

PUBLIC CHAPTER NO. 493**HOUSE BILL NO. 1791****By Representatives Montgomery, McCord****Substituted for: Senate Bill No. 1806****By Senator Raymond Finney**

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 32 and Title 7, Chapter 33, relative to special assessments and improvement bonds.

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

SECTION 1. Tennessee Code Annotated, Section 7-32-101, is amended by adding a new subsection (c) as follows:

(c) Notwithstanding any local charter provision or other law to the contrary, the legislative body of any municipality may approve the transfer to such municipality of a public facility that is acquired, improved and/or constructed by a third party, including a private entity, if the municipality reasonably anticipates that private investment in an amount of not less than twenty-five million dollars (\$25,000,000) will be made on property adjacent to the public facility. For purposes of this chapter, "public facility" shall mean roads, streets, sidewalks, utilities (including electrical, gas, water and wastewater improvements) and related improvements, parking facilities, parks and greenways and all other improvements necessary or desirable in connection therewith.

The transfer of any public facility shall be documented by written agreement between the municipality and the transferor(s) of the public facility, and such agreement shall be approved in substantially final form by the legislative body of the municipality. The mayor of the municipality shall submit the proposed form of any such agreement to the legislative body for approval. As a condition to entering into such an agreement, the legislative body shall determine that the municipality and the citizens thereof will receive a public benefit from entering into such agreement. Before approving any agreement setting forth the terms of the transfer of a public facility pursuant to this chapter and the assessment of any portion of consideration thereof pursuant to § 7-32-115, the legislative body of the municipality shall hold a public hearing relating to the proposed agreement and assessment. Notice of such public hearing shall be published by the mayor of the municipality in a newspaper of general circulation in the municipality at least two (2) weeks prior to the date of such public hearing. Such notice shall include the time, place and purpose of the public hearing, and notice of how the proposed form of the agreement and a map of the area that is proposed to be subject to assessment pursuant to § 7-32-115 can be viewed by the public. Additionally, such notice shall be mailed by the mayor of the municipality or his designee via certified mail to each owner of

property proposed to be subject to assessment at the address of such owner on the records of the tax assessor of the county in which the property is located.

The municipality may pay consideration for any transfer of a public facility pursuant to this subsection. The amount of such consideration and the terms of payment for such consideration shall be set forth in the agreement described above, however, such consideration may not exceed the cost documented by the selling party of acquiring, improving and/or constructing the public facility, including any costs incurred in the acquisition of the land on which the public facility is located. Such consideration shall be payable in such manner as may be agreed upon between the municipality and the transferor(s) of the public facilities and may be payable in such installments and at such times as may be agreed upon by the municipality and the transferor(s). Additionally, a municipality may agree as additional consideration for the transfer of a public facility to reimburse the transferor(s) of a public facility for expenditures made by such transferor(s) to improve existing public facilities in order to facilitate the construction of the public facility being sold or to connect the public facility being sold to existing public facilities; however, the amount of such reimbursement may not exceed the actual documented cost of such expenditures.

For purposes of this chapter, "municipality" or "city" shall mean any town, city, metropolitan government or county to which this subsection applies; all references to the "mayor" of a municipality in this chapter shall be deemed to include the chief executive officer of any municipality; and all references to the "city clerk" or comparable official shall be deemed to include the clerk or other officer who maintains the records of a municipality; and all references to the "treasurer" shall be deemed to include the finance director or other chief financial officer of the municipality.

Notwithstanding any other provision to the contrary, §§ 7-32-102 through 7-32-114 of this chapter shall not apply to the acquisition of any public facilities pursuant to § 7-32-101(c) or any assessments relating thereto.

The authority granted to municipalities hereto shall not be construed to limit in any manner the authority of any municipality to acquire a public facility or any other property in accordance with other provisions of law or any local charter.

Any action taken by the legislative body relating to the transfer of a public facility and the appointment and assessment of the consideration therefore may be by resolution, adopted at a meeting, regular or special, of the legislative body at which the resolution is introduced, and shall take effect immediately upon adoption. Except as is specifically provided herein, no such resolution need be published or posted, or be subject to veto by the municipality's mayor, nor shall any such resolution require for its passage more than a majority vote of all members of the legislative body then in office. Any property that is subject to assessment pursuant to § 7-32-115 shall be specifically identified in the resolution that is adopted approving the transfer of the public facility to the municipality. In identifying the property that is to be subject to assessment, the legislative body may remove but not add any

properties to those identified in the map of such properties that is subject to the public view prior to the public hearing on the proposed agreement to acquire the public facility.

SECTION 2. Tennessee Code Annotated, Section 7-32-115, is amended by inserting "(a)" before the existing provision, thereby creating a subsection (a), and adding a new subsection (b) as follows:

(b)

(1) In connection with the approval of the transfer of any public facility pursuant to § 7-32-101(c), the legislative body of the municipality shall apportion the costs incurred by the municipality under the agreement to transfer the public facility and any related costs, including reimbursed expenditures related to the public facility pursuant to § 7-32-101(c) and including all expenses and costs relating to public improvements incurred by the municipality pursuant to the agreement, among each parcel of property that is determined by the legislative body to directly benefit from such public facility on a fair basis, as defined below, and shall assess each parcel of property the amount so apportioned. For purposes of this chapter:

(A) "Assessed value basis" means the apportionment of the applicable cost according to the ratio that the assessed value of the individual parcels of property bears to the total assessed value of all such properties at such time as is determined by the legislative body.

(B) "Benefits received basis" means the apportionment of the applicable costs according to an equitable determination by the legislative body of the municipality of the special benefit received by the individual parcel of property from the public facility, taking into account assessed value basis, square foot basis, or any combination thereof, and may include consideration of assessed value of land only, graduation for different classes of property based on the nature of such property, including amount of frontage on public streets, and the extent of any special benefits received.

(C) "Fair basis" means assessed value basis, square foot basis, or benefits received basis.

(D) "Square foot basis" means the apportionment of the applicable costs according to the ratio that the square footage of the individual parcels of property or the buildings expected to be constructed thereon bears to the square footage of all such property or the buildings expected to be constructed thereon.

(2) The aggregate amount of the assessment levied for the purpose of financing a public facility may equal the total consideration paid for such public facility and any related reimbursed expenditures

pursuant to § 7-32-101(c) and any other related expenditures incurred by the municipality, including fiscal and legal expenses.

(3) Each person owning property affected by the levy of an assessment shall receive written notice of:

(A) The method of apportionment of the assessment; and

(B) The amount of the assessment allocated to the owner's parcel.

Such notice shall be delivered by certified mail to the address listed on the records of the tax assessor of the county in which the property is located.

(4) For purposes of apportioning and assessing costs incurred by a municipality pursuant to § 7-32-101(c), §§ 7-32-116 through 7-32-118 and § 7-32-121(c) of this chapter shall not be applicable.

SECTION 3. Tennessee Code Annotated, Section 7-32-122, is amended to add the following language after the word "improvement":

or any costs incurred pursuant to § 7-32-101(c)

SECTION 4. Tennessee Code Annotated, Section 7-32-123, is amended by adding the following sentence at the end of that section:

If any objections to an assessment to pay costs pursuant to § 7-32-101(c) are made, the confirmation of such assessment shall require the unanimous approval of the members of the legislative body present at the meeting at which such objection is considered.

SECTION 5. Tennessee Code Annotated, Section 7-32-124, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a) If no objection to the assessment or the amount of the assessment is filed, or if the property owners fail to appear in person or by attorney and present the objection, the assessment shall be confirmed and made final.

SECTION 6. Tennessee Code Annotated, Section 7-32-126, is amended by adding the following sentence at the end of that section:

Notwithstanding the foregoing, an owner of property subject to an assessment may irrevocably waive his right to appeal in the contract for installment payments described in § 7-32-134 or by otherwise evidencing such waiver in writing.

SECTION 7. Tennessee Code Annotated, Section 7-32-129, is amended by deleting such section in its entirety and substituting instead the following:

(a) After the legislative body has levied the assessments against certain parcels of property, the city clerk or person designated shall deliver such assessments to the tax collector of the municipality, who shall enter the assessments upon the tax collector's records, which shall include the following information:

- (1) Name of owner of such property;
- (2) Amount that has been assessed against such parcel of property; and
- (3) Any other information deemed appropriate.

(b) The above-described information shall be indexed according to the names of the owners of the property.

(c) If a parcel subject to an assessment is subdivided, as a condition of recording any subdivision plat, the owner of the parcel must consent in writing to an equitable allocation of the assessment among the subdivided parcels, and such allocation shall be noted on the records of the appropriate tax collector.

SECTION 8. Tennessee Code Annotated, Section 7-32-133, is amended by inserting "(a)" before the existing provision, thereby creating a subsection (a), and adding a new subsection (b) as follows:

(b) For an assessment levied in connection with a public facility acquired pursuant to § 7-32-101(c), the municipality may permit payment of the assessment in installments, made not more frequently than monthly and amortized for a period not to exceed thirty (30) years from the date of acquisition and accruing interest at a rate to be determined by the municipality; however, such interest rate shall not exceed the maximum rate of interest permitted by law. Property owners shall enter into a written agreement detailing the terms of such installment payments pursuant to § 7-32-134.

SECTION 9. Tennessee Code Annotated, Section 7-32-136, is amended by adding the following sentence at the end of that section:

Notwithstanding the foregoing, an owner of property subject to an assessment may irrevocably waive his right to prepay such assessment in the contract for installment payments described in § 7-32-134 or by otherwise evidencing such waiver in writing.

SECTION 10. Tennessee Code Annotated, Title 7, Chapter 32, is amended by adding a new section 7-32-142 as follows:

This chapter, being necessary to secure and preserve public health, safety, convenience and welfare, shall be liberally construed to effect its purposes.

SECTION 11. Tennessee Code Annotated, Title 7, Chapter 33, is amended by adding a new section 7-33-121 as follows:

(a) Notwithstanding any other provision of this chapter to the contrary, a municipality may issue revenue bonds in the manner provided in title 9, chapter 21, including part 3 thereof, to finance all costs and expenses incurred in connection with the transfer of public facilities pursuant to Section 7-32-101(c), including all costs incurred by the municipality pursuant to the agreement to make related public improvements and costs related to the issuance of the bonds, and in such case all assessments received pursuant to title 7, chapter 32 by such municipality shall be deemed revenues for purposes of title 9, chapter 21. In such a case, such revenue bonds may be, but are not required to be, additionally secured by the full faith and credit of the municipality as described above.

(b) Any municipality is also authorized to delegate to any industrial development corporation incorporated by the municipality or any other municipality in which the public facility is located the authority to issue such revenue bonds in which case the municipality shall enter into an agreement with the industrial development corporation pursuant to which the municipality shall agree to promptly pay to the industrial development corporation the assessments (including any interest thereon) as collected and such assessments shall be held in trust by the municipality for the benefit of the industrial development corporation when received. The municipality may direct any property owner that is required to pay assessments to make such payments directly to an industrial development corporation or its assignee. If an industrial development corporation issues such bonds, assessments imposed pursuant to title 7, chapter 32, and any interest collected on such assessments shall constitute "revenues" as the term is defined in § 7-53-101, and public facilities and related expenses described in § 7-32-101(c), whether transferred to the industrial development corporation on behalf of the municipality or to the municipality itself, shall constitute a "project" as defined in § 7-53-101. Any municipality is authorized to delegate to an industrial development corporation the authority to acquire a public facility on behalf of the municipality in the manner described in § 7-32-101(c). All bonds issued by industrial development corporations pursuant to this section shall be issued in accordance with chapter 53 of this title.

(c) Any municipality is also authorized to delegate to any public building authority the authority to issue such revenue bonds in which case the municipality shall enter into an agreement with the public building authority pursuant to which the municipality shall agree to promptly pay to the public building authority the assessments (including any interest thereon) as collected and such assessments shall be held in trust by the municipality for the benefit of the public building authority when received. The municipality may direct any property owner that is required to pay assessments to make such payments directly to a public building authority or its assignee. If a public building authority issues such bonds, assessments imposed pursuant to title 7, chapter 32, and any interest collected on such assessments shall constitute "revenues" as the term is defined in § 12-10-103, and public facilities and related expenses described in this chapter, whether transferred to the public building authority on behalf of the municipality or to the municipality itself shall constitute a "project" as defined in § 12-10-103. Any municipality is authorized to delegate to a public building authority the authority to acquire an improvement described a public

facility on behalf of the municipality. All bonds issued by public building authorities pursuant to this section shall be issued in accordance with title 12, chapter 10. At least thirty (30) days prior to the issuance of any bonds or other obligations by any public entity acting pursuant to this chapter, the public entity shall give notice of the proposed issuance of the bonds or other obligations to the state director of local finance and shall also provide the state director with a copy of the ordinance or resolution authorizing such bonds or other obligations.

SECTION 12. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: June 7, 2007



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 21st day of June 2007



PHIL BREDEESEN, GOVERNOR