

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: S3/23/07

A Bill

SENATE BILL 862

5 By: Senator B. Pritchard
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7

For An Act To Be Entitled

9 AN ACT TO CREATE THE ARKANSAS TAXPAYER'S
10 PROTECTION ACT; TO REQUIRE AN ELECTION BY
11 MUNICIPAL ELECTORS PRIOR TO A MUNICIPALITY
12 ENACTING A REAL PROPERTY TRANSFER TAX OR A
13 DEVELOPMENT IMPACT FEE; AND FOR OTHER PURPOSES.
14

Subtitle

15 TO CREATE THE ARKANSAS TAXPAYER'S
16 PROTECTION ACT AND TO REQUIRE AN
17 ELECTION BY MUNICIPAL ELECTORS PRIOR TO
18 A MUNICIPALITY ENACTING A REAL PROPERTY
19 TRANSFER TAX OR A DEVELOPMENT IMPACT
20 FEE.
21
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code § 14-56-103, concerning the levying of a
27 development impact fee, is amended to add a new subsection to read as
28 follows:

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

33 (2) The requirement in subdivision (j)(1) of this subsection
34 does not invalidate any development impact fee adopted by a municipality or
35 municipal service agency before September 1, 2007."
36



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

3 26-82-101. Title.

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

6
7 26-82-102. As used in this chapter:

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

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

16 (3) "Municipality" means:

17 (A) A city of the first class;

18 (B) A city of the second class; or

19 (C) An incorporated town;

20 (4) "Municipal service agency" means:

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

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

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

29 (D) Any municipal wastewater utility or department;

30 (E) Any municipal public facilities board; or

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

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

36 (A) Water supply, treatment, and distribution for either

1 domestic water or for suppression of fires;

2 (B) Wastewater treatment and sanitary sewerage;

3 (C) A storm water drainage;

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

6 (E) Library;

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

8 (G) Police or public safety;

9 (H) Fire protection; or

10 (I) Ambulance or emergency medical transportation and
11 response.

12
13 26-82-103. Call for an election.

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

18 (b)(1) Upon the approval of the qualified electors of the
19 municipality, a local governing body of any municipality may implement either
20 a local real property transfer tax; or

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

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

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

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

1 different types of capital capacity improvements.

3 26-82-104. Local real property transfer tax.

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

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

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

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

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

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

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

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

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

34 (h) Any person desiring to challenge the results of the election as
35 published in the proclamation shall file the challenge in the circuit court
36 of the county where the municipality is located within thirty (30) days after

1 the date of publication of the proclamation.

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

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

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

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

18
19 26-82-105. Collection of local real property transfer tax funds.

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

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

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

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

33 (1)(A) The instrument shall have attached thereto or be
34 accompanied by an affidavit in the form provided in this chapter containing
35 the information required in this chapter and have documentary stamps attached
36 to the face of the instrument evidencing full payment of the local real

1 property transfer tax on the transaction.

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

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

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

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

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

16
17 26-82-106. Exempt transactions.

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

20 (1) A transfer to or from the United States, the State of
21 Arkansas, or any of the instrumentalities, agencies, or political
22 subdivisions of the United States or the State of Arkansas;

23 (2) Any instrument or writing given solely to secure a debt;

24 (3) Any instrument solely for the purpose of correcting or
25 replacing an instrument that has been previously recorded with full payment
26 of the tax having been paid at the time of the previous recordation;

27 (4) An instrument conveying land sold for delinquent taxes;

28 (5) An instrument conveying a leasehold interest in land only;

29 (6) An instrument, including a timber deed, that conveys or
30 grants the right to remove timber from land if the instrument grants or
31 conveys the right to remove the timber for a period of not to exceed twenty-
32 four (24) months;

33 (7) An instrument given by one (1) party in a divorce action to
34 the other party in the divorce action as a division of marital property
35 whether by agreement or order of the court;

36 (8) An instrument given in any judicial proceeding to enforce

1 any security interest in real estate when the instrument transfers the
2 property to the same person who is seeking to enforce the security interest;

3 (9) An instrument given to a secured party in lieu of or to
4 avoid a judicial proceeding to enforce a security interest in real estate;

5 (10) An instrument conveying a home financed by the Federal
6 Housing Administration, Department of Veterans Affairs, or United States
7 Department of Agriculture Rural Development if the sale price of the home is
8 sixty thousand dollars (\$60,000) or less and the seller files with the county
9 recorder a sworn statement by the buyer stating that:

10 (A) Neither the buyer nor the spouse of the buyer has
11 owned a home within three (3) years of the date of closing; and

12 (B) The sale price of the home; and

13 (11) An instrument conveying land between corporations,
14 partnerships, limited liability companies, or other business entities or
15 between a business entity and its shareholders, partners, or members incident
16 to the organization, reorganization, merger, consolidation, capitalization,
17 asset distribution or the liquidation of a corporation, partnership, limited
18 liability company, or other business entity.

19
20 26-82-107. Distribution of local real property transfer tax funds.

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

25
26 26-82-108. Service and other fees.

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

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

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33 /s/ B. Pritchard
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