred in.”

After a local bill receives the authorization of the local legislative delegation and is placed on the Consent Calendar, it is normally passed by the House. However, pursuant to Rule 50, a legislator may object to a local bill being placed on the Consent Calendar.

If a local bill is objected to and placed on the Regular Calendar, Article II, § 18 of the state Constitution requires that it must receive a constitutional majority for it to pass. This means 50 favorable votes in the

House. If a local bill fails to receive a constitutional majority in the House, it will be sent to the Calendar and Rules Committee.

Rule 39 of the House Rules provides that:

“When any bill is voted on and fails to receive a constitutional majority, the same shall be automatically re-referred back to the Calendar and Rules Committee. Any bill so re-referred during the final seven (7) days of the session will not be placed on the calendar for consideration that session unless called for by a favorable vote of two-thirds (2/3) of the members to which the House is entitled under the Constitution, in which case it shall be placed on the calendar for a succeeding day. However, no bill or resolution may be voted on more than twice during this General Assembly.”

Procedures for Handling Local Bills in the Senate

The procedure for handling a local bill in the Senate is similar. After a local bill passes first and second consideration, the procedure for handling of the bill in the Senate is governed by Rule 26 of the Senate Rules of Procedure. It provides that:

“No general bill with local application or private act shall be introduced unless personally signed by a Senator representing a local unit of the government. No general bill with local application or private act shall be passed on third consideration unless $\frac{3}{4}$ of the Senators who represent the local government unit to which the bill is applicable are present or have agreed in writing and have filed the agreement with the Clerk. In the case of Davidson, Knox and Hamilton Counties, the signature or presence of all Senators representing the local unit of government shall be required for passage.”

Three-fourths of Senators who represent the affected local government must be present for the bill to pass on third consideration or the Senators who represent the affected local government must have agreed in writing. However, in the case of Davidson, Knox and Hamilton County all the Senators must be present or must have agreed in writing for the local bill to pass on third consideration.

Local bills in the Senate are normally placed on the Consent Calendar. Rule 38 of the Senate Rules stipulates that:

“Any bills which are not controversial in nature shall be placed on a Consent Calendar by the officers of the Committee on Calendar. The Consent Calendar shall be printed and posted in designated places and delivered to each Senator’s legislative office between two (2) o’clock pm at least two calendar days prior to such consideration.

Any member may object to a bill placed on the Consent Calendar and if objection is raised, the bill or bills so objected to shall be placed at the heel of the next succeeding calendar for final consideration; except the last calendar day of the annual session in which event the bill shall be placed last on the current day’s calendar for final consideration.”

However, pursuant to Rule 38, a legislator may object to a local bill being placed on the Consent Calendar. If a local bill is objected to and placed on the Regular Calendar, the Tennessee Constitution requires that it receive a constitutional majority for it to pass. This means that the local bill must get 17 favorable votes in the Senate. If a local bill fails to receive a constitutional majority in the Senate, it will be sent to the Committee on Calendar.

Rule 62 of the Senate Rules provides that:

“When any bill or resolution is voted on, but fails to receive a constitutional majority, the same shall be automatically re-referred to the Committee on Calendar. Any bill so re-referred after the thirty-fifth (35) legislative day of an annual session shall not be again placed on the calendar for consideration, unless this rule is suspended as provided by Rule 69 in which case it shall be placed in the next available position on the calendar for a succeeding day. However, no bill or resolution, having failed to receive a constitutional majority, shall be voted on more than twice by the Senate during a session.

When a majority of the members to which the body is entitled cast their votes against a bill or resolution, the Speaker shall declare the bill or resolution rejected.”

3. If a local bill passes third consideration in both houses, the bill is then enrolled and signed by both Speakers. After being signed, it is sent to the Governor for his action. The Governor may sign the bill, allow it to pass without his signature or veto it. The Governor’s veto may be overridden by a majority vote of each house of the General Assembly.

4. If the bill is signed by the Governor, allowed to pass without the Governor’s signature, or if the Governor’s veto of the bill is overridden, the local bill then becomes a part of the Tennessee Private Acts of that year. If it is a general bill of local application, it will become a part of the Tennessee Public Acts. However, in order for the local bill to be enacted, it must be approved by a 2/3 majority of the local legislative body identified in the Act or approved by voters in a referendum.

Article XI, § 9 of the Tennessee Constitution requires that a local bill be approved by a two-thirds vote of the local legislative body identified in the legislation or approved by voters in a referendum.

“The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected, and any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.”

LOCAL TAX RELATED BILLS PASSED BY THE GENERAL ASSEMBLY 2004

Bill No.	Type of Bill	City/County	Description	Bill Summary	Status
SB 2049 HB 2130	Local Government	Bradley County	Hotel/motel tax increase	Local bill for Bradley County which increases the hotel/motel tax from 4 percent to 5 percent and revises the allocation formula. Subject to local approval. Amends Chapter 19 of the Private Acts of 1991. (S: Miller J.; H: Newton) Senate amendment 1 allocates the proceeds received by the county from the tax. Proceeds are allocated as follows 20% for the county general fund, 27.5% for support of tourism in the county, 27.5% for the support of industrial recruitment in the county, and 25% for the support of Tri-State Exhibition Center.	Private Chapter 066 (effective 1/22/04)
SB 2595 HB 2604	Local Government	Wayne County	\$30 wheel tax	Local bill for Wayne County imposes a \$30 special privilege tax upon owners of motor-driven vehicles, making an exception for motor-driven bicycles and scooters, farm tractors, self-propelled farm machines, and government vehicles. Repeals Chapter 198 of the Private Acts of 1984. (S: Wilder; H: McDaniel)	Private Chapter 075 (effective 2/20/04)
SB 2881 HB 2868	Taxes Property	Paris	School district tax rate	Subject to local approval, raises tax rate for Paris Special School District by 23 cents to offset loss of TVA revenue sharing funds. (S: Herron; H: Borchert)	Private Chapter 095 (effective 3/26/04)
SB 3265 HB 2869	Taxes General	Stewart County	Wheel tax	Enacts \$35 wheel tax for Stewart County subject to local government approval. (S: Herron; H: Borchert)	Private Chapter 083 (effective 3/9/04)
SB 3462 HB 3555	Local Government	Montgomery County	Adequate facilities tax	Local bill for Montgomery County that authorizes county to impose adequate facilities tax. Sets initial tax rate of \$250.00 per lot and \$250.00 per dwelling unit, with 6% annual increases through 2016. (S: Kurita; H: Head)	Private Chapter 090 (effective 7/1/04)
SB 3469 HB 3560	Local Government	Marshall County	Wheel tax	Local bill for Marshall County revises wheel tax. Raises fee for lost sticker to \$5 from \$1. Broadens earmark to all county highway fund purposes, rather than bridge maintenance. Eliminates exemptions. Amends Chapter 73 of the Private Acts of 1979. (S: Ketron; H: Fowlkes)	Private Chapter 093 (effective 3/25/04)
SB 3481 HB 3574	Local Government	Campbell County	Hotel/motel tax	Local bill for Campbell County authorizes imposition of hotel/motel tax in an amount not to exceed 5 percent of the consideration charged to a transient. (S: Kilby; H: Baird)	Private Chapter 102 (effective 4/12/04)

(continued)

LOCAL TAX RELATED BILLS PASSED BY THE GENERAL ASSEMBLY 2004 (cont.)

Bill No.	Type of Bill	City/County	Description	Bill Summary	Status
SB 3484 HB 3571	Local Government	Greene County	Hotel occupancy tax	Local bill for Greene County increases hotel occupancy tax from 3 percent to 7 percent and reallocates proceeds. Amends Chapter 127 of the Private Acts of 1986, as amended. (S: Southerland; H: Hawk) House amendment 1 corrects language to refer to the actual tax rather than proceeds from the tax when referring to percentages. Substitutes the language, "percentages, proceeds and revenues," for "proceeds and revenues."	Private Chapter 101 (effective 4/12/04)
SB 3489 HB 3583	Local Government	Trenton	Special school district	Local bill for Trenton increases tax rate for the Trenton special school district from \$1.71 to \$1.87 per \$100 of assessed value. Amends Chapter 144 of the Private Acts of 1975, as amended. (S: McLeary; H: Crider)	Private Chapter 109 (effective 5/3/04)
SB 3490 HB 3585	Local Government	Stewart County	Privilege tax on hotel occupancy	Local bill for Stewart County authorizes the county to impose a privilege tax of 5% upon the privilege of occupancy in any hotel. (S: Herron; H: Borchert)	Private Chapter 110 (effective 5/3/04)
SB 3505 HB 3590	Local Government	Decatur County	Wheel tax	Local bill for Decatur County establishes \$30.00 wheel tax. (S: Herron; H: McDaniel)	Private Chapter 120 (effective 5/4/04)
SB 3524 HB 3615	Local Government	Macon County	Impact fee	Local bill for Macon County that authorizes Macon County to levy and collect a development/impact fee. (S: Beavers; H: Buck)	Private Chapter 138 (effective 7/8/04)

Source: *Tennessee Legislation Service*. M. Lee Smith Publishers. 16 August 2004 <<http://search.mleesmith.com/tls/>>

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