



SENATE BILL 855

By Taylor

AN ACT to amend Tennessee Code Annotated, Title 4; Title 5; Title 6; Title 7; Title 8; Title 12; Title 13; Title 29; Title 54; Title 64; Title 65; Title 68 and Title 69, relative to municipal utilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 7-52-110(b), is amended by deleting "ten (10) days" and substituting "ten (10) business days".

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.

Amendment No. 2 to SB0855

Reeves
Signature of Sponsor

AMEND Senate Bill No. 855

House Bill No. 794*

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 35, Part 4, is amended by adding the following as a new section:

(a) **Definitions.** As used in this section, unless the context otherwise requires:

(1) "Adjacency area" means the area outside the corporate limits of a participating municipality but contiguous to or adjacent to those limits and situated such that the participating municipality's provision of sewer service to that area could be reasonably construed pursuant to § 7-82-702(b)(1)(E)(i), provided capacity to serve new customers is available;

(2) "Affordable housing trust fund" means a separate fund established by a participating municipality into which surcharge proceeds are deposited and expended solely for affordable housing purposes within the participating municipality's corporate limits;

(3) "Commercial development" means any multifamily residential structure that is part of a mixed-use or planned commercial development, or non-residential building, site, or structure to be served by the participating municipality's sewerage system;

(4) "Housing surcharge" means a fee or assessment collected for affordable housing within the corporate limits of the participating municipality as authorized by this section for sewer connection of properties located within the adjacency area;

(5) "Participating municipality" means an incorporated city or town in this state that operates a sewerage system outside of its corporate boundaries, including cities or towns subject to § 7-35-417(a), and has imposed a moratorium on new sewer connections outside of its corporate boundaries for a period of five (5) or more consecutive years;

(6) "Public authority" means any agency, authority, or instrumentality created or authorized by any participating municipality or by two (2) or more participating municipalities acting jointly under a general statute or private act, including, but not limited to, an industrial development corporation organized pursuant to title 7, chapter 53, a health, educational and housing facility corporation organized pursuant to title 48, chapter 101, part 3, and a housing authority organized pursuant to title 13, chapter 20, part 1; and

(7) "Residential lot" means a platted lot or parcel designated for a single-family detached dwelling within an approved single-family residential development.

(b) Authority to extend sanitary sewer service or allow sewer connection within adjacency area upon payment of housing surcharge.

(1) A participating municipality may extend sanitary sewer service or allow sewer connection only to property located within an adjacency area if the property owner or developer agrees to pay, or the municipality assesses, a housing surcharge as provided in this section.

(2) Property outside the adjacency area is ineligible for sewerage service under this section.

(3) The municipality may:

(A) Collect the housing surcharge from the property owner or developer;

(B) Assess the housing surcharge against the property and permit payment over a period not to exceed five (5) years, together with interest at a rate fixed by municipal ordinance;

(C) If authorized by a municipal ordinance, permit the satisfaction of an amount equal to the housing surcharge through the allocation of the increased county ad valorem property tax revenues attributable to the development for a period not to exceed five (5) years; provided, that:

(i) The allocation is not prohibited by state law;

(ii) The allocation is approved by the county legislative body responsible for levying and appropriating the ad valorem property tax in the adjacency area where the property is located;

(iii) The allocation is memorialized in a written intergovernmental agreement, pursuant to title 12, chapter 9, or other law, between the participating municipality and the county; and

(iv) The revenues allocated pursuant to the interlocal agreement are deposited into the municipality's affordable housing trust fund and used only for public purposes in accordance with this section; or

(D) Collect the housing surcharge using a combination of the methods authorized in subdivisions (b)(3)(A)-(C); provided, that the amount collected must not exceed the amounts authorized by subsection (c).

(4) This section does not exempt a property owner or developer from any other fees, charges, or other assessments customarily imposed by the municipality, county, or utility in connection with the development of property or

the provision of sewer service. All such fees and charges apply in addition to the surcharge authorized by this section.

(5) Notwithstanding a law to the contrary, a participating municipality may deny a sewer extension or connection request for sewerage services in the event the participating municipality lacks sufficient capacity to provide such services as determined by a study, report, or other information and evidence obtained by the participating municipality and the developer requesting the sewer extension or connection is unable or not willing to financially contribute to necessary upgrades to the participating municipality's sewer system.

(c) Housing surcharge amounts.

(1) For each residential lot in a single-family development located within an adjacency area, the housing surcharge must be an amount not to exceed three percent (3%) of the appraised value of the residential lot with improvements, as determined by an independent appraisal, if a principal structure has been constructed or a building permit for a principal structure has been issued at the time of sewer connection. If a principal structure has not been constructed and a building permit for a principal structure has not been issued at the time of sewer connection, then the housing surcharge may be imposed in the following two stages:

(A) Not to exceed two and one-half percent (2.5%) of the appraised value of the residential lot as improved with subdivision or site infrastructure, as determined by an independent appraisal; and

(B) Not to exceed three percent (3%) of the value of the building or construction, as established at the time of issuance of the building permit.

(2) For each commercial development located within an adjacency area, the housing surcharge shall be an amount not to exceed five percent (5%) of the

appraised value of the commercial property with improvements, as determined by an independent appraisal, if a principal structure has been constructed or a building permit for a principal structure has been issued at the time of sewer connection. If a principal structure has not been constructed and a building permit for a principal structure has not been issued at the time of sewer connection, then the housing surcharge may be imposed in the following two stages:

(A) Not to exceed five percent (5%) of the appraised value of the commercial property as improved with site or subdivision infrastructure, as determined by an independent appraisal; and

(B) Not to exceed five percent (5%) of the value of the building or construction, as established at the time of issuance of the building permit.

(d) Affordable housing trust fund.

(1) Notwithstanding § 7-34-115 or any other law to the contrary, a housing surcharge collected pursuant to this section is not revenue derived from public works for purposes of § 7-34-115 and must be deposited into the participating municipality's affordable housing trust fund.

(2) Revenues in the fund must be used solely to support affordable housing projects located within the participating municipality's corporate limits, including acquisition, development and construction, rehabilitation, or preservation of affordable units pursuant to the rules, requirements, and limitations of the participating municipality's affordable housing trust fund.

(3) A participating municipality may contribute or pledge revenues in the fund to a public authority for the purpose of financing affordable housing projects eligible under this section, which such affordable housing projects constitute projects eligible to be financed with bonds issued by any such public authority.

(4)

(A) A participating municipality, through its public authority, is authorized to issue special obligation revenue bonds or notes for the purpose of financing affordable housing projects eligible under this section.

(B) Bonds or notes issued under this subdivision (d)(4) must be payable solely from, and secured by a pledge of, all or any portion of the revenues deposited into the municipality's affordable housing trust fund pursuant to this section, including revenues collected in future fiscal years, and any other legally available funds approved by the governing body of the municipality.

(C) Bonds or notes issued under this subdivision (d)(4) do not constitute a general obligation or indebtedness of the municipality, and neither the faith and credit nor the taxing power of the municipality is pledged to the payment thereof.

(D) Bonds or notes issued by a participating municipality pursuant to this subdivision (d)(4) must be issued and sold in the manner provided by title 9, chapter 21, part 3, except to the extent this subdivision (d)(4) provides otherwise.

(5) The participating municipality shall include annual reporting of the fund's receipts and expenditures in its budget documents or municipal audit related to all housing surcharges.

(6)

(A) If a developer elects to pay the surcharge in full at the time of connection, rather than through assessment over time, the developer may request and municipality may reserve an amount of surcharge proceeds equal to the payment within the affordable housing trust fund for the

exclusive use and benefit of that developer for a period not to exceed five (5) years from the date of payment.

(B) Reserved funds may be applied only to affordable housing projects located within the municipality's corporate limits in which the developer has an ownership interest, development role, or financial participation, as determined by municipal ordinance.

(C) Reserved funds must be expended solely for affordable housing purposes consistent with this section and must not be distributed as a cash refund or rebate to the developer.

(D) Any portion of the reserved funds not committed or expended within five (5) years of the date of payment revert to the general balance of the affordable housing trust fund and may be used for any eligible purpose under this section.

(E) The municipality may establish by ordinance the procedures, eligibility requirements, documentation standards, and approval process for use of reserved funds under this subdivision (d)(6)(E).

(e) Deferred payment – Billing and collection.

(1) If the housing surcharge authorized by this section is not paid in full at the time of connection, closing, or acquisition of the property and is instead assessed to the property owner for payment over a period of time not to exceed five (5) years, then the participating municipality must bill the unpaid balance, including authorized interest, as a separate line item on the monthly utility bill for the premises served.

(2) Subject to subsection (d), for purposes of collection and enforcement, the billed installment constitutes a utility service charge and may be collected and enforced in the same manner as service charges pursuant to § 7-35-201, including combined billing and discontinuance of service for nonpayment.

(3) The municipality shall provide written disclosure of the remaining balance and payment terms to the property owner upon initiation of billing and upon request thereafter.

(4) The obligation to pay installments under this subsection (e) applies only to the premises served and terminates automatically upon payment in full.

(5) As a condition of authorizing deferred payment of the housing surcharge to be paid by a subsequent purchaser or property owner, the participating municipality shall require the developer to:

(A) Include a disclosure of the deferred surcharge obligation, including the amount, payment term, and billing method, in the purchase and sale contract for the affected property; and

(B) Provide written evidence to the participating municipality, in a form prescribed by municipal ordinance, demonstrating that the disclosure required by subdivision (e)(5)(A) has been included in the purchase and sale contract prior to conveyance of the property.

(f) Appeal.

A request for sewer service, surcharge assessment, or any related action taken under this section is governed exclusively by this section and the implementing municipal ordinance.

(g) Service area limitation.

(1) A participating municipality has exclusive authority by ordinance to delineate the boundaries of the adjacency area eligible for service under this section but is inclusive of the area that could be reasonably construed pursuant to § 7-82-702(b)(1)(E). Any modification of such boundaries must be approved in writing and by ordinance enacted by the participating municipality prior to such modification.

(2) Extension of sewer service under this section does not expand the corporate limits of the participating municipality for any purpose.

(h) **Contractual condition.**

(1)

(A) Except as provided in subdivision (h)(1)(B), as a condition to receiving sewerage service under this section, the participating municipality and the property owner or developer shall execute a written connection agreement that incorporates the surcharge obligation, the amount and payment schedule, any interest authorized by this section, and any other conditions of service established by municipal ordinance.

(B) The requirement of subdivision (h)(1)(A) does not apply when the manner of collecting an amount equal to the housing surcharge pursuant to subdivision (b)(3)(C).

(2) The participating municipality shall not authorize the extension or connection of sewer service to any property located within the adjacency area unless and until the sewer connection agreement has been fully executed.

(3) All costs associated with any authorized sewer extension or sewer connection must be borne by the property owner or developer.

(i) **Vested rights.**

(1) This section does not impair, modify, or supersede vested property rights established pursuant to the Vested Property Rights Act of 2014, compiled in §§ 13-3-413 and 13-4-310.

(2) The housing surcharge, assessment, or other requirements authorized by this section only apply to development applications, sewer extension requests, or sewer connection requests submitted on or after the date that a municipality establishes the sewer extension policy authorized by this section.

(3) This subsection (i) does not limit the authority of a participating municipality to condition new or amended sewer extension or connection approvals on compliance with this section where vested rights have not otherwise been established under state law.

SECTION 2. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. If Section 1, subdivisions (b)(3) or (b)(4), authorizing the allocation of increased ad valorem tax revenues to satisfy a housing surcharge or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 4. This act takes effect upon becoming a law, the public welfare requiring it.

Amendment No. 2 to HB0794

Vaughan
Signature of Sponsor

AMEND Senate Bill No. 855

House Bill No. 794*

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 35, Part 4, is amended by adding the following as a new section:

(a) **Definitions.** As used in this section, unless the context otherwise requires:

(1) "Adjacency area" means the area outside the corporate limits of a participating municipality but contiguous to or adjacent to those limits and situated such that the participating municipality's provision of sewer service to that area could be reasonably construed pursuant to § 7-82-702(b)(1)(E)(i); provided, capacity to serve new customers is available;

(2) "Affordable housing trust fund" means a separate fund established by a participating municipality into which surcharge proceeds are deposited and expended solely for affordable housing purposes within the participating municipality's corporate limits;

(3) "Commercial development" means any multifamily residential structure that is part of a mixed-use or planned commercial development, or non-residential building, site, or structure to be served by the participating municipality's sewerage system;

(4) "Housing surcharge" means a fee or assessment collected for affordable housing within the corporate limits of the participating municipality as authorized by this section for sewer connection of properties located within the adjacency area;

(5) "Participating municipality" means an incorporated city or town in this state that operates a sewerage system outside of its corporate boundaries, including cities or towns subject to § 7-35-417(a), and has imposed a moratorium on new sewer connections outside of its corporate boundaries for a period of five (5) or more consecutive years;

(6) "Public authority" means any agency, authority, or instrumentality created or authorized by any participating municipality or by two (2) or more participating municipalities acting jointly under a general statute or private act, including, but not limited to, an industrial development corporation organized pursuant to title 7, chapter 53, a health, educational and housing facility corporation organized pursuant to title 48, chapter 101, part 3, and a housing authority organized pursuant to title 13, chapter 20, part 1; and

(7) "Residential lot" means a platted lot or parcel designated for a single-family detached dwelling within an approved single-family residential development.

(b) Authority to extend sanitary sewer service or allow sewer connection within adjacency area upon payment of housing surcharge.

(1) A participating municipality may extend sanitary sewer service or allow sewer connection only to property located within an adjacency area if the property owner or developer agrees to pay, or the municipality assesses, a housing surcharge as provided in this section.

(2) Property outside the adjacency area is ineligible for sewerage service under this section.

(3) The municipality may:

(A) Collect the housing surcharge from the property owner or developer;

(B) Assess the housing surcharge against the property and permit payment over a period not to exceed five (5) years, together with interest at a rate fixed by municipal ordinance;

(C) If authorized by a municipal ordinance, permit the satisfaction of an amount equal to the housing surcharge through the allocation of the increased county ad valorem property tax revenues attributable to the development for a period not to exceed five (5) years; provided, that:

(i) The allocation is not prohibited by state law;

(ii) The allocation is approved by the county legislative body responsible for levying and appropriating the ad valorem property tax in the adjacency area where the property is located;

(iii) The allocation is memorialized in a written intergovernmental agreement, pursuant to title 12, chapter 9, or other law, between the participating municipality and the county; and

(iv) The revenues allocated pursuant to the interlocal agreement are deposited into the municipality's affordable housing trust fund and used only for public purposes in accordance with this section; or

(D) Collect the housing surcharge using a combination of the methods authorized in subdivisions (b)(3)(A)-(C); provided, that the amount collected must not exceed the amounts authorized by subsection (c).

(4) This section does not exempt a property owner or developer from any other fees, charges, or other assessments customarily imposed by the municipality, county, or utility in connection with the development of property or

the provision of sewer service. All such fees and charges apply in addition to the surcharge authorized by this section.

(5) Notwithstanding a law to the contrary, a participating municipality may deny a sewer extension or connection request for sewerage services in the event the participating municipality lacks sufficient capacity to provide such services as determined by a study, report, or other information and evidence obtained by the participating municipality and the developer requesting the sewer extension or connection is unable or not willing to financially contribute to necessary upgrades to the participating municipality's sewer system.

(c) Housing surcharge amounts.

(1) For each residential lot in a single-family development located within an adjacency area, the housing surcharge must be an amount not to exceed three percent (3%) of the appraised value of the residential lot with improvements, as determined by an independent appraisal, if a principal structure has been constructed or a building permit for a principal structure has been issued at the time of sewer connection. If a principal structure has not been constructed and a building permit for a principal structure has not been issued at the time of sewer connection, then the housing surcharge may be imposed in the following two (2) stages:

(A) Not to exceed two and one-half percent (2.5%) of the appraised value of the residential lot as improved with subdivision or site infrastructure, as determined by an independent appraisal; and

(B) Not to exceed three percent (3%) of the value of the building or construction, as established at the time of issuance of the building permit.

(2) For each commercial development located within an adjacency area, the housing surcharge shall be an amount not to exceed five percent (5%) of the

appraised value of the commercial property with improvements, as determined by an independent appraisal, if a principal structure has been constructed or a building permit for a principal structure has been issued at the time of sewer connection. If a principal structure has not been constructed and a building permit for a principal structure has not been issued at the time of sewer connection, then the housing surcharge may be imposed in the following two (2) stages:

(A) Not to exceed five percent (5%) of the appraised value of the commercial property as improved with site or subdivision infrastructure, as determined by an independent appraisal; and

(B) Not to exceed five percent (5%) of the value of the building or construction, as established at the time of issuance of the building permit.

(d) Affordable housing trust fund.

(1) Notwithstanding § 7-34-115 or any other law to the contrary, a housing surcharge collected pursuant to this section is not revenue derived from public works for purposes of § 7-34-115 and must be deposited into the participating municipality's affordable housing trust fund.

(2) Revenues in the fund must be used solely to support affordable housing projects located within the participating municipality's corporate limits, including acquisition, development and construction, rehabilitation, or preservation of affordable units pursuant to the rules, requirements, and limitations of the participating municipality's affordable housing trust fund.

(3) A participating municipality may contribute or pledge revenues in the fund to a public authority for the purpose of financing affordable housing projects eligible under this section, which such affordable housing projects constitute projects eligible to be financed with bonds issued by any such public authority.

(4)

(A) A participating municipality, through its public authority, is authorized to issue special obligation revenue bonds or notes for the purpose of financing affordable housing projects eligible under this section.

(B) Bonds or notes issued under this subdivision (d)(4) must be payable solely from, and secured by a pledge of, all or any portion of the revenues deposited into the municipality's affordable housing trust fund pursuant to this section, including revenues collected in future fiscal years, and any other legally available funds approved by the governing body of the municipality.

(C) Bonds or notes issued under this subdivision (d)(4) do not constitute a general obligation or indebtedness of the municipality, and neither the faith and credit nor the taxing power of the municipality is pledged to the payment thereof.

(D) Bonds or notes issued by a participating municipality pursuant to this subdivision (d)(4) must be issued and sold in the manner provided by title 9, chapter 21, part 3, except to the extent this subdivision (d)(4) provides otherwise.

(5) The participating municipality shall include annual reporting of the fund's receipts and expenditures in its budget documents or municipal audit related to all housing surcharges.

(6)

(A) If a developer elects to pay the surcharge in full at the time of connection, rather than through assessment over time, the developer may request and the municipality may reserve an amount of surcharge proceeds equal to the payment within the affordable housing trust fund for

the exclusive use and benefit of that developer for a period not to exceed five (5) years from the date of payment.

(B) Reserved funds may be applied only to affordable housing projects located within the municipality's corporate limits in which the developer has an ownership interest, development role, or financial participation, as determined by municipal ordinance.

(C) Reserved funds must be expended solely for affordable housing purposes consistent with this section and must not be distributed as a cash refund or rebate to the developer.

(D) Any portion of the reserved funds not committed or expended within five (5) years of the date of payment revert to the general balance of the affordable housing trust fund and may be used for any eligible purpose under this section.

(E) The municipality may establish by ordinance the procedures, eligibility requirements, documentation standards, and approval process for use of reserved funds under this subdivision (d)(6)(E).

(e) Deferred payment – Billing and collection.

(1) If the housing surcharge authorized by this section is not paid in full at the time of connection, closing, or acquisition of the property and is instead assessed to the property owner for payment over a period of time not to exceed five (5) years, then the participating municipality must bill the unpaid balance, including authorized interest, as a separate line item on the monthly utility bill for the premises served.

(2) Subject to subsection (d), for purposes of collection and enforcement, the billed installment constitutes a utility service charge and may be collected and enforced in the same manner as service charges pursuant to § 7-35-201, including combined billing and discontinuance of service for nonpayment.

(3) The municipality shall provide written disclosure of the remaining balance and payment terms to the property owner upon initiation of billing and upon request thereafter.

(4) The obligation to pay installments under this subsection (e) applies only to the premises served and terminates automatically upon payment in full.

(5) As a condition of authorizing deferred payment of the housing surcharge to be paid by a subsequent purchaser or property owner, the participating municipality shall require the developer to:

(A) Include a disclosure of the deferred surcharge obligation, including the amount, payment term, and billing method, in the purchase and sale contract for the affected property; and

(B) Provide written evidence to the participating municipality, in a form prescribed by municipal ordinance, demonstrating that the disclosure required by subdivision (e)(5)(A) has been included in the purchase and sale contract prior to conveyance of the property.

(f) Appeal.

A request for sewer service, surcharge assessment, or any related action taken under this section is governed exclusively by this section and the implementing municipal ordinance.

(g) Service area limitation.

(1) A participating municipality has exclusive authority by ordinance to delineate the boundaries of the adjacency area eligible for service under this section but is inclusive of the area that could be reasonably construed pursuant to § 7-82-702(b)(1)(E). Any modification of such boundaries must be approved in writing and by ordinance enacted by the participating municipality prior to such modification.

(2) Extension of sewer service under this section does not expand the corporate limits of the participating municipality for any purpose.

(h) **Contractual condition.**

(1)

(A) Except as provided in subdivision (h)(1)(B), as a condition to receiving sewerage service under this section, the participating municipality and the property owner or developer shall execute a written connection agreement that incorporates the surcharge obligation, the amount and payment schedule, any interest authorized by this section, and any other conditions of service established by municipal ordinance.

(B) The requirement of subdivision (h)(1)(A) does not apply when the manner of collecting an amount equal to the housing surcharge is the manner authorized by subdivision (b)(3)(C).

(2) The participating municipality shall not authorize the extension or connection of sewer service to any property located within the adjacency area unless and until the sewer connection agreement has been fully executed.

(3) All costs associated with any authorized sewer extension or sewer connection must be borne by the property owner or developer.

(i) **Vested rights.**

(1) This section does not impair, modify, or supersede vested property rights established pursuant to the Vested Property Rights Act of 2014, compiled in §§ 13-3-413 and 13-4-310.

(2) The housing surcharge, assessment, or other requirements authorized by this section only apply to development applications, sewer extension requests, or sewer connection requests submitted on or after the date that a municipality establishes the sewer extension policy authorized by this section.

(3) This subsection (i) does not limit the authority of a participating municipality to condition new or amended sewer extension or connection approvals on compliance with this section where vested rights have not otherwise been established under state law.

SECTION 2. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. If Section 1, subdivision (b)(3) or (b)(4), authorizing the allocation of increased ad valorem tax revenues to satisfy a housing surcharge or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 4. This act takes effect upon becoming a law, the public welfare requiring it.