

SENATE BILL 1977

By Southerland

AN ACT to amend Tennessee Code Annotated, Title 5;
Title 6; Title 7 and Title 67, Chapter 6, relative to
allocation of sales and use tax revenue.

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

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 6, is amended by adding Sections 2 through 14 as a new part.

SECTION 2.

It is the intent of this part to address rural, economically distressed counties experiencing persistent high unemployment and traditionally low levels of family income by apportioning and distributing state sales and use tax revenue to special districts in those counties.

SECTION 3.

An amount equal to the amount of state sales and use tax revenue derived from one percent (1%) of the tax rate imposed pursuant to § 67-6-202 on all sales in a special district shall be apportioned and distributed to an eligible county or municipality in a special district that has adopted a resolution or ordinance accepting the apportionment and that meets the other requirements of this part for the purpose of funding economic development and infrastructure projects.

SECTION 4. For purposes of this part:

(1) "Building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or

articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract;

(2) "Capital outlay project":

(A) Means major, permanent, or long-lived improvements or betterments, such as land and structures that would be properly chargeable to a capital asset account and distinguished from current expenditures and ordinary maintenance expenses; and

(B) Includes roads, streets, bridges, law enforcement vehicles, fire trucks, ambulances, garbage trucks, and other major equipment;

(3) "County-wide project" means a capital outlay project of an eligible county for the use or benefit of the residents of the eligible county;

(4) "Eligible county" means:

(A) Prior to December 31, 2020, a county that meets one (1) or more of the following criteria as of December 31, 2020:

(i) Has a per capita income of eighty percent (80%) or less of the national average;

(ii) Has an unemployment rate that is, for the most recent twenty-four-month period for which data are available, at least one percent (1%) greater than the national average unemployment rate, or, for the most recent twelve-month period for which data are available, at least two percent (2%) greater than the state average unemployment rate;

(iii) Has experienced, or is about to experience, a special need arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions, as determined by the commissioner of finance and administration, the commissioner of economic and community development, and the commissioner of revenue; or

(iv) Has an area composed of property acquired from the state by an eligible county or an industrial development corporation established in the eligible county, and the property was used by the state as a correctional facility; or

(B) On and after December 31, 2020, a distressed rural county that will be identified using a consistent methodology based on a set of broadly available measures of economic well-being that could include county unemployment rate, rate of job growth, personal income per capita, property tax base per capita, percentage of high school graduates, and percentage below poverty. Using this consistent methodology, the commissioner of finance and administration, the commissioner of economic and community development, and the commissioner of revenue shall determine which counties are eligible counties and shall publish a list of the eligible counties meeting the criteria in this subdivision (4)(B) by July 1 of each year;

(5) "Infeasible" means that a capital outlay project has, in the judgment of the legislative body as expressed in the resolution or ordinance required by Section 14(b), become impracticable, unserviceable, unrealistic, or otherwise not in the best interests of the residents of a special district or a municipality;

(6) "Interlocal agreement" means a contract entered into pursuant to § 12-9-104 between an eligible county and one (1) or more qualified municipalities located within the special district containing a combined total of no less than fifty percent (50%) of the aggregate municipal population located within the special district;

(7) "Level one county-wide project" means a county-wide project of an eligible county that is used to carry out functions on behalf of the state and is limited to a county courthouse; a county administrative building primarily for county constitutional officers or

elected officials; a county or regional jail, correctional institution, or other detention facility; a county health department facility; or any combination of such projects;

(8) "Level two county-wide project" means a county-wide project of an eligible county or one (1) or more municipalities, other than a level one county-wide project, and where the project is to be owned or operated or both by an eligible county, one (1) or more municipalities, or any combination thereof; and

(9) "Special district" means one (1) or more parcels of real property located within an eligible county, in which a level one county-wide project or level two county-wide project is owned or operated.

SECTION 5.

(a) In order to receive an apportionment of sales and use tax revenues under this part, each participating local governmental body must adopt a resolution or ordinance, as applicable. Prior to adoption of a resolution by the legislative body of an eligible county containing a special district that would accept the apportionment and distribution of sales and use tax revenues under this part, the county legislative body may enter into an interlocal agreement with any or all of the municipalities located within the special district. Any eligible county that desires to use the sales and use tax revenue collected within a municipality shall provide written notice to the mayor or chief elected official in the municipality located within the eligible county. Such notice must contain the date, time, place, and purpose of a meeting at which the legislative bodies of the eligible county and of each municipality shall meet to discuss the possible projects for inclusion in the resolution, including municipally-owned or -operated projects. The county must provide written notice at least ten (10) days prior to the date of the meeting. The meeting must be held at least thirty (30) days prior to the adoption of the resolution.

(b) The resolution must include the following:

(1) The purpose for which the proceeds of the sales and use tax revenues are to be used and may be expended, which may consist of capital outlay projects located within or outside, or both within and outside, any incorporated areas in the eligible county, and which may include any or all of the following purposes:

(A) A capital outlay project consisting of road, street, and bridge purposes, including sidewalks and bicycle paths;

(B) A capital outlay project in the special district and consisting of a courthouse; administrative buildings; a civic center; a local or regional jail, correctional institution, or other detention facility; a library; a coliseum; local or regional recovered materials processing facility; or local or regional solid waste handling facility, including, but not limited to, any facility for purposes of incineration of waste to direct energy conversion, but excluding a solid waste thermal treatment technology facility;

(C) A capital outlay project that will be operated by a joint authority or authorities of the eligible county and one (1) or more municipalities within the special district;

(D) A capital outlay project, to be owned or operated or both by the eligible county, one (1) or more municipalities within the special district, one (1) or more local authorities within the special district, or any combination thereof;

(E) A capital outlay project for a cultural facility, recreational facility, a historic facility, or a facility that provides a combination of such purposes;

(F) A water capital outlay project, a sewer capital outlay project, a water and sewer capital outlay project, or a combination of such projects, to be owned or operated or both by an eligible county's water and sewer district and one (1) or more municipalities in the eligible county;

(G) The retirement of previously incurred general obligation debt of the eligible county, one (1) or more municipalities within the special district, or any combination thereof;

(H) A capital outlay project within the special district for public safety facilities, airport facilities, or related capital equipment used in the operation of public safety or airport facilities, or any combination of such purposes;

(I) A capital outlay project within the special district for capital equipment for use in voting in official elections or referendums;

(J) A capital outlay project within the special district for a transportation facility designed for the transportation of persons or goods, including railroads, port and harbor facilities, mass transportation facilities, or any combination thereof;

(K) A capital outlay project within the special district and for a hospital or hospital facilities that are owned by the eligible county or a municipality or hospital authority within the special district and operated by the eligible county, municipality, or hospital authority or by an organization that is tax exempt under Section 501(c)(3) of the Internal Revenue Code, and that operates the hospital through a contract or lease with such county, municipality, or hospital authority;

(L) The repair of capital outlay projects, including roads, streets, and bridges, located, in part or in whole, within the special district that have been damaged or destroyed by a natural disaster;

(M) A capital outlay project that is owned, operated, or administered by the state and located, in part or in whole, within the special district; or

(N) Matching requirements found in state grants; and

(2) If general obligation debt is to be repaid with the distribution of sales and use tax revenue, the principal amount of the debt to be issued, the purpose for which the debt is to be issued, the local government issuing the debt, the interest rate or rates or the maximum interest rate or rates which such debt is to bear, and the amount of principal to be paid in each year during the life of the debt.

SECTION 6.

(a) With respect to any consolidated government created by the consolidation of a county and one (1) or more municipalities, this part controls over any conflicting provisions of this chapter.

(b) A consolidated government is authorized to accept a distribution of sales and use tax revenue under this part for any capital outlay project provided for in Sections 5(b)(1)(C), (D), and (F), or any combination thereof, without the necessity of operating such project jointly with a municipal governing authority, owning or operating such projects with one (1) or more municipalities, or entering into a contract with one (1) or more municipalities with respect to such project.

SECTION 7.

(a) Within eighty (80) days after the date of adoption of the resolution by the eligible county's legislative body to accept the distribution of sales and use tax revenue under this part, the county shall furnish a certified copy of the resolution to the department of revenue. The distribution of sales and use tax revenue to each county shall begin on the first day of the next succeeding calendar quarter following the date of submission of the resolution to the department.

(b) The distribution of sales and use tax revenue shall cease the first day of the next succeeding calendar quarter immediately following the date on which an eligible county is removed from the economically distressed counties list due to the growth experienced since adoption of the resolution. This subsection (b) does not apply to any eligible county that uses the distribution of sales and use tax revenue to pay on a bond project issued through a previous resolution pursuant to Section 5(b)(1)(G).

SECTION 8.

Notwithstanding any other law to the contrary, each sales and use tax return of any taxpayer remitting state sales and use taxes collected under this chapter must separately identify the location of each retail establishment at which any of the taxes remitted were collected and specify the total amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the county trustee that the apportionment of sales and use tax revenue is distributed according to situs of sale.

SECTION 9.

(a) One percent (1%) of the amount of the sales and use tax revenue to be distributed pursuant to this part must be paid into the general fund of the state treasury to defray the costs of administration, and the remaining proceeds of the revenue must be

distributed to the legislative body of the eligible county containing the special district as specified in subsection (b).

(b) The eligible county shall distribute proceeds as follows:

(1) To the county legislative body and any municipalities as specified in an interlocal agreement. Where an interlocal agreement has been entered into, the agreement must, at a minimum, include the following:

(A) The specific capital outlay project to be funded pursuant to the agreement;

(B) The estimated or projected dollar amounts allocated for each project from tax proceeds from the apportionment of sales and use tax revenue authorized by this part;

(C) The procedures for distributing proceeds from the sales and use tax revenue to municipalities;

(D) A schedule for distributing proceeds from the sales and use tax revenue to municipalities, and the schedule must include the priority or order in which projects will be fully or partially funded;

(E) A provision that all capital outlay projects included in the agreement must be funded from proceeds from the apportionment of sales and use tax revenue authorized by this part except as otherwise agreed;

(F) A provision that proceeds from the sales and use tax revenue pursuant to this part are to be maintained in separate accounts and utilized exclusively for the specified purposes;

(G) Recordkeeping and audit procedures necessary to carry out the purposes of this part; and

(H) Such other provisions as the eligible county and participating municipalities choose to address; or

(2) Where an interlocal agreement has not been entered into pursuant to subdivision (b)(1), the eligible county containing the special district shall distribute the proceeds of the sales and use tax revenue apportioned by this part as follows:

(A)

(i) To the governing authority of the eligible county for one (1) or more level one county-wide projects specified in the resolution required by Section 5; provided, however, that any tax revenue distributed under this part that funds a level one county-wide project where an interlocal agreement has not been entered into pursuant to subdivision (b)(1) must be distributed for a period of five (5) years. In the event that a level one county-wide project is estimated to cost an amount that exceeds the proceeds projected to be collected during a twenty-four month period of the distribution of the tax revenue, the tax revenue shall be distributed for a period of six (6) years;

(ii)

(a) In the event that no level one county-wide project is included in the resolution required by Section 5, to the county legislative body for one (1) or more level two county-wide projects specified by the county legislative body in the resolution;

(b) In the event no level one county-wide project is included in the resolution and the county legislative body has specified one (1) or more municipal projects as level two county-wide projects in the resolution, to the legislative body of the appropriate municipality or municipalities for such level two county-wide projects specified in the resolution;

(c) The total estimated cost of all level two county-wide projects specified under this subdivision (b)(2)(A)(ii) shall not exceed twenty percent (20%) of the proceeds projected to be distributed during the period specified in the resolution; or

(B) In the event that no county-wide project is included in the resolution to receive the distribution of sales and use tax revenue or in the event that tax revenues exceed that amount required to fund the county-wide project or projects, the remaining revenue must be distributed in the following manner:

(i) As specified in an interlocal agreement other than the agreement specified in subdivision (b)(1). The interlocal agreement must include, at a minimum, the information required in subdivision (b)(1); or

(ii) To the municipalities within the special district based upon the ratio that the population of each municipality bears to the total population of the eligible county containing the special district. If any municipality is located in more than one (1) eligible

county, only that portion of its population that is within the special district is authorized to be included in the distribution. The remainder of the proceeds must be distributed to the county legislative body containing the special district. Capital outlay projects included in the referendum ballot by the eligible county or any municipalities within the special district must be based upon the anticipated proceeds and distribution of the tax. The county legislative body containing the special district shall distribute all proceeds received by the eligible county for the apportionment of the sales and use tax revenue to the municipalities within the special district on a monthly basis where proceeds are distributed in accordance with this subdivision (b)(2)(B)(ii).

SECTION 10.

Notwithstanding any other law to the contrary, the sales tax provided for in this chapter is imposed upon the sale of any tangible personal property that is ordered by and delivered to the purchaser at a point outside the geographical area of the county in which the tax is imposed.

SECTION 11.

The commissioner of revenue is authorized to promulgate rules to effectuate the purposes of this part and that are necessary for the effective and efficient administration and enforcement of the apportionment of sales and use tax revenue pursuant to this part. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 12.

(a)

(1) The tax revenue apportionment available pursuant to this part must be used by the eligible county and municipalities within the eligible county receiving proceeds of the sales and use tax revenue exclusively for the purpose or purposes specified in the resolution calling for the receipt of the apportionment. Such proceeds must be kept in a separate account from other funds and shall not be commingled with other funds of the eligible county or municipality receiving the tax revenue apportionment prior to any expenditure.

(2) The county legislative body and the legislative body of each municipality within the special district receiving any proceeds from the tax revenue apportionment pursuant to this part must maintain a record of each and every project for which the revenue is used. A schedule must be included in each annual audit that identifies for each such project the original estimated cost, the current estimated cost, amounts expended in prior years, and amounts expended in the current year. The auditor shall verify the expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The auditor's report on the financial statements must include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.

(3) In the event that a municipality fails to comply with the requirements of this part, the eligible county containing the special district shall not be held liable for such noncompliance.

(4) If the resolution calling for the tax revenue apportionment specifies that the proceeds of the revenue are to be used in whole or in part for capital

outlay projects consisting of road, street, and bridge purposes, then authorized uses of the tax proceeds include:

- (A) Acquisition of rights-of-way for roads, streets, bridges, sidewalks, and bicycle paths;
- (B) Construction of roads, streets, bridges, sidewalks, and bicycle paths;
- (C) Renovation and improvement of roads, streets, bridges, sidewalks, and bicycle paths, including resurfacing;
- (D) Relocation of utilities for roads, streets, bridges, sidewalks, and bicycle paths;
- (E) Improvement of surface-water drainage from roads, streets, bridges, sidewalks, and bicycle paths; and
- (F) Patching, leveling, milling, widening, shoulder preparation, culvert repair, and other repairs necessary for the preservation of roads, streets, bridges, sidewalks, and bicycle paths.

(b) Storm-water capital outlay projects and drainage capital outlay projects may be funded pursuant to subdivision (a)(4)(D) or in conjunction with road, street, and bridge capital outlay projects.

(c) No general obligation debt shall be issued in conjunction with the resolution unless the legislative bodies of the eligible county or municipalities within the special district issuing the debt determine, and if the debt is to be validated the bodies demonstrate during the validation proceedings that during each year in which any payment of principal or interest on the debt is due, the eligible county or municipalities within the special district issuing such debt will receive net proceeds sufficient to fully satisfy such liability from the revenue authorized by this part. General obligation debt

issued under this part must be paid first from the separate account described in subsection (a). Such debt constitutes a pledge of the full faith, credit, and taxing power of the eligible county or municipalities within the special district issuing such debt, and any liability on the debt that is not satisfied from the proceeds of the apportionment of tax revenue authorized by this part must be satisfied from the general funds of the eligible county or municipalities within the special district issuing the debt.

(d) The resolution calling for accepting the apportionment of sales and use tax revenue authorized by this part may specify that:

(1) All proceeds will be used for payment of general obligation debt, and in such case, the proceeds shall be used solely for such purpose except as provided in subsection (e);

(2) Part of the proceeds of the revenue will be used for payment of general obligation debt, and in such case, the resolution must specifically state the other purposes for which such proceeds will be used and that no part of the net proceeds from the proceeds received in any year are authorized to be used for those other purposes until all debt service requirements of the general obligation debt for that year have first been satisfied from the separate account described in subsection (a); and

(3) No general obligation debt is to be issued in conjunction with accepting the apportionment, and in such case, the resolution must specifically state the purpose for which the proceeds will be used.

(e)

(1)

(A) If the proceeds are specified to be used solely for the purpose of payment of general obligation debt, then any net proceeds of the tax in

excess of the amount required for final payment of such debt must be used in accordance with subdivision (e)(2).

(B) If the eligible county or municipality within the special district receives an amount of net proceeds in excess of the estimated cost of the capital outlay project or projects specified in the resolution or in excess of the actual cost of such capital outlay project or projects, then such excess proceeds must be used in accordance with subdivision (e)(2).

(C) If the apportionment of tax revenue is terminated under subsection (c) by reason of denial of validation of debt, then all net proceeds received by the eligible county or municipality within the special district from the tax revenue are deemed excess proceeds subject to subdivision (e)(2).

(2) Unless otherwise provided in this part or in an interlocal agreement entered into pursuant to this part, excess proceeds under this subsection (e) must be used solely for the purpose of reducing any indebtedness of the county containing the special district other than indebtedness incurred pursuant to this part. If there is no such other indebtedness or, if the excess proceeds exceed the amount of any such other indebtedness, then the excess proceeds must be paid into the general fund of the county containing the special district. Any funds paid into the general fund of the county must be used for the purpose of offsetting any revenue loss resulting from a reduction in ad valorem taxes.

SECTION 13.

Each eligible county and municipality receiving proceeds from the apportionment of sales and use tax revenue under this part shall maintain a record of each and every project for which the proceeds of the tax revenue are used. Not later than December 31

of each year, each local government receiving proceeds from the tax revenue under this part shall publish annually, in a local newspaper of general circulation and in a prominent location on the local government website, if the local government maintains a website, a brief, nontechnical report that shows for each project or purpose in the resolution or ordinance accepting the apportionment of tax revenue under this part, the original estimated cost, the current estimated cost, amounts expended in prior years, amounts expended in the current year, any excess proceeds that have not been expended for a project or purpose, estimated completion date, and the actual completion cost of a project completed during the current year. In the case of apportionment for road, street, and bridge purposes, the information must be in the form of a consolidated schedule of the total original estimated cost, the total current estimated cost, and the total amounts expended in prior years and the current year for all such projects and not a separate enumeration of such information with respect to each individual road, street, or bridge project. The report must also include a statement of what corrective action the local government intends to implement with respect to each project that is underfunded or behind schedule.

SECTION 14.

(a)

(1) Notwithstanding this part to the contrary, if the apportionment of state tax revenue authorized by this part has been distributed within a special district for a purpose authorized by Section 5(b) and one (1) or more projects authorized in the resolution become or are determined to be infeasible, then this section applies. However, this section does not apply until the governing authority or governing authorities specified under subdivision (a)(2) adopt a resolution or

ordinance determining that such project has become infeasible in accordance with subdivision (a)(2).

(2)

(A) If a project that has become infeasible is a project for which the eligible county is responsible, the county must approve a resolution determining that the project has become infeasible.

(B) If a project that has become infeasible is a municipal project, an ordinance of the municipality responsible for the project must approve a resolution determining that the project has become infeasible. Upon its approval by the municipality, the ordinance must be transmitted to the governing authority of the eligible county. The county governing authority shall rely on the determination by the municipality that the municipal project has become infeasible.

(C) If a project that has become infeasible is a joint project of the eligible county or a county authority and one (1) or more municipalities or a joint project of two (2) or more municipalities, an ordinance or resolution from each of the jurisdictions involved in the joint project determining that the project has become infeasible is required.

(3) If the governing authority seeking a determination that a project is infeasible has incurred or entered into financing for such project, whether through an intergovernmental contract, a multiyear lease or purchase contract, or other form of indebtedness, no such ordinance or resolution may be adopted until the governing authority discharges in full the obligation incurred or provides for the defeasance of the obligation.

(b) Upon the adoption of the resolution or ordinance required by subsection (a), the tax will continue to be apportioned and distributed for the same period of time as originally authorized. Subject to approval in a referendum required by subsection (c), the county, or the municipality if the infeasible project is a project owned or operated by the municipality, or each entity that is part of a joint project, may expend the previously collected and future proceeds of the tax, or such portion thereof as was intended for the purpose that has been determined to be infeasible if the tax were imposed for more than one (1) purpose, to reduce any general obligation indebtedness of the affected jurisdiction containing or within the special district other than indebtedness incurred pursuant to this part, or by paying such proceeds into the general fund of the eligible county or municipality to be used for the purpose of reducing ad valorem taxes, or both. In the event of a joint project in which there is an interlocal agreement apportioning the project, the proceeds are to be divided among the applicable entities according to the agreement. In the event of a joint project in which there is no agreement apportioning the project, the proceeds are to be divided equally among the applicable entities.

(c)

(1) Upon the adoption of the resolution or ordinance required by subsection (a), the legislative body of the eligible county shall notify the county election commission by forwarding to the commission a copy of a resolution or ordinance calling for the modification of the purpose for which proceeds of the tax revenue apportionment authorized by this part may be expended. The ordinance or resolution must specify the modified purpose for which the balance of proceeds of the tax revenue are to be used and an estimate of the amount of the proceeds available to be used for the modified purpose.

(2) Upon receipt of the resolution or ordinance, the county election commission shall call for a special election for the purpose of submitting to the voters of the county residing within the special district the question of modifying the project for which the apportionment of state tax revenue may be expended. The county election commission shall conduct the election in the manner specified in subdivision (c)(3).

(3) The ballots submitting a question of the approval of the modified purpose for the apportionment of state tax revenue previously approved by the voters of the county containing the special district as authorized by this part shall have written or printed on them the following:

Shall the capital outlay project approved for use of proceeds of the special 1 percent sales and use tax apportionment distributed in the special district of _____ County [here insert name of county] be modified so as to authorize use of such proceeds for the purpose of [here insert purpose] of _____ County [here insert name of county]?"

(4) If there are multiple projects to be submitted to the electors for approval of a modified purpose, there shall be one (1) question for all projects of the county or its authorities, one (1) question for all projects of municipalities, and one (1) question for joint projects.

(5) The votes cast on the question shall be canvassed and the results proclaimed by the county election commission and certified by it to the county legislative body.

(6) If the majority vote is in favor of modifying the project or projects, then the proceeds of the apportionment as provided in this part must be used for such modified purpose and deemed to be approved on the date that the county

election commission makes its official canvass of the election returns. The county election commission shall furnish written notice of the results to the department of revenue within seven (7) days of the approval by the voters. The expenses incurred in connection with the conduct of the election are to be paid by the eligible county.

(d) Notwithstanding any provision of law to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Section 9, Chapter 529 of the Public Acts of 1992, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Section 4, Chapter 856 of the Public Acts of 2002, shall be distributed to the eligible county or the municipality for the purposes contemplated in this part. The revenue must continue to be allocated as provided in Chapter 529 of the Public Acts of 1992, and Chapter 856 of the Public Acts of 2002, respectively.

SECTION 15. This act shall take effect upon becoming a law, the public welfare requiring it.