

Summary of the County Powers Relief Act

Near the end of the 2006 legislative session, the General Assembly passed SB 3839 (sponsored by Sen. Ramsey)/HB 3469 (sponsored by Rep. Rinks). This legislation was designated the “County Powers Relief Act.” The purpose of this bill was to provide relief to county governments that are experiencing rapid population growth and the associated costs and burdens this growth places on a public K-12 education system. It enacts a new Part 29 under Title 67, Chapter 4 of the Tennessee Code to authorize growth counties, as defined under the act, to enact a “county school facilities tax” on residential development. The act took effect upon becoming a law. It was signed by the Governor on June 20, 2006, and was designated 2006 Public Chapter 953.

Growth Counties

A county may meet the criteria to be a growth county by one of two ways: (1) The county experienced a 20% or greater increase in population between the last 2 federal decennial censuses (or the county experiences that level of growth between any subsequent federal censuses); or (2) the county experienced a 9% or greater increase in population over the period from 2000 to 2004 (or over any subsequent 4 year period).

Counties that meet these criteria are authorized to levy a tax on the privilege of residential development to be known as a “county school facilities tax.”

Adoption, Applicable Rates and Exempt Properties

- Before the tax may be levied, the county is required to have adopted a capital improvement program.
- The tax can then be levied by a resolution adopted by a 2/3 vote of the entire membership of the county legislative body at 2 consecutive, regularly scheduled meetings. A sample resolution is included in this spotlight.
- The tax may be levied at a rate not to exceed \$1.00 per square foot. Square footage is determined based on the total heated or air-conditioned residential living space.
- Once adopted, the rate of the tax cannot be increased for 4 years. Once the 4 year period has run, the county legislative body may increase the rate, but by no more than 10%. After any increase, the rate is again frozen for a four year period. County commissions should seriously consider these limitations when deciding the initial rate for the tax levy.
- Public buildings, places of worship, barns and agricultural buildings, replacement buildings for structures damaged by disaster, buildings owned by 501(c)(3) nonprofit corporations and buildings constructed in an area designated by the federal government as a blighted, distressed or urban renewal zone are exempt from the tax.

Administration and Collection

- Liability for the tax is tracked through the building permit system. If a county qualifying as a growth county does not have a building permit system, it will need to institute one in order to administer and collect this tax.
- When a permit for residential development is issued, the official issuing the permit is to provide the applicant with a form estimating the school facilities tax that will apply to the property. A copy of this information is forwarded to the official designated to collect the tax.
- If the building permit is issued by a municipal building official, that official is also directed by the law to fill out a form estimating the tax and forward a copy of it to the county official or employee who collects the tax.
- In the alternative, the county may contract with any municipality within the county through an interlocal agreement to designate the municipal building official as a collector of the tax and provide for the municipality to receive a commission on the taxes collected by the municipality for the county on residential development in the municipality.
- The tax is not due and payable by the permit holder until the earlier of 1 year from the date the permit is issued or 30 days after the property is sold. At that time, the holder of the building permit becomes liable for paying the tax. The tax is paid by the person who acquired the building permit, not by the purchaser of the home.
- If construction has not been completed or the property has not sold after 1 year, the holder of the building permit may request an extension. A total of 2 extensions may be granted.
- At the time the tax is paid, the collector of the tax is directed to determine whether the actual square footage of the completed structure matches the proposed square footage shown on the building permit.
- Any person or entity that owes delinquent school facilities taxes is ineligible to receive other building permits until the delinquency, and any penalties and fees, are paid in full.
- The county is required to provide for a procedure for administrative review of the decisions of officials administering the tax. Such administrative review is subject to judicial review in accordance with existing law.
- The legislative body is also authorized to adopt any guidelines, procedures, regulations and forms necessary to implement, administer and enforce the tax.

Required Use of the Revenue

- All revenue from this tax is turned over to the county trustee for deposit. The revenue is required by law to be used exclusively for funding growth-related capital expenditures for education, including the retirement of bonded indebtedness.
- Due to the limitations on the use of the funds, it is recommended that the revenue be directed to either an education debt service fund or capital projects fund.
- The revenue from the tax could be used to pay off indebtedness on school construction projects that occurred prior to the levy of the tax so long as it can be shown that those projects were reasonably related to growth.

Prohibitions on Other Taxes

- The bill establishes this law as the exclusive authority for local governments to adopt any new or additional adequate facilities taxes on development. This will prevent future private acts for development taxes.
- The bill prohibits counties from enacting any impact fees or local real estate transfer taxes in the future by either public or private act.
- The bill preserves existing development taxes and impact fees to the extent authorized by any private acts in effect when the act became a law. The bill allows a city or county to revise the dedicated use and purpose of the tax levied by a pre-existing tax from public facilities to public school facilities. However, the General Assembly is not authorized to amend a pre-existing act to increase the development tax levied by the act or authorize additional development taxes or impact fees.
- Counties that levy a development tax or impact fee by private act under prior law may not levy the school facilities tax authorized by this act so long as they are levying and collecting development taxes or impact fees under the authority of the private act. To use the authority provided by the County Powers Relief Act, the county will first have to take steps to repeal any resolutions levying development taxes or impact fees under pre-existing private acts.

Future Eligibility for Other Counties

- Under the provisions of the law, 39 counties currently qualify as growth counties (see the chart below for more detail).
- After the next federal census and after each year's population estimates are released by the census bureau, it is possible that other counties will qualify as a growth county under the standards for growth over either the 10 or 4 year period. At that time, those counties will also be eligible to enact this tax.
- In addition, the act includes language that requires the General Assembly, in the 2010 legislative session, to review the provisions of the act to ascertain the effect on and the needs of those counties which did not qualify to levy the tax under the act. At that time, it is possible the General Assembly will expand or modify the provisions governing which counties may levy the tax.

Counties Qualifying to Enact Adequate Facilities Tax

Counties Experiencing More than 20% Growth from the 1990 to 2000 Census

Listed in order based on rate of population growth

Williamson*	56.30%	Union	30.04%	Dickson*	23.09%
Rutherford*	53.52%	Sequatchie	28.29%	Lewis	22.93%
Sevier	39.43%	Macon*	28.17%	Trousdale	22.62%
Meigs	38.01%	Bledsoe	27.90%	Cannon	22.54%
Tipton	36.48%	Monroe	27.57%	Moore	21.58%
Cumberland	34.74%	Johnson	27.12%	Dekalb	21.33%
Jefferson	34.16%	Maury*	26.79%	Putnam	21.30%
Montgomery*	34.10%	Sumner*	26.30%	Chester	21.23%
Hickman*	33.07%	Smith	25.24%	Wayne	20.86%
Cheatham*	32.32%	Loudon	25.06%	Grainger	20.85%
Wilson*	32.13%	Marshall*	24.27%	Hardeman	20.23%
Robertson*	31.19%	Bedford	23.59%	Hawkins	20.19%
Stewart	30.50%	Blount	23.09%		

Counties Experiencing More than 9% Growth During 2000 - 2004

(Counties are not listed if they already qualify above)

Fayette* 16.73% growth over 2000-2004

* Indicates county already has some form of development tax or impact fee by private act

**RESOLUTION ADOPTING THE PROVISIONS OF THE
COUNTY POWERS RELIEF ACT, 2006 PUBLIC CHAPTER 953,
AND TO LEVY A SCHOOL FACILITIES TAX ON THE
PRIVILEGE OF RESIDENTIAL DEVELOPMENT
IN _____ COUNTY**

WHEREAS, the General Assembly, in passing the County Powers Relief Act, Chapter 953 of the Public Acts of 2006, provided authority for counties which qualify under the act to levy a tax on the privilege of residential development to be known as a school facilities tax;

WHEREAS, _____ County has experienced population growth at a rate that qualifies it as a growth county in accordance with the provisions of the County Powers Relief Act in that it experienced growth of [choose one] twenty percent (20%) or more from the 1990 federal decennial census to the 2000 federal decennial census [or] nine percent (9%) or more from the period of 2000 to 2004 according to U.S. Census Bureau population estimates;

WHEREAS, the Board of Commissioners of _____ County finds that the county is in need of an additional source of revenue to offset the demands upon the public school system caused by the population growth experienced by the county and to help fund capital expenditures for the public school system; and

WHEREAS, the county has adopted a capital improvement plan in accordance with the requirements of *Tennessee Code Annotated*, Section 67-4-2909.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of _____ County, Tennessee, meeting in regular session on the ____ day of _____, 200__, in _____, Tennessee, that a school facilities tax be levied in accordance with the following provisions and in accordance with state law as codified in *Tennessee Code Annotated*, Title 67, Chapter 4, Part 29.

SECTION 1. In accordance with the provisions of *Tennessee Code Annotated*, Section 67-4-2904, _____ County hereby levies a tax on the privilege of residential development of property within the county as defined by *Tennessee Code Annotated*, Section 67-4-2903.

SECTION 2. All terms as used in this resolution shall be defined in accordance with *Tennessee Code Annotated*, Section 67-4-2903, and other applicable provisions of the County Powers Relief Act.

SECTION 3. The tax shall be levied at a rate of _____ per square foot of residential property, to be calculated in accordance with the provisions of the County Powers Relief Act. After the tax levied by this resolution becomes effective, such rate shall not be increased for a period of four (4) years in accordance with *Tennessee Code Annotated*, Section 67-4-2908.

SECTION 4. The tax shall not apply to those buildings or structures exempted by the provisions of *Tennessee Code Annotated*, Section 67-4-2906.

SECTION 5. The county building commissioner [or other county official or employee charged with the issuance of building permits] and any municipal official or employee that issue building permits for residential development within _____ County are hereby directed to notify permit applicants of the liability for this tax in accordance with the provisions of *Tennessee Code Annotated*, Section 67-4-2910, and to provide applicants with a form estimating the school facilities tax liability at the time the building permit is issued.

SECTION 6. The _____ is hereby designated as the (official/employee) in _____ County responsible for the collection of this tax which shall become due and payable in accordance with *Tennessee Code Annotated*, Section 67-4-2910. The county building commissioner and any municipal official or employee that issue building permits are directed to forward a copy of the form estimating school facilities tax liability to the office of the _____ within thirty (30) days of the issuance of a building permit for residential development.

SECTION 7. The revenue generated by this tax shall be paid over to the county trustee within thirty (30) days of collection for deposit in accordance with *Tennessee Code Annotated*, Section 67-4-2911. Such funds shall be used exclusively for the purpose of funding capital expenditures for education, including the retirement of bonded indebtedness, the need for which is reasonably related to population growth. The county trustee is hereby directed to deposit such revenue in the (education debt service and/or education capital expenditures) fund.

SECTION 8. Any person aggrieved by the decision of an official or employee responsible for administration and collection of this tax may obtain review of this decision by applying to the _____ County Board of Zoning Appeals within thirty days (30) of the decision. [NOTE: The act does not require review by the Board of Zoning Appeals, but does specify that the county must provide a procedure for administrative review. Another entity may be designated other than the Board of Zoning Appeals, but some entity must be designated]

SECTION 9. If a timely request for a hearing is made by an aggrieved party, the Board of Zoning Appeals shall, within a reasonable time following the request, hold a hearing regarding the complaint by the aggrieved party. Failure to make the demand for a hearing within the time limit allowed by this Resolution shall constitute a waiver of the right to a hearing. After the Board of Zoning Appeals renders its decision, the aggrieved party may seek judicial review of same under *Tennessee Code Annotated*, Title 27, Chapter 8, Part 1.

BE IT FURTHER RESOLVED, that, this resolution shall become effective after its adoption by a two-thirds (2/3) vote of this legislative body at two (2) consecutive, regularly scheduled meetings and this tax shall be levied beginning on the first day of the month following at least thirty (30) days after the second vote, the public welfare requiring it.

This resolution passed first reading at the regular _____, 200_, meeting of the Board of Commissioners of _____ County by a vote of:

YEAS _____ NAYS _____ PASSED _____ ABSENT _____

This resolution passed second reading at the regular _____, 200_, meeting of the Board of Commissioners of _____ County by a vote of:

YEAS _____ NAYS _____ PASSED _____ ABSENT _____

ATTEST:

APPROVED:

COUNTY CLERK

COUNTY MAYOR

This ____ day of _____, 200_.