

HOUSE BILL 2615

By Faison

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 13 as a new part.

SECTION 2.

It is the intent of this part to address rural, economically distressed counties experiencing persistently high unemployment and traditionally low levels of family income by apportioning and distributing state sales and use tax revenue to 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 an eligible county or municipality in which an eligible project is owned or operated must be apportioned and distributed to the county or municipality that has adopted a resolution or ordinance accepting the apportionment, has received the approval of the eligible project from the commissioner of finance and administration, and 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, 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, 2022, a county that meets one (1) or more of the following criteria as of December 31, 2022:

(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, 2022, a distressed rural county that is 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) "Eligible project":

(A) Means a level one county-wide project or a level two county-wide project that will directly or indirectly create new economic growth; and

(B) Includes infrastructure; critical governmental services support or facilities, or both; or economic development related municipal capital outlay projects or expenses, or both;

(6) "Infeasible" means that an eligible project has, in the judgment of the legislative body as expressed in the resolution or ordinance required by Section 13(a),

become impracticable, unserviceable, unrealistic, or otherwise not in the best interests of the residents of an eligible county or municipality;

(7) "Interlocal agreement" means a contract entered into pursuant to § 12-9-104 between an eligible county and one (1) or more qualified municipalities;

(8) "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; or a combination of such projects; and

(9) "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.

#### SECTION 5.

(a) In order to receive an apportionment of sales and use tax revenues under this part, each participating local governmental body shall adopt an appropriate resolution or ordinance, as applicable. Prior to adoption of a resolution by the legislative body of an eligible county 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 one (1) or more of the municipalities located within the county. An 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. The 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 shall 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 purpose for which the proceeds of the sales and use tax revenues are to be used and may be expended, which may consist of eligible projects located within or outside, or both within and outside, any incorporated areas in the eligible county, and which may include one (1) or more of the following purposes:

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

(2) A capital outlay project within the eligible county and consisting of a courthouse; administrative building; civic center; library; coliseum; local or regional recovered materials processing facility; or local or regional solid waste handling facility, including, but not limited to, a facility for purposes of incineration of waste to direct energy conversion, but excluding a solid waste thermal treatment technology facility;

(3) 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 eligible county;

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

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

(6) A water capital outlay project, sewer capital outlay project, or 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;

(7) A capital outlay project within the eligible county 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;

(8) A capital outlay project within the eligible county 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;

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

(10) A capital outlay project that is owned, operated, or administered by the state and located, in part or in whole, within the eligible county;

(11) Matching requirements found in state grants;

(12) Administrative, legal, planning, and engineering expenses related to a capital outlay project; or

(13) The creation and promotion or marketing of a tourism project.

## SECTION 6.

(a) With respect to a 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 may accept a distribution of sales and use tax revenue under this part for any capital outlay project provided for in Section 5(b)(3),(4), and (6), or any combination thereof, without the necessity of operating the project jointly

with a municipal governing authority, owning or operating the projects with one (1) or more municipalities, or entering into a contract with one (1) or more municipalities with respect to the project.

#### SECTION 7.

(a) Within eighty (80) days after the date of adoption of the resolution or ordinance by the legislative body of the eligible county or municipality to accept the distribution of sales and use tax revenue under this part, an eligible county or municipality, as applicable, shall submit to the commissioner of finance and administration a certified copy of the resolution or ordinance and a completed application requesting approval of the eligible project and acknowledging that a portion of sales and use taxes from within the eligible county or municipality in which the eligible project is owned or operated will be used for the purposes listed in the resolution or ordinance. An application fee is not required. The application must be developed by the department of finance and administration.

(b) The application must include, but not be limited to, the following information:

(i) A narrative explaining the need and economic impact of the eligible project;

(ii) The number of jobs that the applicant estimates will be created as a result of the eligible project and the wages, salaries, and other compensation that will be paid to those persons holding the jobs;

(iii) The estimated development and construction costs of the eligible project and the estimated private capital investment as a result of the eligible project;

(iv) A certification from the applicant that it complied with the criteria required to be eligible;

(v) If applicable, a description of the financing required for the eligible project;

(vi) An affidavit, on a form provided by the department of finance and administration, signed by the applicant certifying that the eligible project cannot proceed without the availability of financing under this part along with supporting documentation establishing the need for and the amount of the financing; and

(vii) Such financial and other information as may be necessary for the commissioner of finance and administration to evaluate the application.

(c) Action must not be taken with respect to an application until the commissioner of finance and administration determines that the commissioner has received all information that may be relevant or necessary in determining the qualifications of the applicant and the eligible project.

(d) Each eligible project must be certified by the commissioner of finance and administration. Once the commissioner of finance and administration has received all of the information required by subsection (a), the commissioner may certify, in the commissioner's discretion, the eligible project. Prior to certifying the eligible project, the commissioner shall determine that the eligible project is not economically feasible without the tax revenue allocation contemplated in this part. Notwithstanding this part to the contrary, a tax revenue allocation shall not be made unless the commissioners of finance and administration and economic and community development jointly determine that the tax revenue allocation is in the best interest of the state. For purposes of this section, "best interest of the state" means a determination by the commissioners of finance and administration and economic and community development that the eligible project is a result of the tax revenue allocation provided in this section and that the economic benefits to this state resulting from the eligible project outweigh the anticipated



amount of the tax revenue allocation. In evaluating the information submitted with the application, each commissioner may consider normal underwriting criteria such as debt capacity, ability to repay, equity and other capital at risk for the eligible project, and the proposed terms of the contemplated indebtedness.

(e) The distribution of sales and use tax revenue must 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 growth experienced since adoption of the resolution.

(f) Except as provided in subsection (e), the distribution of sales and use tax revenue must continue for a period of thirty (30) years, or until the date on which all the cost of an eligible project, including any principal and interest on indebtedness, have been fully paid, whichever is sooner. Following the expiration of this thirty-year period, or upon the date on which such costs have been fully paid, whichever is sooner, all amounts that would have otherwise been distributed to the eligible county or municipality or retained in lieu of distribution must be allocated as provided otherwise without regard to this part.

#### SECTION 8.

(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 as specified in subsection (b).

(b) The eligible county shall distribute proceeds to the county legislative body and any municipalities as specified in an interlocal agreement.

(c) Where an interlocal agreement has been entered into, the agreement must, at a minimum, include the following:

- (1) The specific eligible project to be funded pursuant to the agreement;
- (2) The estimated or projected dollar amounts allocated for each eligible project from tax proceeds from the apportionment of sales and use tax revenue authorized by this part;
- (3) The procedures for distributing proceeds from the sales and use tax revenue to municipalities;
- (4) 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 eligible projects will be fully or partially funded;
- (5) A provision that all eligible 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 upon by the county and municipalities;
- (6) 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;
- (7) Recordkeeping and audit procedures necessary to carry out the purposes of this part; and
- (8) Such other provisions as the eligible county and participating municipalities choose to address.

## SECTION 9.

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 10.

The commissioner of revenue is authorized to promulgate rules to effectuate the purposes of this part 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 11.

(a)

(1) The tax revenue apportionment available pursuant to this part must be used by the eligible county and municipalities receiving proceeds of the sales and use tax revenue exclusively for the purpose or purposes specified in the resolution or ordinance calling for the receipt of the apportionment. The 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 county receiving any proceeds from the tax revenue apportionment pursuant to this part shall maintain a record of each and every eligible project for which the revenue is used. A schedule must be included in each annual audit that identifies for each eligible 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 is not liable for such noncompliance.

(4) If the resolution or ordinance calling for the tax revenue apportionment specifies that the proceeds of the revenue are to be used in whole or in part for eligible 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) General obligation debt shall not be issued in conjunction with the resolution or ordinance unless the legislative bodies of the eligible county or municipalities issuing the debt determine, and if the debt is to be validated, then 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 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 issuing such debt, and 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 issuing the debt.

(d) The resolution or ordinance 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 must 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) General obligation debt shall not be issued in conjunction with accepting the apportionment, and in such case, the resolution or ordinance 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 receives an amount of net proceeds in excess of the estimated cost of the eligible project or projects specified in the resolution or ordinance or in excess of the actual cost of such eligible 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 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 in which the eligible project is located 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 in which the eligible project is

located. 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.

(f) Bonds, notes, refunding bonds, or other indebtedness relative to the cost of an eligible project must not be issued for a term longer than thirty (30) years.

## SECTION 12.

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 eligible 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 eligible 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 an eligible project or purpose, estimated completion date, and the actual completion cost of an eligible 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 eligible 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 eligible project that is underfunded or behind schedule.

SECTION 13.

(a)

(1) Notwithstanding this part to the contrary, if the apportionment of state tax revenue authorized by this part has been distributed for a purpose authorized by Section 5(b) and one (1) or more eligible projects authorized in the resolution or ordinance 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 the eligible project has become infeasible in accordance with subdivision (a)(2).

(2)

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

(B) If an eligible project that has become infeasible is a municipal project, then an ordinance of the municipality responsible for the eligible project shall approve an ordinance determining that the eligible 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 an eligible 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, then an



ordinance or resolution from each of the jurisdictions involved in the joint project determining that the eligible project has become infeasible is required.

(3) If the governing authority seeking a determination that an eligible project is infeasible has incurred or entered into financing for the eligible project, whether through an intergovernmental contract, a multiyear lease or purchase contract, or other form of indebtedness, then the ordinance or resolution shall not 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 must continue to be apportioned and distributed for the same period of time as originally authorized. The eligible county, or the municipality if the infeasible project is an eligible 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 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 must 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 must be divided equally among the applicable entities.

(c) Notwithstanding any law to the contrary, the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to

chapter 529, § 9 of the Public Acts of 1992, and the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in chapter 856, § 4 of the Public Acts of 2002, shall not 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 14. This act takes effect upon becoming a law, the public welfare requiring it.