LOCAL REALTY TRANSFER TAXES

AN ANALYSIS OF SB 1250/HB 0885

STAFF REPORT
FEBRUARY 2008

TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
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Local Realty Transfer Taxes

An Analysis of SB 1250/HB 0885

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Staff Report
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PURPOSE

The Tennessee Advisory Commission on Intergovernmental Relations has prepared this support pursuant to a request by the General Assembly that the Commission study SB 1250/HB 0885, which would authorize counties to levy a realty transfer tax.

EXECUTIVE SUMMARY

Amid rapid growth and increasing costs, local governments are looking for ways to increase their revenue. SB 1250/HB 0885, referred to the TACIR for study in 2007, would authorize counties to levy a realty transfer tax at any rate chosen by the county government. A realty transfer tax is a charge on the conveyance of any real property. In this commission report, we analyze SB 1250/HB 0885, study realty transfer taxes as a revenue generating tool for local governments in Tennessee, including potential collections by county, and recommend the adoption of an amended version of SB 1250/HB 0885. The report also provides detailed data on state and local realty transfer taxes in other states, arguments from the National Realtors Association against realty transfer taxes, and a discussion of the implications this type of tax would have on local housing markets.

Tennessee already imposes a state realty transfer tax at a rate of $0.37 per $100 of value.

The TACIR staff has reported on the broad issue of growth-related local government fiscal problems several times over the years. In most cases, attention has been focused on local development taxes and impact fees, and in some cases included the issue of local realty transfer taxes. Tennessee already imposes a state realty transfer tax at a rate of $0.37 per $100 of value (Tennessee Code Annotated (TCA) § 67-4-409). This tax produced $157.4 million during fiscal year 2007. In accordance with previous commission recommendations and extensive research, the TACIR staff recommends that an amended version of this legislation be approved. The bill should be amended so as to amend any existing state laws that preclude local governments from levying the tax, being cautious to only affect the real estate transfer tax, and to use language that makes it clear that the authorization for the local tax parallels all sections of the law that refer to the state recordation tax, to include caps and rates. The General Assembly's action on this issue will need to consider both the continuing fiscal pressures facing local governments in Tennessee, and the changing national fiscal situation facing the economy. The TACIR staff further recommends that the General Assembly consider adopting one of these four alternative formats for the tax:

- **<u>Counties and cities</u>**: Authorize both county and municipal governments to levy local realty transfer taxes in the same manner as provided for the tax imposed for state purposes

  All revenue collected from local realty transfer taxes would be earmarked for local general fund use. Local realty transfer taxes could be levied at tax rates less than or equal to the state tax rate authorized in TCA § 67-4-409(a). Local taxes could be imposed by a simple majority vote of a local legislative body. Both levels of government within a county could levy the tax. This version would authorize a potential state and local tax of up to $1.11 per $100 (effective combined tax rate of 1.11%).

- **<u>Counties only</u>**: Authorize only county governments to levy a local realty transfer tax in the same manner as provided for the tax imposed for state purposes

  All revenue collected would be earmarked for local general fund use. County realty transfer taxes could be levied at rates less than or equal to the state tax rate authorized in TCA § 67-4-409(a). Such a tax could be imposed by a simple majority vote of the county legislative body. This version would authorize a potential state and county tax rate of $.74 per $100 (effective combined tax rate of 0.74%).

- **<u>Counties share with cities</u>**: Authorize county governments to levy a local realty transfer tax in the same manner as provided for the tax imposed for state purposes

  All revenue collected would be earmarked for local general fund use. County realty transfer taxes could be levied at rates less than or equal to the state tax rate authorized in TCA § 67-4-409(a). Such a tax could be imposed by a simple majority vote of the county legislative body. Taxes collected on a realty transfer within a municipality shall be distributed evenly between the county and the municipality. This version would authorize a potential state and county tax rate of $.74 per $100 (effective combined tax rate of 0.74%). Taxes on transfers of property located within a municipality would be shared between the county and municipality.

- **County and city separate**: Authorize counties and municipal governments to levy local realty transfer taxes in the same manner as provided for the tax imposed for state purposes

  All revenue collected from local realty transfer taxes would be earmarked for local general fund use. Local realty transfer taxes could be levied at tax rates less than or equal to the state tax rate authorized in TCA § 67-4-409(a). Local taxes could be imposed by a simple majority vote of a local legislative body. Both levels of government within a county could levy the tax. A municipal tax shall apply only to transfers within the municipality. A county realty transfer tax shall apply only to transfers occurring outside municipalities that impose the tax. This version would authorize a maximum combined state and local tax rate of $0.74 per $100 (effective combined tax rate of 0.74%).

A .37% real estate transfer tax could have raised $157.4 million for Tennessee counties in 2007.

If county governments were authorized to levy the same 0.37% tax as the state, and utilizing the same tax base, the potential for all counties during fiscal year 2007 would have been equal to $157.4 million. The potential amounts at a rate other than 37 cents per $100 can be estimated by multiplying the base amounts by the ratio of any local tax rate chosen to the state rate. The potential revenue from a local tax using a tax base different from that used by the state is unknown since all records relating to the tax base are maintained at the local level; thus, separate estimates for realty transfer taxes at the municipal level are not available.

During 2005, the TACIR investigated the issues of development taxes and realty transfer taxes at the request of the General Assembly. The information gleaned from studying the issues and the public hearing presentations resulted in the formation of several recommendations produced by staff for consideration by the TACIR members at a meeting held in December 2005. The resulting recommendations included one that supported a general statutory authorization for all local governments to impose local realty transfer taxes.

None of the development-related bills studied by the TACIR staff in 2005 were passed in 2006; however, in 2006 the General Assembly passed the County Powers Relief Act, Public Chapter 953 of 2006, which authorized additional development taxes in a limited number of high growth counties. This bill also precluded any new authorizations for development or real estate transfer taxes by private or public act legislation. The issue remains alive and active as witnessed by the introduction during the 2007 legislative session of SB 1250/HB 0885.

In its current form, SB 1250/HB 0885 authorizes counties to levy a transfer tax in addition to the state transfer tax. The county, by resolution, would set the amount of the tax, and the tax may be imposed on all transfers of realty. The resolution would designate the county officer against whom suit may be brought for recovery and designate the accounts into which the tax proceeds would be deposited. Ultimately, SB 1250/HB 0885 in its current form conflicts with the County Powers and Relief Act (CPRA). The General Assembly would have to amend the CPRA to allow local authorities to levy this tax.

A common concern voiced by the National Realtors Association and other critics of realty transfer taxes is that their use would cause home prices to rise; indeed, anything that increases the cost of housing can potentially impact home sales. If we assume that a new modest $100,000 home consists of $10,000 in land, $43,000 in materials, $43,000 in labor, and $4,000 or so in state and local sales taxes (9.5% on materials), then an extra $370 in local transfer taxes (a local tax imposed at the same rate as the state rate) is minor in comparison to the burden already imposed by the state and local governments on a new home buyer. Arguments focused on the potential impact of this relatively small increase in tax burden on home prices and home sales distract from the real issue of solving the problem many local governments face when excessive growth and development swamp a local fiscal structure. Currently, realty transfer taxes are levied in 38 states and the District of Columbia. In many states, both state and local governments are authorized to levy the tax.

INTRODUCTION

There have been several attempts to amend the Tennessee state realty transfer tax (TCA 67-4-409) and authorize local governments to levy a like tax, but none has succeeded. Previously proposed legislation placed a cap on the maximum rate local governments could charge. A bill referred to the TACIR in 2007 would authorize counties to levy a realty transfer tax at any rate chosen by the county government (SB 1250/HB 0885). The state realty transfer tax produced $157.4 million during fiscal year 2007. The tax is levied at a rate of $0.37 per $100 of value (effective rate of 0.37%). Local governments are not authorized to levy a similar tax (see TCA 67-4-401). The TACIR has in the recent past recommended that all local governments in Tennessee be authorized to enact a real estate transfer tax.

Many local governments, especially those experiencing exceptionally high population growth, have sought to broaden their taxing authority to include a local realty transfer tax. Many of these same local governments sought and have been granted the authority to levy local impact fees, a fiscal tool used to finance growth-related infrastructure. While both revenue sources can assist in financing growth-related public services, realty transfer taxes are levied on a broader tax base than traditional development taxes and fees, which are generally levied directly on new development activities only. Realty transfer taxes are levied on all transfers of both new and existing property. Both new impact fees and local realty transfer taxes have been put on hold by the "County Powers Relief Act" of 2006 (Public Chapter 953 of 2006). This legislation provided certain county governments that are experiencing rapid population growth to enact school facilities taxes on residential development, but with some restrictions. Included in those restrictions is a prohibition against further impact fees or local real estate transfer taxes.

REALTY TRANSFER TAXES BY STATE

Realty transfer taxes are levied in 38 states and the District of Columbia. In many states, both state and local governments are authorized to levy the tax. Table 1 lists the realty transfer tax rates

Bill Summary for SB1250/ HB 0885

Present law taxes the privilege of recording deeds and other instruments that indicate a transfer of realty at the rate of 37 cents per $100 of property value. This bill authorizes counties to levy a transfer tax in addition to the state transfer tax. The county, by resolution, would set the amount of the tax, and the tax may be imposed on all transfers of realty in the same manner as provided under present law for the state tax. The resolution would designate the county officer against whom suit may be brought for recovery and designate the accounts into which the tax proceeds would be deposited.

Source: Tennessee General Assembly

for each state. Table 2 lists both the local rate and the combined state and local realty transfer tax rates in states in which the tax is levied by both levels of government. Though some states allow for local realty transfer taxes, local governments may choose not to actually levy the tax. Generally, realty transfer taxes represent a minor source of revenue to both state and local governments. Reliable data on realty transfer tax collections is not available; however, data on documentary and stock transfer taxes (includes taxes on recording, registration, and transfer of mortgages, deeds, and securities) is available from the U. S. Census. The data is generally available for state governments only. The data for 2002 (2002 Census of Governments) shows that this tax source (a broader category than taxes on realty transfer only) accounted for more than 1% of total taxes in only a small number of states.[1] The 2002 Census of Governments shows little information on local tax collections from this source.

TABLE 1. STATE REALTY TRANSFER TAXES

STATE	TAX DESCRIPTION	EFFECTIVE TAX RATE (%)
Alabama	Deeds $0.50 per $500	0.10%
Alaska	None	None
Arizona	$2 fee per deed or contract	Flat fee
Arkansas	$3.30 per $1,000	0.33%
California*	Local option transfer tax only	n/a
Colorado	$0.01 per $100	0.01%
Connecticut**	Either 0.5% or 1% depending on type of property and value	0.5% to 1%[a]
Delaware**	2% of property value (decreases to 1.5% if local rate is 1.5%)	1.5% to 2%
District of Columbia	1.10% on transfer of real property and 1.10% on deed recordation	1.10%
Florida**	$0.70 per $100 (0.6% in Miami-Dade County)	0.70%
Georgia	$0.10 per $100	0.10%
Hawaii	0.1% on conveyances under $600K; 0.2% for those $600K-$1million; and 0.3% for all in excess of $1million ($0.15 to $0.35 per $100 on condominiums and single family residences that do not qualify for homeowner exemption)	0.1% to 0.3% (0.15% to 0.35%)
Idaho	None	None
Illinois**	$0.50 per $500	0.10%
Indiana	None	None
Iowa	$0.80 per $500	0.16%
Kansas	None	None
Kentucky	$0.50 per $500	0.10%
Louisiana*	Local option only (New Orelans)	n/a
Maine	$2.20 per $500	0.44%
Maryland**	0.5% (0.25% for first-time buyers)	0.50%

TABLE 1. STATE REALTY TRANSFER TAXES *(CONTINUED)*

STATE	TAX DESCRIPTION	EFFECTIVE TAX RATE (%)
Massachusetts**	$4.56 per $1000 (plus 14% surtax); also $10 to $20 document fee	0.46%
Michigan**	$3.75 per $500	0.75%
Minnesota	Deed tax $1.65 per $500	0.33%
Mississippi	None	None
Missouri	None	None
Montana	None	None
Nebraska	$2.25 per each $1,000	0.23%
Nevada**	$1.95-$2.55 per $500 depending on population of county	0.255% max.
New Hampshire	$1.50 per $100 ($0.75 per $100 on both the buyer and seller)	1.50%
New Jersey**	Varies based on price and tax status (seniors, disabled) Homes $1 million+ add 1% surtax	0.40%
New Mexico	None	None
New York**	$2 per $500, plus 1% additional on homes over $1 million (mansion tax)	0.4% or 1.4% over $1 million
North Carolina**	$1 per $500 (51% of revenue retained at local level)	0.20%
North Dakota	None	None
Ohio**	$0.10 per $100	0.10%
Oklahoma	Deed stamp tax $0.75 per $500	0.15%
Oregon	None	None
Pennsylvania**	Documentary stamp tax 1%	1.00%
Rhode Island	$2.00 per $500	0.40%
South Carolina**	Deed recording fee $1.30 per $500	0.26%
South Dakota	$0.50 per $500	0.10%
Tennessee	$0.37 per $100	0.37%
Texas	None	None
Utah	None	None
Vermont	1.25% unless property is owner-occupied, in which case tax is 0.5% on the first $100,000 of value and 1.25% over $100,000.	1.25%
Virginia**	$0.35 per $100 ($0.25 tax on recordation and $0.10 on grantors)	0.35%
Washington**	Real property sale excise tax 1.28%	1.28%
West Virginia**	$1.10 per $500	0.22%
Wisconsin	$0.30 per $100	0.30%
Wyoming	None	None

[a]Connecticut: 0.5% on residential values up to $800,000; 1% on excess over $800,000; nonresidentlal properties taxed at 1%.

Sources: NCSL and Commerce Clearing House State Tax Guide May 2005.
Federation of Tax Administrators, State Real Estate Transfer Taxes (2006).

States with no transfer tax
*Local transfer tax only
**State and local option tax

TABLE 2. LOCAL AND COMBINED STATE AND LOCAL TAXES

STATE	TAX DESCRIPTION	EFFECTIVE TAX RATE (%)	COMBINED EFFECTIVE RATE (%)
California*	Local option $0.55 per $500	0.11%	0.11%
Connecticut	Municipal tax	0.25%[a]	0.75% up to 1.25%
Delaware	Local rate varies up to 1.5%	max. 1.5%	max. 3%
Florida	Local tax in Dade Co. is $0.45 per $100 (single family residences are exempt)	0.45%	1.05% (in Dade Co.)
Illinois	County $0.25 per $500	0.05%	0.15%
Louisiana*	$325 flat fee	-	-
Maryland	Local transfer taxes ranging up to 1.5%	1.50%	2%
Massachusetts	Special legislation necessary		
Michigan	County $0.55 per $500 or $0.75 per $500 depending on population	0.11% to 0.15%	0.86% up to 0.9%
Nevada	Local option in mid-size county only	0.10%	0.40% 0.51% to 0.61% in three counties
New Jersey	Local rate 0.10%	0.10%	0.50%
New York	New York City residential 1% to 1.425%; commercial 1.425% to 2.625%	1% to 1.425% (residential)	2% - 2.825%
North Carolina	0.20%[b]	0.20%	0.40%
Ohio	Local option $0.30 per $100	0.30%	0.40%
Pennsylvania	Local taxes range from 1-3%	1-3%	4% max.
South Carolina	County deed recording fee $0.55 per $500	0.11%	0.37%.
Virginia	Local tax of up to $0.083 per $100 (up to 1/3 of state recordation tax)	0.08%	0.43%
Washington	Local option tax 0.3% to 0.5%	0.3-0.5%	1.33% max.
West Virginia	County $0.55 per $500 Additional county option $0.55 per $500	0.11% 0.11%	0.33% 0.44%

[a]Effective 7/1/2008, local rates reduced to 0.11%.

[b]A handful of counties, with specific state authorization, levy a local tax of 0.2%. A new law (2007) allows all counties the option of imposing either a tax on real estate transactions up to 0.4% or a 0.25% increase in the local sales rate. The option must pass a local referendum. Passage of the real estate transactions tax in counties with an existing real estate tax would result in a local tax of up to 6%.

*Local transfer tax only.

Sources: NCSL and Commerce Clearing House State Tax Guide May 2005.
Federation of Tax Administrators, State Real Estate Transfer Taxes (2006).

TAX POTENTIAL

If county governments are authorized to levy the same tax as the state, and utilize the same tax base, the potential for all counties during fiscal year 2007 would have been equal to $157.4 million. State transfer tax collections by county are shown in Appendix 2. These figures represent the potential collections each county could anticipate with a local rate of 0.37%. The potential amounts at a rate other than 37 cents per $100 can be estimated by multiplying the amounts in the table by the ratio of any local tax rate chosen to the state rate. The potential revenue from a local tax using a tax base different from that used by the state is unknown since all records relating to the tax base are maintained at the local level; thus, separate estimates for realty transfer taxes at the municipal level are not available. Statewide collections would be higher if municipal governments were also able to enact a real estate transfer tax. Presumably local officials can request detailed realty transfer data from their respective local tax collectors for use in estimating such revenue potential.

Assuming the tax were to use the same rates, caps, and base as the state tax, a local real estate transfer tax would have raised $157.4 million for Tennessee counties statewide in fiscal year 2007.

The historical trend for realty transfer taxes is promising. Between fiscal year 1997 and fiscal year 2007, state realty transfer taxes grew 133%, a compound annual rate of growth (CARG) of 8.82%. While realty transfers reflect the ups and downs of the economy as do retail sales and corporate profits,[2] the 8.82% CARG is well above growth rates for most state taxes.

DO TRANSFER TAXES RAISE THE COST OF HOUSING?

Anything that increases the cost of housing can potentially impact home sales; however, the more interesting question is not whether a new tax will impact the cost of housing, but rather “by how much will it impact housing sales.” Concerns over other state and local taxes that raise the cost of homebuilding and home prices aren’t normally as vocal as those raised in opposition to increased realty transfer taxes or impact fees. The fact is that the single largest tax or fee impacting new home prices is the sales tax. Anything that causes new home prices to rise causes their very close substitute (existing home prices) to rise.

If we assume that a new modest $100,000 home consists of $10,000 in land, $43,000 in materials, $43,000 in labor, and $4,000 or so in state and local sales taxes (9.5% on materials), then an extra $370 in local transfer taxes (a local tax imposed at the same rate as the state rate) is minor in comparison to the burden already imposed by the state and local governments on a new home buyer.

Local property taxes can be a major item at a property closing, and any increase in property taxes can have the same economic effect as a new transfer tax; in essence there is no difference between the impact of a new transfer tax at a property closing and an increase in prorated property taxes that must be paid in advance. Interestingly, the revenue generated by both might be used partly or fully to fund infrastructure improvements in the community.

Lenders are required by law[3] to provide prospective buyers with a good faith estimate of the closing costs that a buyer must come up with at closing. Government recording and transfer charges, along with an endless list of other settlement charges, can be a surprise to new buyers.   In many cases, buyers can roll most of the settlement costs into the amount they borrow from their lender. A buyer could add $370 to a 30 year mortgage at a cost of less than $3 per month. What is true for many who lease a car is also true for many who buy a house; the most important two things are the down-payment and the monthly payment amount. The most important item that controls the monthly mortgage payment, as many homeowners with initial "teaser" loans are now discovering, is the interest rate, not the sometimes irritating number of fees and charges that appear at a closing.

One study of transfer taxes in Philadelphia found that "housing prices generally fall by an amount which covers the tax in the short run" due to the inelastic supply of housing.[4] Conversely, the National Association of Realtors® (NAR) released a brief[5] that lists several reasons realty transfer taxes are detrimental to the housing market. In sum, NAR suggests that transfer taxes "have a negative impact on housing costs and economic development, reduce housing opportunities across the income spectrum, and are a particularly poor revenue source for the general operating budgets of state and local governments because of their extreme volatility."

The volatility issue is a straw man. It distracts from the real issue of solving the problem many local governments face when excessive growth and development swamp a local fiscal structure. A local realty transfer tax has never been espoused as a potential new major revenue source for local governments. In this way it is similar to the Hall Income tax, which is used by the state as a supplementary source of revenue, not as the cornerstone for state finance. The Hall Income tax also exhibits instability, primarily because of the importance of capital gains in its tax base. The local realty tax would be a minor additional source of revenue for local government finance. Most appreciate the fact that the revenue it produces can be volatile over the short run and understand that problems associated with such volatility can be avoided by simply earmarking such revenue for infrastructure expenditures only. This reduces the impact of any volatility on normal operating budgets.

The regressive impact of the tax may be reduced somewhat by requiring that the tax be paid by the seller rather than the buyer.

The realty transfer tax, just like the property tax, is a regressive tax. Most of the taxes levied on Tennessee residents are regressive, so a concern about a regressive realty transfer tax may be misplaced. The regressive impact of the tax may be reduced somewhat by requiring that the tax be paid by the seller rather than the buyer. Some states require that the tax be split evenly between the two parties. Some states reduce the regressive impact of transfer taxes by providing a fixed dollar exemption (that generally benefits lower priced properties the most) or by exempting new first time homebuyers from the tax. Such exemptions clearly reduce the local revenue potential of such a tax.

SB 1250/HB 0885 CONFLICTS WITH TCA

Tennessee Code Annotated (TCA) § 67-4-2913, created by the County Powers Relief Act, prevents any county from levying a real estate transfer (recordation) tax. Adding language to

SB 1250/HB 0885 conflicts with certain other TCA statutes and is ambiguous regarding rates and caps for a local real estate transfer tax.

TCA § 67-4-409 that authorizes county transfer taxes would therefore create a conflict. Another possible conflict exists at TCA § 67-4-401, which prohibits counties and municipalities from imposing any tax mentioned in TCA Title 67, Chapter 4, Part 4. The existing law that imposes a state tax on realty transfers is located at TCA § 67-4-409.

In addition to these possible statutory conflicts, the wording of SB 1250/HB 0885 also raises issues not clarified by the wording in the bill. While it appears that the intent of the bill is to authorize county governments to levy a realty transfer tax similar in all respects to the realty transfer tax levied by the state, the following items are ambiguous:

- The language in the proposed new subsection (o) (1) is not clear as to the tax rate that county governments may levy. As written, it seems that a county could impose whatever tax rate it chose, rather than the tax rate imposed by the state.
- TCA § 67-4-409(h) limits the state real estate transfer tax to a maximum of $100,000 for certain manufacturing, processing, fabricating, or assembling plants. The proposed bill does not reference this section of the law, leaving ambiguous whether the $100,000 cap applies to any county transfer tax.

PREVIOUS TACIR RECOMMENDATION

The TACIR was also directed by the General Assembly to study three real estate transfer bills in 2005:

SB 1056/HB 608 (Ketron, Hood): would have authorized counties experiencing rapid growth to levy a realty transfer tax up to $0.25 per $100

SB 1068/HB 975 (Ketron, Hood): same as SB 1056

SB 1170/HB 2133 (Kyle, Miller): would have authorized any county experiencing rapid growth to impose a realty transfer tax not to exceed the state rate (0.37%)

These three bills were discussed in addition to several development tax bills at the December 2005 TACIR meeting (see Appendix 3 for an excerpt from the minutes of that meeting). At that meeting, the Commission adopted the following recommendation:

> The real estate transfer tax affects all real estate sales rather than just new homes and/or new business development. It is, therefore, a general tax rather than a growth impact tax. Nonetheless, because it gives local governments the freedom to use a more broad-based tax that will still provide increased revenues with increased growth, staff recommends general enabling legislation authorizing such a tax.

Unlike SB 1250/HB 0885, this recommendation did not suggest limiting the new authority to establish real estate transfer taxes to just county governments. The general enabling legislation would apply to all local governments. Like SB 1250/HB 0885, the TACIR recommendation also did not specify rates or caps for the local real estate transfer tax.

There is some concern that allowing all local governments to adopt a real estate transfer tax could effectively triple the tax rate in some locations, with both a municipal and county tax rate on top of the current state tax rate. Alternatives might include capping the total combined local rate, similar to the way that the local options sales tax rate has a maximum combined rate, developing some form of revenue sharing scenario within counties with municipalities to prevent excessive rates, or completely separating the realty tax base between city and county governments.

RECOMMENDATION OPTIONS

As SB 1250/HB 0885 is generally consistent with the earlier Commission recommendation, the **TACIR staff recommends that an amended version of this legislation be approved. The bill should be amended so as to amend any existing state laws that preclude local governments from levying the tax, being cautious to only affect the real estate transfer tax, and to use language that makes it clear that the authorization for the**

local tax parallels all sections of the law that refer to the state recordation tax, to include caps and rates. The General Assembly's action on this issue will need to consider both the continuing fiscal pressures facing local governments in Tennessee, and the changing national fiscal situation facing the economy.

The TACIR staff further recommends that the General Assembly consider adopting one of these four alternative formats for the tax:

- **Counties and cities**: Authorize both county and municipal governments to levy local realty transfer taxes in the same manner as provided for the tax imposed for state purposes

  All revenue collected from local realty transfer taxes would be earmarked for local general fund use. Local realty transfer taxes could be levied at tax rates less than or equal to the state tax rate authorized in TCA § 67-4-409(a). Local taxes could be imposed by a simple majority vote of a local legislative body. Both levels of government within a county could levy the tax. This version would authorize a potential state and local tax of up to $1.11 per $100 (effective combined tax rate of 1.11%).

- **Counties only**: Authorize only county governments to levy a local realty transfer tax in the same manner as provided for the tax imposed for state purposes

  All revenue collected would be earmarked for local general fund use. County realty transfer taxes could be levied at rates less than or equal to the state tax rate authorized in TCA § 67-4-409(a). Such a tax could be imposed by a simple majority vote of the county legislative body. This version would authorize a potential state and county tax rate of $.74 per $100 (effective combined tax rate of 0.74%).

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APPENDICES

APPENDIX A

SENATE BILL 1250 By Burchett / HOUSE BILL 0885 By Montgomery

AN ACT to amend Tennessee Code Annotated, Section 67-4-409, relative to real estate transfer taxes.

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

SECTION 1. Tennessee Code Annotated, Section 67-4-409(a), is amended by deleting the language "for state purposes only," and by substituting instead the language "for state purposes,".

SECTION 2. Tennessee Code Annotated, Section 67-4-409, is further amended by adding the following language as a new subsection (o):

(o)

(1) In addition to the tax imposed pursuant to subsection (a) for state purposes, the county legislative body of any county is authorized to impose an additional tax by resolution in an amount to be determined by the county legislative body for county purposes on all transfers of realty, whether by deed, court deed, decree, partition deed, or other instrument evidencing transfer of any interest in real estate in the same manner as provided in subsection (a) for the tax imposed for state purposes.

(2) Any resolution of a county adopted in accordance with subdivision (1) may be repealed in the same manner as provided for its adoption.

(3) A tax levied pursuant to subdivision (1) shall be collected by the register of the county in which the instrument is offered for recordation at the same time and in the same manner as the tax levied for state purposes is collected.

(4) The resolution levying the tax shall designate the county officer against whom suit may be brought for recovery and shall further designate the accounts into which the proceeds shall be deposited.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring

it.

APPENDIX B

STATE TRANSFER TAX COLLECTIONS BY COUNTY, FY 2007

COUNTY	YTD TOTAL
Anderson	1,178,467.17
Bedford	860,795.74
Benton	214,024.67
Bledsoe	158,706.66
Blount	2,794,511.76
Bradley	1,850,563.37
Campbell	731,817.65
Cannon	186,226.58
Carroll	348,104.91
Carter	576,998.65
Cheatham	813,811.17
Chester	200,052.48
Claiborne	401,227.64
Clay	70,931.92
Cocke	518,528.94
Coffee	829,469.64
Crockett	110,933.23
Cumberland	1,396,566.02
Davidson-Nashville	22,437,570.58
Decatur	164,889.20
Dekalb	458,614.13
Dickson	898,147.38
Dyer	428,790.03
Fayette	1,313,687.17
Fentress	354,293.22
Franklin	686,567.60
Gibson	593,862.74
Giles	446,787.43
Grainger	359,606.19
Greene	906,191.41
Grundy	164,984.97
Hamblen	939,767.51
Hamilton	7,483,698.10
Hancock	60,583.33
Hardeman	309,908.29

COUNTY	YTD TOTAL
Hardin	866,768.97
Hawkins	759,292.65
Haywood	199,590.32
Henderson	261,558.29
Henry	443,426.23
Hickman	440,426.56
Houston	75,307.28
Humphreys	336,356.97
Jackson	115,503.12
Jefferson	1,275,551.03
Johnson	309,641.82
Knox	11,614,309.41
Lake	46,370.21
Lauderdale	217,646.18
Lawrence	538,274.97
Lewis	206,465.43
Lincoln	561,946.55
Loudon	1,822,938.61
McMinn	823,419.65
McNairy	294,178.78
Macon	240,876.50
Madison	1,824,157.01
Marion	587,576.99
Marshall	494,571.54
Maury	1,959,495.45
Meigs	380,185.97
Monroe	869,249.89
Montgomery	3,992,124.77
Moore	91,858.90
Morgan	189,398.74
Obion	260,379.84
Overton	246,861.39
Perry	157,930.84
Pickett	102,087.32
Polk	302,463.33

APPENDIX B *(CONTINUED)*

STATE TRANSFER TAX COLLECTIONS BY COUNTY, FY 2007

COUNTY	YTD TOTAL
Putnam	1,131,733.06
Rhea	503,923.72
Roane	1,088,677.74
Robertson	1,448,169.92
Rutherford	7,981,688.32
Scott	183,549.76
Sequatchie	258,857.80
Sevier	5,233,924.32
Shelby	24,094,514.09
Smith	307,903.84
Stewart	161,898.62
Sullivan	2,289,942.64
Sumner	5,125,540.48
Tipton	888,705.75
Trousdale	93,778.12
Unicoi	205,367.52
Union	311,233.70
Van Buren	304,151.26
Warren	479,421.99
Washington	2,529,923.03
Wayne	514,328.85
Weakley	302,971.13
White	345,816.57
Williamson	13,541,730.18
Wilson	3,876,928.21
STATE TOTALS	**157,362,559.61**

Source: Tennessee Department of Revenue

APPENDIX C

EXCERPT FROM DECEMBER 13, 2005 TACIR MEETING

Presentation by Dr. Harry GREEN, Executive Director of TACIR, on Local Development Taxes and Fees

Dr. Harry GREEN introduced the topic of local fiscal flexibility and growth taxes with some historical perspective. He reported that explosive growth following World War II first brought discussions of growth and whether or not it paid for itself. Dr. GREEN noted that President Nixon introduced federal grants that were unrestricted in their use for local governments, but that President Reagan phased those out in the 1980's. He noted other pressures on local governments, including policy changes that have diminished the property tax base over the years, including the Greenbelt Program, the deregulation and privatization of public utilities, and growth in tax abatements and deferrals. He also noted state limitations on the base for the local option sales tax, as well as the fact that thirty-three counties already levy the maximum allowed rate.

Dr. GREEN stated that the current focus on the costs of growth in Tennessee began with the location of the Nissan plant in Rutherford County in 1981, which was followed by the Saturn plant in Maury County, and by many suppliers which came in to service them. Pressure for an impact fee bill first came from Williamson County in the late 1980's and has continued and expanded from there.

Dr. GREEN reported that opinions differ on whether or not growth causes costs that extend beyond the revenues it raises for local governments. Government research tends to find that additional costs created by growth are not recovered under current local tax systems. Private industry studies tend to find that growth pays for itself under current local tax structures.

Looking at how growth has actually occurred in the state, Dr. GREEN presented information on population, student average daily membership (ADM) growth, and wage growth (a proxy for economic growth). A county gets a point for each growth metric on which it ranks in the top twenty in either nominal or percentage growth. Those with the most points are the fastest growing. Dr. GREEN provided a growth map with the results of this examination.

Moving to staff recommendations, Dr. GREEN stated that, generally, the General Assembly should grant authority to local governments to determine their own fiscal futures, in the context of acceptable levels of accountability, as local governments are facing a crisis. Staff recommended, therefore, that there be general enabling legislation for impact fees, adequate facilities taxes, and real estate transfer taxes, noting that real estate transfer taxes are not specifically targeted at growth. He noted that two of the fourteen bills referred to TACIR appeared to be caption bills that required no commission action.

Dr. GREEN noted that, at the September meeting, there was some discussion among the Commissioners as to whether or not growth taxes should be restricted to only those local governments which met certain "growth triggers," demonstrating that they had a need for these taxes. Staff considered this idea and produced a list of several measures that might be used as growth triggers. Staff noted, however, that many local governments are special cases that do not necessarily fit into any standard list of growth triggers, especially local governments that are dealing with multiple school systems within one county. Staff produced this list to promote debate and does not recommend any specific measure, nor does staff recommend that any growth trigger requirement demand that a local government meet every measure on the list.

Mayor HUFFMAN inquired about the education property tax and whether it included education debt service costs (it does not), and Mayor GREER asked if the percent of TVA in lieu of property tax money directed to education was considered (it was not). The larger report does consider these as special cases. Mayor BRAGG noted that city charters govern their process for levying taxes and suggested the legislature need not require a 2/3 vote, but should let each local government adopt these taxes as they would any other. Dr. GREEN agreed, saying no such requirement exists for the state.

Senator NORRIS asked why it was assumed that local governments had to ask the legislature for permission to levy these taxes. David CONNER, attorney with the County Technical Assistance Service, said that there is a string of court cases that make clear that counties can only levy the taxes the state allows them to, as they are considered to be subsets of the state. Some city governments can levy them pursuant to their charters, though he was not as familiar with which types had which abilities.

Senator HENRY asked if staff had considered any recommendations to remove the referendum requirement on increases in the local option sales tax, given that a high local option sales tax rate was mentioned as a trigger. Staff had not considered that, as it was neither in the bills referred by the General Assembly nor mentioned in the discussion at the September meeting. Chairman RINKS asked what factors went toward the different levels of different taxes in each county. Dr. GREEN replied there are interactions among the levels of different taxes in each county, but that staff had not explored that as part of this subject.

Mayor GOLDSWORTHY pointed out that there are many considerations that go into the decisions for levels of different taxes. She noted that the sales tax can be regressive and that this might factor into the decision to keep it lower and raise other taxes. Mayor YAGER asked if the triggers were part of the recommendation. Dr. GREEN responded that the recommendation did not include those, but that the information was supplied because of an interest in triggers expressed by some Commissioners at the September meeting and because accountability was understood to be a concern of the legislature. Mayor YAGER asked if every county would be expected to meet every trigger. Dr. GREEN responded that these were just ideas for triggers and might not all be used and that the interactions among taxes should be considered.

Mayor BRAGG asked about the recommendation that cities be required to provide a full range of services and a minimum level of property tax and if these levels were defined. He suggested that the requirements in PC 1101 might be used. After some discussion, the Commissioners seemed to agree that, if a trigger requirement was included for cities, using the services and property tax requirements in PC 1101 would provide a level of consistency with other state legislation.

Mayor ALLEN wanted to know if the triggers were applied to the “Tier 1” growth counties. Dr. GREEN said the tiers were based solely on growth as described earlier. Mayor ALLEN said that debt was important to look at, using Rutherford County’s debt as an example of rapid growth costs that have been covered by debt. Mayor HUFFMAN suggested that effective property tax rates might be better to use than nominal rates. Dr. GREEN said we always put that in our considerations.

Chairman RINKS said that the referendum requirement would almost have to be lifted if having a 2.5% sales tax rate is used as a trigger. He said it would not be fair to require it of a local government if they did not have the ability to pass it. Dr. GREEN stated again that this list of triggers was included only to start a debate and that it did not have to be a trigger.

Senator NORRIS asked what reasons there might be for refusing to give local authority and wondered if the state kept tabs on all of the local revenues. Comptroller MORGAN said they used to try to keep up with all the local financial, revenue and debt information, but they stopped doing that years ago, as it always lagged far behind and was not useful. He noted that CTAS accumulated quite a bit of information on the counties. He said he did not think that MTAS did anything as comprehensive for cities. He said we do not have a state planning operation in Tennessee and we do not have an organized way to gather that information. On local authority, he said it is simply that the authority has always been with the state. A discussion ensued of how political opposition to approving local tax bills in the legislature grew over the last several years, primarily as a political problem for legislators who voted for them. In elections, legislators accused one another of voting to raise taxes every time they voted on a local authorization bill, including once for each procedural vote.

Senator HENRY moved that the referendum requirement on the local option sales tax be removed. Mr. Charles CARDWELL seconded the motion. Senator NORRIS said that was a terrible idea. Senator HENRY said local governments need to be able to address their fiscal needs. Senator NORRIS said the citizenry understands if it is strapped. Senator HENRY said the local legislative bodies need the freedom. Chairman RINKS suggested that the referendum requirement motion could be removed only if the local option sales tax rate was a trigger. Chairman RINKS made that an amendment, which was seconded by Senator HENRY. Chairman RINKS said that it might be clearer if they made a decision about triggers first, and then returned to Senator HENRY's motion if there was a local option sales tax trigger. Senator HENRY withdrew his motion. Mayor ALLEN said she was prepared to make a motion, but Chairman RINKS suggested the discussion be completed first. Mayor GOLDSWORTHY said decisions on the recommendations might be affected by whether or not there were triggers put on them.

Chairman RINKS asked if there was a state gross receipts tax. Comptroller MORGAN and Stan CHERVIN explained that the gross receipts tax is a local tax, but that the legislature raised it to the maximum level in all local areas and added a state portion. Chairman RINKS asked if the real estate transfer tax would be new to local governments. Comptroller MORGAN said the state has one, but the language preventing local governments from levying them would need to be removed. Local governments already collect it for a small fee, so they are in a position to deal with it administratively.

Comptroller MORGAN pointed out that the idea about triggers was a philosophical idea. Should the new taxes be restricted to local governments who are still stressed after using the taxes available to them or should local governments just be able to decide what they use? How much authority should the local governments have for themselves? Chairman RINKS agreed that the question was about local autonomy, if it should be granted, and, if so, if there should be restrictions on it.

Mayor BRAGG asked if there was a way to work around the political problem that the legislature has as a simpler way to address the problem. He pointed out that every city and every county is a different case and triggers would be very difficult to generalize. He stated that he was not in favor of any of the triggers and felt that they were just something the legislature wanted to use for political reasons.

Chairman RINKS pointed out that these taxes are on people other than those that live in the county or city when the tax is passed. He is concerned that growth taxes would be an easy way out for local governments and might not be fair. Mayor ALLEN said such issues could be dealt with by ousting people from office in elections. She also pointed out that low growth counties could use some of these taxes if they were in financial difficulty even though they would never meet growth trigger requirements. Mr. John JOHNSON opposed triggers because cities without school systems would have no way to meet the triggers.

Senator HENRY moved to recommend the removal of the referendum requirement for local option sales tax increases. The motion was seconded by Mr. CARDWELL and then passed.

Mayor ALLEN moved that the Commission make a recommendation in several parts: 1) The Commission should recommend general enabling impact fee legislation; 2) In order to provide more flexibility to local governments, and allow them to shape and better plan for growth, the Commission should recommend general enabling adequate facilities tax legislation; 3) The real estate transfer tax affects all real estate sales rather than just new homes and/or new business development. It is, therefore, a general tax rather than a growth impact tax. [Nonetheless, because it gives local governments the freedom to use a more broad-based tax that will still provide increased revenues with increased growth,] staff recommends general enabling legislation authorizing such a tax; 4) The Commission should recommend that cities be included in any local fiscal flexibility legislation, but that requires such cities offer a full range of services as delineated in Public Chapter 1101 and specific to the property tax issue; 5) The Commission should recommend a simple majority or as provided by a city charter [to levy the taxes locally]; 6) Consider additional policy ideas presented to or by the Commission as listed on page six [of the staff recommendations].

Note - the list on page six includes:

- *Allowing local governments to adopt any tax that any other local government has at its disposal. Special local taxes include:*
    - o *special local gross receipts tax (Gatlinburg and Pigeon Forge)*
    - o *restaurant tax (Gatlinburg)*
    - o *amusement tax (Gatlinburg, Pigeon Forge, Knoxville, Portland, Lenoir City, and Polk County)*
    - o *cigarette tax (Shelby County, including Memphis and Millington)*
    - o *impact fees and adequate facilities taxes (several counties and cities)*

Real estate transfer taxes are not currently authorized for any local governments in Tennessee.

- *Allowing local governments to adopt any constitutional tax*
- *Changing state shared tax formulas to reflect fiscal capacity and need*

After several minutes of discussion, largely on the merits of including the PC 1101 requirement as a trigger for cities, Senator HENRY moved that a study commission be set up to consider the elements of Mayor ALLEN's motion. Mr. CARDWELL seconded. The motion failed on a seven to nine roll call vote. Chairman RINKS moved that each recommendation be voted on separately. After some discussion, Alderman KIRK called the question on Chairman RINK's motion; the motion failed on voice vote.

Mayor VENABLE said that, since there were not going to be trigger requirements for counties, the PC 1101 requirements for cities should not be included either. He moved to amend Mayor ALLEN's motion to remove the second part of the fourth recommendation that put PC 1101 requirements on cities as a requirement to pass the local taxes covered by the general enabling legislation. The motion was seconded by Mayor GREER and passed.

A vote was taken on Mayor ALLEN's motion as amended by Mayor VENABLE's motion:

1) The Commission should recommend general enabling impact fee legislation; 2) In order to provide more flexibility to local governments, and allow them to shape and better plan for growth, the Commission should recommend general enabling adequate facilities tax legislation; 3) The real estate transfer tax affects all real estate sales rather than just new homes and/or new business development. It is, therefore, a general tax rather than a growth impact tax. Staff recommends general enabling legislation authorizing such a tax; 4) The Commission should recommend that cities be included in any local fiscal flexibility legislation; 5) The Commission recommends a simple majority or as provided by a city charter [to levy the taxes locally]; 6) Consider additional policy ideas presented to or by the Commission as listed on page six [of the staff recommendations].

The motion passed.

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ENDNOTES

[1] Connecticut (1.3%), Delaware (2.8%), District of Columbia (4.7%), Florida (4.2% but includes transfers of securities), Maryland (1.2%), Massachusetts (1.2%), Michigan (1.2%), Minnesota (1.7%), New Hampshire (5.3%), New York (1.2%), Pennsylvania (1.5%), Tennessee (1.7%), Vermont (1.4%), Virginia (1.7%), and Washington (3.4%).

[2] State realty transfer taxes experienced slight declines during fiscal 1998 and 2000.

[3] Federal Real Estate Settlement Procedures Act (RESPA).

[4] Benjamin, John, N. Edward Coulson, and Shiawee X. Yang. *Real Estate Transfer Taxes and Property Values: The Philadelphia Story*. Journal of Real Estate Finance and Economics, 7: 151-157 (1993).

[5] Potential Impacts of Increases in Real Estate Transfer Taxes: A Report from the Research Division of the National Association of Realtors® (2003). http://www.realtor.org/Research.nsf/files/retransfertaxes.pdf/$FILE/retransfertaxes.pdf, (accessed January 2, 2008).

TACIR Members

Representative Randy Rinks, Chairman
Mayor Tom Rowland, Vice Chairman
Harry A. Green, Executive Director

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Senator James Kyle
Senator Mark Norris
Senator Jim Tracy
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Senator Randy McNally Chairman, Finance Ways & Means Committee
Comptroller John Morgan

Executive Branch

Paula Davis, Department of Economic & Community Development
Leslie Newman, Department of Commerce and Insurance

Municipal

Tommy Bragg, Mayor of Murfreesboro
Sharon Goldsworthy, Mayor of Germantown
Bob Kirk, Alderman, City of Dyersburg
Tom Rowland, Mayor of Cleveland

County

Rogers Anderson, Williamson County Mayor
Jeff Huffman, Tipton County Executive
R.J. Hank Thompson, Sumner County Executive
Vacant

Other Local Officials

Brent Greer, Tennessee Development District Association
Charles Cardwell, County Officials Association of Tennessee

Private Citizens

John Johnson, Morristown
Tommy Schumpert, Knoxville

Commissioner Emeritus

Senator Douglas Henry

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