

HOUSE BILL No. 2092

By Committee on Taxation

1-22

AN ACT relating to cities and counties; enacting the city and county development activity excise tax act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. This act shall be known and may be cited as the city and county development activity excise tax act.

Sec. 2. As used in this act:

(a) "Building permit fee" means the fees charged to enforce any adopted uniform building code.

(b) "Development activity" means any construction or expansion of a building, structure, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for public facilities.

(c) "Development approval" means any written authorization from a municipality that authorizes the commencement of development activity.

(d) "Hookup fees" means reasonable fees, not in excess of the approximate average costs to the municipality, for services provided for and directly attributable to the connection to utility services, including gas, water, sewer, power, or municipality utility services.

(e) "Excise tax" means a payment of money imposed upon development activity as a condition of development approval but shall not mean a special assessment, a building permit fee, a hookup fee, a fee for project improvements, or other reasonable permit or application fee.

(f) "Municipality" means a city or county.

(g) "Project improvements" means site improvements and facilities that are planned and designed to provide service for development resulting from a development activity; and necessary for the use and convenience of the occupants or users of development resulting from a development activity. Such term shall not mean system improvements.

(h) "Proportionate share" means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any development activity.

(i) "Public facilities" means only the following capital facilities that have a life expectancy of 10 or more years and are owned or operated by or on behalf of a municipality: (1) Water rights and water supply, treat-

1 ment, and distribution facilities; (2) wastewater collection and treatment
2 facilities; (3) storm water, drainage, and flood control facilities; (4) mu-
3 nicipal power facilities; (5) roadway facilities; (6) parks, recreation facili-
4 ties, open space, and trails; and (7) public safety facilities.

5 (j) "Public safety facility" means a building constructed or leased to
6 house police, fire, or other public safety entities, but shall not mean a jail,
7 prison, or other place of involuntary incarceration.

8 (k) "Roadway facilities" means streets or roads that have been de-
9 signed on an officially adopted subdivision plat, roadway plan or general
10 plan of a municipality, together with all necessary appurtenance, including
11 associated improvements to federal or state roadways only when the as-
12 sociated improvements are necessitated by the new development, and are
13 not funded by the state or federal government. Such term shall not mean
14 federal or state roadways.

15 (l) "Service area" means a geographic area designed by a municipality
16 on the basis of sound planning or engineering principals in which a de-
17 fined set of public facilities provide service within the area. Such areas
18 may include the entire municipality.

19 (m) "System improvements" means existing public facilities that are
20 designed to provide services to service areas within the community at
21 large and future public facilities identified in a capital improvements plan
22 that are intended to upgrade or improve services to service areas within
23 the community at large. Such term shall not mean project improvements.

24 Sec. 3. (a) Each municipality shall comply with the requirements of
25 this act before establishing or modifying any excise tax. A municipality
26 may not: Establish any new excise tax that are not authorized by this act,
27 or impose or charge any other fees as a condition of development approval
28 unless those fees are a reasonable charge for the service provided.

29 (b) Before imposing an excise tax, each municipality shall prepare a
30 capital facilities plan. The plan shall identify demands placed upon exist-
31 ing public facilities by new development activity, and the proposed means
32 by which the local political subdivision will meet those demands.

33 (c) Municipalities need not prepare a separate capital facilities plan
34 if an existing capital facilities plan contains the elements required by this
35 subsection. In preparing the plan, each municipality shall generally con-
36 sider all standard revenue sources to finance the system improvements.

37 (d) A municipality may only impose an excise tax on development
38 activities when its plan for financing system improvements establishes that
39 such tax is necessary to achieve an equitable allocation to the cost borne
40 in the past and to be borne in the future, in comparison to the benefits
41 already received and yet to be received.

42 (e) (1) Each municipality imposing an excise tax shall prepare a writ-
43 ten analysis of each excise tax that:

1 (A) Identifies the impact on system improvements required by the
2 development activity;

3 (B) demonstrates how those impacts on system improvements are
4 reasonably related to the development activity;

5 (C) estimates the proportionate share of the costs of impacts on sys-
6 tem improvements that are reasonably related to the new development
7 activity; and

8 (D) based upon those factors and the requirements of this act, iden-
9 tifies how the excise tax was calculated.

10 (2) In analyzing whether or not the proportionate share of the costs
11 of public facilities are reasonably related to the new development activity,
12 the municipality shall identify, if applicable:

13 (A) The cost of existing public facilities;

14 (B) the manner of financing existing public facilities, such as user
15 charges, special assessments, bonded indebtedness, property taxes, sales
16 taxes, or state and federal grants;

17 (C) the relative extent to which the newly developed properties and
18 the other properties in the municipality have already contributed to the
19 cost of existing public facilities, by such means as user charges, special
20 assessments, or payment from the proceeds of general taxes;

21 (D) the relative extent to which the newly developed properties and
22 the other properties in the municipality will contribute to the cost of
23 existing public facilities in the future;

24 (E) the extent to which the newly developed properties are entitled
25 to a credit because the municipality is requiring their developers or own-
26 ers, by contractual arrangement or otherwise, to provide common facili-
27 ties, inside or outside the proposed development, that have been provided
28 by the municipality and financed through general taxation or other means,
29 apart from user charges, in other parts of the municipality;

30 (F) extraordinary costs, if any, in servicing the newly developed prop-
31 erties; and

32 (G) projected revenue from user charges, special assessments, gen-
33 eral property taxes, sales taxes, bond proceeds, and other locally collected
34 revenues.

35 (f) Nothing in this act may be construed to repeal or otherwise elim-
36 inate any impact fee or similar exaction in effect on the effective date of
37 this act that is pledged as a source of revenues to pay bonded indebted-
38 ness that was incurred before the effective date of this act.

39 Sec. 4. (a) Each municipality wishing to impose an excise tax shall
40 pass an ordinance or resolution specifically stating the need for such tax.
41 The excise tax imposed by that enactment may not exceed the highest
42 fee justified by the excise tax analysis performed pursuant to section 3,
43 and amendments thereto. In calculating the excise tax, each municipality

1 may include:

- 2 (1) The construction contract price;
3 (2) the cost of acquiring land improvements, materials, and fixtures;
4 (3) the cost for planning, surveying, and engineering fees for services
5 provided for and directly related to the construction of the system im-
6 provements; and
7 (4) debt service charges, if the political subdivision might use excise
8 tax as a revenue stream to pay the principal and interest on bonds, notes,
9 or other obligations issued to finance the costs of the system
10 improvement.

11 (b) In enacting an excise tax ordinance or resolution a municipality
12 shall make a copy of the proposed excise tax ordinance or resolution
13 available to the public at least 14 days before the date of the public hear-
14 ing and publish notice of the hearing at least once each week for two
15 consecutive weeks in the municipality's official newspaper, prior to the
16 public hearing.

17 (c) The municipality shall ensure that the excise tax ordinance or res-
18 olution contains: (1) A provision establishing one or more service areas
19 within which it shall calculate and impose an excise tax for various land
20 use categories; either pursuant to a schedule of the excise taxes for each
21 type of development activity that specifies the amount of the excise tax
22 to be imposed for each type of system improvement; or the formula that
23 the municipality will use to calculate each excise tax;

24 (2) a provision authorizing the municipality to adjust the standard
25 excise tax at the time the fee is charged to respond to unusual circum-
26 stances in specific cases and ensure that the excise taxes are imposed
27 fairly; and

28 (3) a provision governing calculation of the amount of the excise tax
29 to be imposed on a particular development that permits adjustment of
30 the amount of the tax based upon studies and data submitted by the
31 developer.

32 (d) The municipality may include a provision in the excise tax ordi-
33 nance or resolution that:

34 (1) Exempts low income housing and other development activities
35 with broad public purposes from an excise tax and establishes one or more
36 sources of funds other than an excise tax to pay for that development
37 activity;

38 (2) imposes an excise tax for public facility costs previously incurred
39 by a municipality to the extent that new growth and development will be
40 served by the previously constructed improvements; and

41 (3) allows a credit against an excise tax for any dedication of land for,
42 improvement to or new construction of, any system improvements pro-
43 vided by the developer if the facilities are identified in the capital im-

1 improvements plan, and are required by the municipality as a condition of
2 approving the development activity.

3 (e) Except as provided in subsection (d)(2), the municipality may not
4 impose an excise tax to cure deficiencies in public facilities serving existing
5 development.

6 Sec. 5. Each municipality collecting an excise tax shall establish sep-
7 arate interest bearing accounts for each type of public facility for which
8 an excise tax is collected, deposit excise tax receipts in the account, retain
9 the interest earned on each fund or account in the fund or account, and
10 at the end of each fiscal year, prepare a report on each fund or account
11 showing the source and amount of all moneys collected, earned, and re-
12 ceived by the fund or account and each expenditure from the fund or
13 account.

14 Sec. 6. (a) A municipality may expend an excise tax only for system
15 improvements for public facilities identified in the capital improvements
16 plan; and system improvements for the specific public facility type for
17 which the tax was collected.

18 (b) (1) Except as provided in paragraph (2), a municipality shall ex-
19 pend or encumber the excise tax for a permissible use within six years of
20 their receipt.

21 (2) A municipality may hold the taxes for longer than six years if it
22 identifies in writing an extraordinary and compelling reason why the ex-
23 cise tax moneys should be held longer than six years, and an absolute date
24 by which the excise tax moneys will be expended.

25 Sec. 7. A municipality shall refund any excise tax paid by a developer,
26 plus interest earned, when the developer does not proceed with the de-
27 velopment activity and has filed a written request for a refund, the taxes
28 have not been spent or encumbered, and no impact has resulted.

29 Sec. 8. This act shall take effect and be in force from and after its
30 publication in the statute book.

31
32
33
34
35
36
37
38
39
40
41
42
43