

**ARKANSAS SENATE**  
86th General Assembly - Regular Session, 2007  
**Amendment Form**

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**Subtitle of Senate Bill No. 862**

"TO CREATE THE ARKANSAS TAXPAYER S PROTECTION ACT; TO REQUIRE AN  
ELECTION BY COUNTY OR MUNICIPAL ELECTORS PRIOR TO A COUNTY OR  
MUNICIPALITY ENACTING A REAL PROPERTY TRANSFER TAX AND TO PROVIDE  
FOR A DEVELOPMENT IMPACT FEE."

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**Amendment No. 1 to Senate Bill No. 862.**

Amend Senate Bill No. 862 as originally introduced:

Page 1, delete lines 9 through 14, and substitute the following:  
"AN ACT TO CREATE THE ARKANSAS TAXPAYER'S PROTECTION ACT; TO REQUIRE AN  
ELECTION BY MUNICIPAL ELECTORS PRIOR TO A MUNICIPALITY ENACTING A REAL  
PROPERTY TRANSFER TAX OR A DEVELOPMENT IMPACT FEE; AND FOR OTHER PURPOSES."

AND

Page 1, delete lines 17 through 22, and substitute the following:  
"TO CREATE THE ARKANSAS TAXPAYER'S PROTECTION ACT AND TO REQUIRE AN ELECTION  
BY MUNICIPAL ELECTORS PRIOR TO A MUNICIPALITY ENACTING A REAL PROPERTY  
TRANSFER TAX OR A DEVELOPMENT IMPACT FEE."

AND

Page 1, delete lines 27 through 30, and substitute the following:  
"SECTION 1. Arkansas Code § 14-56-103, concerning the levying of a  
development impact fee, is amended to add a new subsection to read as  
follows:

(j)(1) Beginning September 1, 2007, before a municipality or municipal  
service agency levies a development impact fee under this section, the  
municipality shall submit the issue to the qualified electors of the  
municipality for approval.

(2) The requirement in subdivision (j)(1) of this subsection  
does not invalidate any development impact fee adopted by a municipality or  
municipal service agency before September 1, 2007."

SECTION 2. Arkansas Code Title 26 is amended to add an additional  
chapter to read as follows:

26-82-101. Title.



This chapter shall be known and may be cited as the "Arkansas Taxpayer's Protection Act".

26-82-102. As used in this chapter:

(1) "Consideration" means the amount of full actual consideration paid or to be paid for the property conveyed, including the amount of any purchase-money encumbrance executed by the purchaser;

(2) "Local real property transfer tax" means a tax levied on real property within the boundaries of the political subdivision that levies such a tax when the real property is sold, granted, assigned, transferred, or otherwise conveyed to, or vested in the purchaser, or any other person by the purchaser's direction.

(3) "Municipality" means:

(A) A city of the first class;

(B) A city of the second class; or

(C) An incorporated town;

(4) "Municipal service agency" means:

(A) Any department, commission, utility, or agency of a municipality, including any municipally owned or controlled corporation;

(B) Any municipal improvement district, consolidated public or municipal utility system improvement district, or municipally owned nonprofit corporation that owns or operates any utility service;

(C) Any municipal water department, waterworks or joint waterworks, or a consolidated waterworks system operating under the Consolidated Waterworks Authorization Act, § 25-20-301 et seq.;

(D) Any municipal wastewater utility or department;

(E) Any municipal public facilities board; or

(F) Any municipal entity described in this subdivision (4) operating with another similar entity under an interlocal agreement in accordance with § 25-20-101 et seq. or § 25-20-201 et seq.; and

(5) "Public facility" means a publicly owned facility that is one (1) or more of the following systems or a portion of those systems:

(A) Water supply, treatment, and distribution for either domestic water or for suppression of fires;

(B) Wastewater treatment and sanitary sewerage;

(C) A storm water drainage;

(D) A road, street, sidewalk, highway, or public transportation;

(E) Library;

(F) A park, open space, or recreation area;

(G) Police or public safety;

(H) Fire protection; or

(I) Ambulance or emergency medical transportation and response.

26-82-103. Call for an election.

(a) A local governing body of any municipality may call an election for the levy of a local real property transfer tax on real property transferred within the municipality to be dedicated to the purchase, construction, improvement, or maintenance of public facilities;

(b)(1) Upon the approval of the qualified electors of the municipality, a local governing body of any municipality may implement either

a local real property transfer tax; or

(2) A local governing body of any municipality may enact an ordinance for the levy of a development impact fee under § 14-56-103 to offset the cost to the municipality or to a municipal service agency that is reasonably attributable to providing a necessary public facility to the new development.

(c) Nothing shall prevent a municipality to combine money collected through a local real property transfer tax or development impact fee with a separate capital improvement fund for the purpose of pooling investments or capacity capital improvement expenditures as long as the funds are accounted for separately.

(d) A local governing body of any municipality may only impose either a local real property transfer tax or a development impact fee for the same capacity improvement.

(e) Nothing within this subsection shall prohibit a municipality from enacting or continuing an impact fee for certain types of capital capacity improvements and also imposing a local real property transfer tax for different types of capital capacity improvements.

26-82-104. Local real property transfer tax.

(a) The proceeds of a local real property transfer tax levied under this chapter shall be used only for the public facility designated in the ordinance calling the election under § 26-82-103.

(b) The election shall be held within one hundred twenty (120) days of the ordinance calling the election, but not before sixty (60) days of the ordinance calling the election.

(c) The local governing body of any municipality shall notify its board of election commissioners that the measure has been referred to the vote of the qualified electors of the municipality and shall submit a copy of the ballot title to its board of election commissioners.

(d) The ballot title to be used shall be substantially in the following form:

“[  ] FOR adoption of the local real property transfer tax of (amount of tax) for each one thousand dollars (\$1,000) or fractional part, within.....(Name of municipality).”

“[  ] AGAINST adoption of the local real property transfer tax of (amount of tax) for each one thousand dollars (\$1,000), or fractional part, within .....(Name of municipality).”

(e) The ballot title shall also include an expiration date for the levy of the local real property transfer tax, and, if adopted in this form, the local real property transfer tax shall cease to be levied on the date noted on the ballot.

(f) An election for the levy of a local real property transfer tax shall be conducted in the manner provided by law for all other municipal elections unless otherwise specified in this subchapter.

(g) After the election results have been certified, the local governing board of the municipality shall immediately issue a proclamation declaring the results of the election and cause the proclamation to be published one (1) time in a newspaper having general circulation within the municipality.

(h) Any person desiring to challenge the results of the election as published in the proclamation shall file the challenge in the circuit court

of the county where the municipality is located within thirty (30) days after the date of publication of the proclamation.

(i) If no election challenge is timely filed, there shall be levied, effective on the first day of the first month of the calendar quarter after the expiration of the thirty-day challenge period, a local real property transfer tax to be collected in the amount decided by the qualified electors and for the purpose decided by the qualified electors.

(j)(1) In the event of an election challenge, the local real property transfer tax shall be collected as prescribed in this section unless enjoined by court order.

(2) Hearings involving an election challenge under this section shall be advanced on the docket of the court and disposed at the earliest feasible time.

(k) When the submission of the levy of a local real property transfer tax is submitted to the qualified electors and the measure is defeated, the measure shall not again be submitted to the electors by ordinance of the local governing body of the municipality at a special or general election for a period of one (1) year from the date the measure was last voted upon.

26-82-105. Collection of local real property transfer tax funds.

(a) The municipality shall design documentary stamps in appropriate denominations and shall make the documentary stamps available for purchase at the appropriate municipal office or by consignment with a bank, a savings and loan association, or a title company located in the municipality.

(b) The municipality may rely upon the local real property transfer tax affidavit of compliance as provided in § 26-60-108 for the purpose of establishing the consideration for the transaction.

(c) A grantee or buyer, or his or her agent, shall furnish proof of payment of the local real property transfer tax as provided in this chapter before the real estate transfer instrument may be accepted by the county recorder of deeds for recordation.

(d) The county recorder shall not record any instrument evidencing a transfer of title subject to this chapter unless:

(1)(A) The instrument shall have attached thereto or be accompanied by an affidavit in the form provided in this chapter containing the information required in this chapter and have documentary stamps attached to the face of the instrument evidencing full payment of the local real property transfer tax on the transaction.

(B) The instrument shall contain a notation on its face, which shall be recorded as part of the instrument, that the affidavit was completed; or

(2)(A) Either stamped or attached to the instrument in a manner which will cause it to be recorded as part of the instrument the following statement:

“I certify under penalty of false swearing that the legally correct amount of documentary stamps have been placed on this instrument.”

(B) This statement shall be signed by the grantee or his or her agent, and the grantee’s address shall be clearly shown on the instrument.

(e) The recorder of deeds shall not record any instrument where documentary stamps are attached in such a manner that the amount printed on each stamp is not visible.

26-82-106. Exempt transactions.

(a) The local real property transfer tax imposed by this chapter shall not apply to a transfer of the following:

- (1) A transfer to or from the United States, the State of Arkansas, or any of the instrumentalities, agencies, or political subdivisions of the United States or the State of Arkansas;
- (2) Any instrument or writing given solely to secure a debt;
- (3) Any instrument solely for the purpose of correcting or replacing an instrument that has been previously recorded with full payment of the tax having been paid at the time of the previous recordation;
- (4) An instrument conveying land sold for delinquent taxes;
- (5) An instrument conveying a leasehold interest in land only;
- (6) An instrument, including a timber deed, that conveys or grants the right to remove timber from land if the instrument grants or conveys the right to remove the timber for a period of not to exceed twenty-four (24) months;
- (7) An instrument given by one (1) party in a divorce action to the other party in the divorce action as a division of marital property whether by agreement or order of the court;
- (8) An instrument given in any judicial proceeding to enforce any security interest in real estate when the instrument transfers the property to the same person who is seeking to enforce the security interest;
- (9) An instrument given to a secured party in lieu of or to avoid a judicial proceeding to enforce a security interest in real estate;
- (10) An instrument conveying a home financed by the Federal Housing Administration, Department of Veterans Affairs, or United States Department of Agriculture Rural Development if the sale price of the home is sixty thousand dollars (\$60,000) or less and the seller files with the county recorder a sworn statement by the buyer stating that:
  - (A) Neither the buyer nor the spouse of the buyer has owned a home within three (3) years of the date of closing; and
  - (B) The sale price of the home; and
- (11) An instrument conveying land between corporations, partnerships, limited liability companies, or other business entities or between a business entity and its shareholders, partners, or members incident to the organization, reorganization, merger, consolidation, capitalization, asset distribution or the liquidation of a corporation, partnership, limited liability company, or other business entity.

26-82-107. Distribution of local real property transfer tax funds.

The municipality shall collect the revenues from the sale of documentary stamps and the revenues shall be spent in compliance with this chapter and the ordinance calling for the local real property transfer tax election, as set forth in § 26-82-103(a).

26-82-108. Service and other fees.

(a)(1) Pursuant to § 26-73-103, it is unlawful for a municipality or a municipal service agency to charge unreasonably high service or user fees in an attempt to thwart the purpose of this chapter.

(2) Any service or user fee charged shall be based on the actual cost of providing the service.

The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_

By: Senator B. Pritchard

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Secretary