

PAYING FOR GROWTH: GENERAL ASSEMBLY AUTHORIZATIONS FOR DEVELOPMENT TAXES AND IMPACT FEES

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In the decade 1990-2000 Tennessee's overall population grew by 17%. However, this growth was not distributed equally throughout the state. A few counties actually lost population, while others in Middle Tennessee experienced growth rates of over 50 percent.

Beginning in 1987, counties and cities anticipating growth began to seek ways to raise new revenues to meet the costs of their expanding populations. Growth puts pressure on local governments for additional public services and infrastructure that can't be met adequately through traditional means such as the local sales tax and property tax. In addition, a consensus developed that existing residents should not be saddled with the fiscal burdens generated by new arrivals. Thus, county and municipal governing bodies sought new authorization for development taxes and fees or began to implement authority they already had.

TYPES OF LEVIES¹

Growth levies in Tennessee fall into two categories: impact fees and development taxes.

Key Points

- Growth pressures local governments to provide additional public services and infrastructure that can't be met adequately by the local sales tax or property tax.
- Local officials report that development tax/impact fee revenues are significant in enabling them to cope with the costs of growth.
- Impact fees must be reasonably related to the actual additional costs of serving a new development.
- Development taxes are primarily a tool for raising revenue instead of financing facilities for specific developments.
- Development tax revenues are intended to supplement- not replace - revenues from other taxes such as the property tax and sales tax.
- Development taxes are applied at a level set by the local governing body, impact fees must be based upon standard usage formulas.

¹ Source: "Impact Fee Study for Smyrna, Tennessee," Duncan Associates, Houston, Texas, November 1999 (by permission)

A. **Impact fees** are user charges and must be reasonably related to the actual additional costs of serving a new development. They are based upon a standard formula and a pre-determined fee schedule. Standards for evaluating the legality of impact fees have developed out of case law:

- The need for new facilities must be generated by new development;
- The amount of the fee must not exceed a proportional fair share of the cost of serving the new development;
- Revenues from the fee must be spent within a reasonable period of time and benefit the fee-paying development;
- Revenues cannot be used for operating costs or for pre-existing deficiencies;
- Credits must be applied to account for other revenues generated by the new development and for the value of land dedications and other developer improvements or contributions; and
- Governments cannot charge an impact fee and require developer extractions for the same development.

Impact fees are typically phased in over a one to two-year period and collections are usually earmarked and accounted for separately in case of legal challenge. Determining the maximum justifiable fee is a complex process involving meticulous empirical data collection and the application of nationwide service standards. Virtually every local impact fee ordinance is preceded by a study to determine, and to document, the actual additional costs of providing services to new residents. Most impact fee levies are for streets and roads, parks, or fire protection services. The actual rate of the fee is set by the local governing body, often at a level that is less than the maximum that could be supported.

B. **Development taxes**, also known as construction or adequate facilities taxes, are privilege taxes on the development industry that are intended to raise revenue for general government purposes. These levies differ from impact fees in several ways:

- They are primarily a tool for raising revenue instead of financing facilities for specific developments;
- Revenues do not have to be earmarked or accounted for separately;
- Revenues are not restricted-they can be used for pre-existing deficiencies or for operation and maintenance;
- The fee schedule need not be based upon studies to document burdens and benefits; and
- Legal authority for development taxes comes from general municipal taxing powers-not police powers.

Development/adequate facilities taxes are simpler to enact, administer, and update, and are not usually subject to legal challenge. Development taxes promote housing affordability by taxing all development, whereas some impact fees are assessed only on residential development. Development taxes are also more progressive because they are based upon square footage without having to document how the development impact is related to the size and use of the building.

LOCAL GOVERNMENT AUTHORIZATIONS

In Tennessee, every county and municipality that has the power to levy an impact fee or development tax derives that power from the General Assembly-either directly or indirectly. Authorizations come in three ways: public acts; private acts; and municipal charter provisions. As of the end of calendar year 2001, twelve counties and eighty-five municipalities, (97 total) are authorized to levy impact fees and development taxes. Of these, eleven counties and fifteen municipalities (26 total) have passed ordinances implementing that authority, and one county and seventy municipalities (71 total) have not. The summary is as follows:

- 2 Public Acts: Davidson County (never implemented) and Mount Juliet
- 23 Private Acts: Cheatham County, Ashland City, Kingston Springs, Pegram, Dickson County, Fayette County, Piperton, Hickman County, Marshall County, Maury County, Columbia, Spring Hill, Robertson County, Rutherford County, Smyrna, Gatlinburg, Sumner County, Trousdale County, Williamson County, Brentwood, Fairview, Franklin, and Nolensville.
- 2 Municipal Charters: La Vergne and White House (TCA 6-2-201(15), Mayor-Aldermanic Charter)

In addition, 68 other municipalities incorporated under the Mayor-Aldermanic Charter have the statutory authority to levy impact fees, but have not done so. The 70 municipalities incorporated under the Mayor-Aldermanic Charter are listed in Table 1.

Tennessee has two cities (Elizabethton and Union City) that are incorporated under the Modified City Manager-Council Charter (TCA 6-30-101). By statutory reference these two have the same powers granted to Mayor-Aldermanic cities, but neither has chosen to implement an impact fee.

**TABLE 1
GENERAL LAW MAYOR-ALDERMANIC CHARTER CITIES (70)**

CITY	POPULATION	COUNTY
Allardt	642	Fentress
Arlington	2,569	Shelby
Atwood	1,000	Carroll
Bean Station	2,493	Grainger
Bell Buckle	391	Bedford
Blaine	1,585	Grainger
Bulls Gap	714	Hawkins
Caryville	2,243	Campbell
Church Hill	5,916	Hawkins
Clarksburg	285	Carroll
Coopertown	3,027	Robertson
Crab Orchard	838	Cumberland
Crump	1,521	Hardin
Cumberland City	316	Stewart
Dover	1,442	Stewart
Doyle	525	White
Eastview	618	McNairy
Estill Springs	2,152	Franklin
Farragut	17,720	Knox
Finger	350	McNairy
Greenback	954	Loudon
Gruetli-Laager	1,867	Grundy
Guys	483	McNairy
Harrogate	4,286	Claiborne
Hendersonville	40,620	Sumner
Hickory Withe	2,574	Fayette
Huntsville	981	Scott
Jacksboro	1,887	Campbell
Jasper	3,214	Marion
Kimball	1,312	Marion
La Vergne	18,687	Rutherford
Lobelville	915	Perry
Loretto	1,665	Lawrence
Louisville	2,001	Blount
McMinnville	12,749	Warren
Michie	647	McNairy
Midtown	1,306	Roane
Milledgeville	287	Chester, Hardin, McNairy
Minor Hill	437	Giles
Monteagle	1,238	Grundy, Marion
Mosheim	1,749	Greene
Mount Carmel	4,795	Hawkins
New Hope	1,043	Marion
New Market	1,234	Jefferson
New Tazewell	2,871	Claiborne
Nolensville	3,099	Williamson

**TABLE 1
GENERAL LAW MAYOR-ALDERMANIC CHARTER CITIES (70)**

Pegram	2,146	Cheatham
Philadelphia	533	Loudon
Pittman Center	477	Sevier
Plainview	1,866	Union
Pleasant View	2,934	Cheatham
Powells Crossroads	1,286	Marion
Rutledge	1,187	Grainger
Sneedville	1,257	Hancock
South Carthage	1,302	Smith
Spring Hill	7,715	Maury, Williamson
Stantonville	312	McNairy
Sunbright	577	Morgan
Surgoinsville	1,484	Hawkins
Tazewell	2,165	Claiborne
Thompson's Station	1,283	Williamson
Three Way	1,375	Madison
Unicoi	3,519	Unicoi
Vonore	1,162	Monroe
Walden	1,960	Hamilton
Walnut Grove	677	Sumner
Wartburg	890	Morgan
White House	7,220	Robertson, Sumner
Winfield	911	Scott
Woodland Mills	296	Obion

Source: Municipal Technical Advisory Service, University of Tennessee

CHARACTERISTICS OF AUTHORIZED LEVIES

Development taxes may be applied to all new residential, commercial or industrial development, separately or in combination. They are usually levied on all new development within the jurisdiction on a uniform basis, regardless of the impact of the new development on governmental expenditures. This means that new development in an area already served by infrastructure is taxed at the same rate as new development in an area that lacks infrastructure.

Development tax rates may be set at a flat amount per lot or unit, or based upon gross square footage, or a combination thereof. Varying rates may apply for single-family and multi-family units and for mobile homes. These taxes are usually payable when a developer files a plat or applies for a building permit. Thus, revenues may be in hand before the city or county government has incurred any expenses related to the development. **All the authorizations make it clear that development tax revenues are intended to supplement-not replace- revenues from other taxes such as the property tax and sales tax.**

While development tax revenues do not have to be earmarked for specific projects or services, almost all the authorizations and implementing ordinances restrict the revenues to expenditures associated with growth, such as for school construction, streets and roads, and other public facilities and infrastructure. Municipalities levy development taxes within their corporate limits. Counties levy them throughout the county, including within municipal boundaries, but lower rates may be set for developments that are already being taxed by a city.

Impact fees are assessed as a cost per lot or per unit, but the level of the fee is geared to the type of development. For instance, a new Wal-Mart or fast food restaurant generates much more traffic than a single-

family residence, so these types of commercial developments would be subject to significant road impact fees. On the other hand, these would ordinarily have no liability at all for a park impact fee. A new residence might be assessed impact fees for roads, parks, fire service, and schools.

Whereas development taxes are applied at a level set by the local governing body, impact fees must be based upon standard usage formulas. Thus a road impact fee would be based upon an inventory of the existing roadway system; new streets and roads required; improvements needed; standard travel demand by type of land use; and average trip lengths to arrive at a net cost per unit. Impact fee computations are further complicated by cost offsets against improvements or contributions made by the developer.

Local officials report that development tax/impact fee revenues are significant in enabling them to cope with the costs of growth. The impact fee for a single-family residence in White House (Robertson County) is \$1,245, and in La Vergne (Rutherford County), the single-family fee is \$265 for roads and \$185 for parks, for a total of \$450. In fiscal year 2001, the city of Franklin (Williamson County) collected \$3.66 million from its adequate facilities tax, and another \$5.56 million in road impact fees.

DEVELOPMENT LEVIES/GROWTH RATES

Table 2 shows the growth rates for counties and cities that have development taxes and impact fees. With only a few exceptions, most of these jurisdictions were well into rapid growth before seeking authorization for these additional levies. Maury and Williamson counties and the municipalities of Spring Hill, Brentwood, Fairview, and Franklin were fortunate to get their authority well before the population boom of the 1990s. Note that all of the fastest growing jurisdictions are in Middle

Tennessee. Interestingly, two counties and three municipalities that got authorization for development levies either lost population in the 90s or had a growth rate below the state average.

Two cities-Spring Hill and Piperton-got their authorizations before Maury County and Fayette County did, and two others-Mount Juliet and Gatlinburg-are in counties that still are not authorized to levy development taxes or fees. Davidson County is the only jurisdiction that has authority to levy a public facilities tax, but has not exercised it.

Williamson County and the cities of Brentwood, Fairview, and Franklin were the first local governments in the state to secure legislative authorization for development taxes and impact fees; they had these in place prior to the boom decade of the 90s; and they all got their legislation passed in the same year so the county had a uniform, coordinated development policy. Details on all the authorizations are presented in Table 3.

**TABLE 2
GROWTH RATES IN COUNTIES AND MUNICIPALITIES
WITH DEVELOPMENT TAXES OR IMPACT FEES**

JURISDICTION	YEAR OF FIRST AUTHORIZATION	% GROWTH 1990 – 2000	PROJECTED % GROWTH 2000 -2020
Cheatham County	1997	32%	64%
Ashland City	1997	43%	64%
Kingston Springs	1997	81%	81%
Pegram	1997	57%	81%
Davidson County ²	1988	12%	11%
Dickson County	2000	23%	47%
Fayette County	2001	13%	14%
Piperton	2000	-4.0%	3%
Hickman County	2000	33%	36%
Marshall County	1996	24%	39%
Maury County	1991	27%	19%
Columbia	1994	16%	19%
Spring Hill	1988	427%	40%
Robertson County	1996	31%	34%
White House	1996	143%	53%
Rutherford County	1996	54%	54%
La Vergne	1998	149%	70%
Smyrna	1999	74%	70%
(Sevier County) ³	-	-	-
Gatlinburg	1989	-1.0%	65%
Sumner County	1999	26%	44%
Trousdale County	2000	23%	9%
Williamson County	1987	56%	45%
Brentwood	1987	43%	58%
Fairview	1987	38%	49%
Franklin	1987	108%	58%
Nolensville	1997	N/A	58%
(Wilson County) ³	-	-	-
Mount Juliet	1998	129%	60%
Tennessee	N/A	17%	19%

Source: 2000 U.S. Census, University of Tennessee Center for Business and Economic Research.

² Never implemented by governing body.

³ ()Indicates a county that does not have a tax or fee but which contains a municipality that does.

**TABLE 3
OVERVIEW OF GENERAL ASSEMBLY AUTHORIZATIONS FOR IMPACT FEES AND DEVELOPMENT/
ADEQUATE FACILITIES TAXES 1987 - 2001**

COUNTY	JURISDICTION	TITLE OF TAX/FEE	AUTHORIZATION (YEAR)	LEVY APPLIES TO	AMOUNT/BASIS OF LEVY AUTHORIZED	DISPOSITION OF REVENUES
Cheatham	Cheatham County	Development Tax	Private Chapter 28 (1997) ⁴	Single/ Multi Family Development	Left up to Governing Body \$3750. Per Lot or Unit	\$3125, schools; \$250 parks/recreation; \$375. General fund
	Cheatham County	Adequate Facilities Tax	Private Chapter 68 (1997)	New Commercial Development	NTE ⁵ .50 Per Gross Sq. Ft.	Education Debt Service
	Cheatham County	Adequate Facilities Tax	Private Chapter 69 (1997)	New Industrial Development	NTE .50 Per Gross Sq. Ft.	Education Debt Service
	Cheatham County	Adequate Facilities Tax	Private Chapter 89 (1997)	New Residential Development	NTE \$1.00 Per Gross Sq. Ft.	Education Debt Service
	Ashland City	Adequate Facilities Tax	Private Chapter 52 (1997)	New Residential And Non- Residential Development	Left up to Governing Body	Capital Projects Fund
	Kingston Springs	Adequate Facilities Tax	Private Chapter 54 (1997)	New Residential And Non- Residential Development	Left up to Governing Body .75 Per Gross Sq. Ft. for Residential; .40 Per Gross Sq. Ft. for Commercial	Capital Projects Fund
	Pegram	Adequate Facilities Tax	Private Chapter 53 (1997)	New Residential and Non- Residential Development	.75 Per Gross Sq. Ft. For Residential; .40 Per Gross Sq.Ft. for Commercial	Capital Projects Fund

⁴ Amended by Private Chapter 145 (2000)

⁵ Not to Exceed

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COUNTY	JURISDICTION	TITLE OF TAX/FEE	AUTHORIZATION (YEAR)	LEVY APPLIES TO	AMOUNT/BASIS OF LEVY AUTHORIZED	DISPOSITION OF REVENUES
Davidson	Davidson County	Impact Fee	TN Cooperative Public Facilities Financing Act; Public Chapter 1022 (1988)	New Development	To be set by the Governing Body ⁶	Public Facilities
Dickson	Dickson County	Adequate Facilities Tax	Private Chapter 158 (2000)	New Residential and Non-Residential Development	Left up to County Governing Body	Public Facilities Related to New Development
Fayette	Fayette County	Adequate Facilities Tax	Private Chapter 69 (2001)	New Development	Left up to County Governing Body	Public Facilities Related to New Development
	Piperton	Adequate Facilities Tax	Private Chapter 146 (2000)	New Residential & Non-Residential Development	Left up to Governing Body	Public Facilities related to New Development
Hickman	Hickman County	Development Privilege Tax	Private Chapter 97 (2000)	New Residential, Industrial, and Commercial Development	NTE \$1.00 Per Gross Sq. Ft. Residential; .25 Gross Sq. Ft. Commercial/Industrial ⁷	Public Facilities related to New Development
Marshall	Marshall County	Adequate Facilities Tax	Private Chapter 211 (1996) ⁸	New Residential and Commercial Development	NTE \$2.00 Per Gross Sq. Ft.	Capital Projects Fund

⁶Never implemented by Governing Body

⁷ Both rates expire September 1, 2002. After that time rates to be set by the County Governing Body

⁸ Tax was subject to referendum which was rejected on November 5, 1996

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OVERVIEW OF GENERAL ASSEMBLY AUTHORIZATIONS FOR IMPACT FEES AND DEVELOPMENT/
ADEQUATE FACILITIES TAXES 1987 - 2001**

COUNTY	JURISDICTION	TITLE OF TAX/FEE	AUTHORIZATION (YEAR)	LEVY APPLIES TO	AMOUNT/BASIS OF LEVY AUTHORIZED	DISPOSITION OF REVENUES
	Marshall County	Adequate Facilities Tax	Private Chapter 157 (2000)	New Residential And Commercial Development	NTE \$1.00 Per Gross Sq. Ft.	Public Facilities Related to New Development
	Marshall County	Adequate Facilities Tax	Private Chapter 22 (2001)	New Development	NTE \$1. Per Gross Sq. Ft. New Residential And Commercial Development	Public Facilities Related to New Development
Maury	Maury County	Adequate Facilities Tax	Private Chapter 118 (1991) ⁹	New Residential and Non-Residential Development	.50 Sq. Ft. Residential .30 Sq. Ft. Non-Residential	Public Facilities Related To New Development
	Columbia	Impact Fee	Private Chapter 194 (1994)	New Land Development	Set by the Governing Body	Capital Projects Fund
	Spring Hill	Adequate Facilities Tax	Private Chapter 173 (1998)	New Residential & Non-Residential Development	NTE \$1.00 Gross Sq. Ft. Residential NTE \$2.00 Gross Sq. Ft. Non-Residential	Public Facilities Related to New Development
	Spring Hill	Construction Impact Fee	Private Chapter 176 (1988)	Residential and Commercial Development	Set by the Governing Body \$500 + .25 Per Gross Sq. Ft.	Public Facilities Related to New Development
Robertson	Robertson County	Adequate Facilities Tax	Private Chapter 213 (1996)	New Residential Development	Set by the Governing Body \$1.00 Per Heated Sq. Ft.	Schools
	White House	Impact Fee	TCA 6-2-201 (15) ¹⁰	Any Development	Set by Governing Body. Avg. \$1245. Per Residence; Commercial Varies Widely	Specific Costs Related to New Development

⁹ Amended by Private Chapter 123 (2000)

¹⁰70 municipalities incorporated under the Mayor-Aldermanic Charter are specifically authorized to assess impact fees, but only La Vergne and White House have done so.

**TABLE 3
OVERVIEW OF GENERAL ASSEMBLY AUTHORIZATIONS FOR IMPACT FEES AND DEVELOPMENT/
ADEQUATE FACILITIES TAXES 1987 - 2001**

COUNTY	JURISDICTION	TITLE OF TAX/FEE	AUTHORIZATION (YEAR)	LEVY APPLIES TO	AMOUNT/BASIS OF LEVY AUTHORIZED	DISPOSITION OF REVENUES
Rutherford	Rutherford County	Adequate Facilities Tax	Private Chapter 212 (1996)	New Residential Development	NTE..40 Per Gross Sq. Ft.	.25 School Projects; .10 Law Enforcement; .05 Roads & Bridges
	Rutherford County	Development Tax	Private Chapter 215 (1996) ¹¹	New Residential Land Development	\$750 Per Lot or Unit	Gen. Fund for Additional Co.. Services and Debt
	Rutherford County	Adequate Facilities Tax	Private Chapter 216 (1996)	New Residential & Non-Residential Development	.40 Per Gross Sq. Ft.	.25 School Projects; .10 Law Enforcement; .05 Roads & Bridges
	La Vergne	Impact Fee	TCA 6-2-201 (15) ¹⁰	Any Development	Set by Governing Body. \$265. for Roads and \$185. for Parks for Single Family Residence. \$311. for Roads and Parks Per Multi-Family Unit. Commercial Varies Widely	Specific Costs Related to New Development
	Smyrna	Development Tax	Private Chapter 42 (1999)	All Property Subject to Taxation	Set by Governing Body. \$1232 Per Single Family Residence; \$813. Per Multi-Family Unit; \$847. Per Mobile Home; Commercial Varies Widely	Unspecified
(Sevier) ¹²	Gatlinburg	Construction Impact Fee	Private Chapter 56 (1989)	New Land Development	Set by Governing Body	Capital Improvements Fund

¹¹ Amended by Private Chapters 114 (1998) and 149 (2000) Private Chapters (2000) Private Chapter 159 (2000) amended 149.

¹² County government does not have a tax or fee.

**TABLE 3
OVERVIEW OF GENERAL ASSEMBLY AUTHORIZATIONS FOR IMPACT FEES AND DEVELOPMENT/
ADEQUATE FACILITIES TAXES 1987 - 2001**

COUNTY	JURISDICTION	TITLE OF TAX/FEE	AUTHORIZATION (YEAR)	LEVY APPLIES TO	AMOUNT/BASIS OF LEVY AUTHORIZED	DISPOSITION OF REVENUES
	Gatlinburg	Development Impact Fee	Private Chapter 167 (1990)	New Land Development	Set by Governing Body	Special Benefit Account
Sumner	Sumner County	Adequate Facilities Tax	Private Chapter 57 (1999)	New Residential & Industrial Development	.70 Gross Sq. Ft. Residential; .40 Gross Sq. Ft. Industrial	Projects Situated in Areas of Growth (Schools)
Trousdale	Trousdale County	Adequate Facilities Tax	Private Chapter 71 (2000)	Residential and Commercial Development	Set by Governing Body	Capital Projects or Debt Service
Williamson	Williamson County	Adequate School Facilities Tax	Private Chapter 113 (1987) ¹²	New Residential and Non-Residential Development	NTE \$1.00 Per Gross Sq. Ft.	County Schools
	Williamson County	Adequate Facilities Tax	Private Chapter 118 (1987) ¹³	New Residential & Non-Residential Development	NTE \$1.00 Gross Sq. Ft. Residential; NTE \$2.00 Gross Sq. Ft. Non-Residential	Public Facilities Related to New Development
	Williamson County	Construction Impact Fee	Private Chapter 120 (1987)	New Land Development	.90 Sq. Ft. Per Residence in Unincorp. Areas and .68 Per Sq. Ft. in Cities; .34 Per Sq. Ft. Commercial	.60 School; .20 Roads; .08 Parks/Recreation ; .02 Fire Protection
	Brentwood	Construction Privilege Tax	Private Chapter 86 (1987)	New Residential and Non-Residential Development	NTE .50 Gross Sq. Ft. Residential; NTE \$1.50 Gross Sq. Ft. Non-Residential	Public Transportation Facilities

¹³ Amended by Private Chapters 173 (1990) and 121 (1991)

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OVERVIEW OF GENERAL ASSEMBLY AUTHORIZATIONS FOR IMPACT FEES AND DEVELOPMENT/
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COUNTY	JURISDICTION	TITLE OF TAX/FEE	AUTHORIZATION (YEAR)	LEVY APPLIES TO	AMOUNT/BASIS OF LEVY AUTHORIZED	DISPOSITION OF REVENUES
	Brentwood	Construction Impact Fee	Private Chapter 115 (1987)	New Land Development	\$598. Per Residential Unit; Commercial Rate Varies	Capital Improvements Fund
	Brentwood	Adequate Facilities Tax	Private Chapter 119 (1987)	New Residential & Non-Residential Development	NTE \$1.00 Gross Sq. Ft. Residential; NTE \$2.00 Gross Sq. Ft. Non-Residential	Public Facilities Related to New Development
	Fairview	Construction Impact Fee	Private Chapter 116 (1987)	New Land Development	Set by Governing Body	Capital Improvements
	Fairview	Adequate Facilities Tax	Private Chapter 121 (1987)	New Residential & Non-Residential Development	NTE \$1.00 Gross Sq. Ft. Residential; NTE \$2.00 Gross Sq. Ft. Non-Residential	Public Facilities Related to New Development
	Fairview	Adequate Facilities Tax	Private Chapter 150 (1998)	New Residential and Non-Residential Development	\$500 Plus .25 Sq. Ft. Residential; \$500 Plus .50 Sq. Ft. Commercial	Public Facilities Related to New Development
	Franklin	Adequate Facilities Tax	Private Chapter 114 (1987)	New Residential & Non-Residential Development	.46 Per Gross Sq. Ft. Residential; .77 Per Gross Sq. Ft. Commercial	Public Facilities Related to New Development
	Franklin	Construction Impact Fee	Private Chapter 117 (1987)	New Land Development	\$425 Per House; Commercial Fee Varies	Roads
	Nolensville	Adequate Facilities Tax	Private Chapter 100 (1997)	New Residential & Non-Residential Development	NTE \$1.00 Gross Sq. Ft. Residential NTE \$2.00 Gross Sq. Ft. Non-Residential	Public Facilities Related to New Development
(Wilson) ¹²	Mount Juliet	Residential Construction Impact Fee	Public Chapter 965 (1998)	New Residential Construction	.50 Per Gross Sq. Ft.	Public Transportation

NOTES AND OBSERVATIONS

- Five jurisdictions- Spring Hill, Williamson County, Brentwood, Fairview, and Franklin- have implemented both a development tax and an impact fee
 - The state's highest development tax was the \$7,500 per lot or unit adopted in Cheatham County in August 1999. This was cut by half to \$3,750 in 2001.
 - Marshall County's original authorization (1996) was the only one requiring a referendum for implementation. The referendum, which provided for an adequate facilities tax of \$2.00 per gross square foot, failed. Four years later, the General Assembly passed a private act for Marshall County providing for an adequate facilities tax of \$1.00 per square foot, which has been ratified by the county governing body.
 - A proposed private act authorizing Wilson County to levy an adequate facilities tax was submitted to the Attorney General for review in 1996. A key provision of the legislation exempted from the tax any person who on January 1, 1996 had been a resident of the county for ten years.
- Opinion No. 96-067 held that this provision would be in violation of the U.S. Constitution. The legislation was not passed and Wilson County is the only county in the Nashville Metropolitan Area that is not authorized to levy a development tax or impact fee.
- A proposed private act authorizing Montgomery County to levy an adequate facilities tax was introduced in the 2000 session of the General Assembly, but failed to pass.
 - Legislation (SB 3147 by Sen. Kyle and HB 3259 by Rep. Head) to authorize certain counties to adopt a realty transfer tax as an alternative to all other development taxes was introduced in the 2001 legislative session, but failed to pass.
 - While Davidson County has never utilized the authority it received from the General Assembly in 1988, the Metropolitan Council passed a resolution in November 2001 requesting the Board of Education and the Planning commission to study the feasibility of imposing an impact fee on new development to provide additional funding for public education. In addition, the Metropolitan Council passed a resolution in April of 2002 asking their General Assembly delegation to support legislation authorizing local governments to impose a real estate transfer tax.

GLOSSARY

Capital project. Any physical facility of a governmental entity that involves substantial nonrecurring expenditures. Construction of schools, highways, water and sewer systems, and the purchase of land for a hospital or park are examples.

Developer extraction. A dedication of land, or a cash payment, required by a city or county as a condition for approving a development. These often arbitrary extractions have been severely restricted by court decisions in recent years.

Development. A major change in the use of an area of land usually involving installation of infrastructure, construction of new buildings, higher population density, and more intense land use. Private development is subject to local planning and zoning ordinances and code requirements.

Development tax. Also known as a construction tax or adequate facilities tax. A privilege tax imposed by a city or county on a residential, commercial, or industrial development that has been approved.

Impact fee. A user charge imposed on the developer by a city or county to defray the additional costs of providing services and facilities to a new development, or for mitigating the impact of a new development.

Infrastructure. Also known as public facilities. Capital facilities and land assets operated for public benefit, including utilities, roads, schools, government buildings, parks, storm drainage systems, and solid waste disposal sites.

Realty transfer tax. Under present law this is a state privilege tax imposed on persons who have a deed or other real property instrument recorded. The amount of the tax is usually based upon the value of the real property being transferred.



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Only reports clearly labeled as “Commission Reports” represent the official position of the Commission. Others are informational.

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