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## Technical Bulletins: Important Public Acts of 1986

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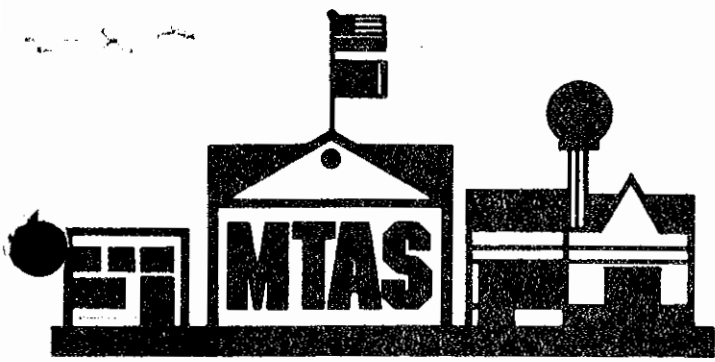
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# TECHNICAL BULLETIN



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## IMPORTANT PUBLIC ACTS OF 1986

by

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The 1986 session of the Tennessee General Assembly has finished its work except for a possible one-day return to Nashville on May 14, 1986, to override vetoes. During this session, our representatives adopted hundreds of new laws, many of them affecting municipalities and municipal officials. In order to inform municipal officials of the most important of these Public Acts, MTAS decided to publish this bulletin.

The summaries are arranged by broad categories and in the categories by Public Chapter number. These summaries should not be substituted for a reading of the Acts themselves. If you wish a copy of any of these Acts, write or call Dennis Huffer, Municipal Technical Advisory Service, 226 Capitol Boulevard Building, Suite 710, Nashville, Tennessee 37219 [Phone: (615) 255-6418].

In addition to this bulletin, the annual Summary of Public Acts of Interest to Tennessee Municipal Officials will be published and distributed in early June. This publication contains summaries of all (we hope) Public Acts of interest to municipal officials. Also in early June there will be a series of workshops in Jackson, Nashville, and Knoxville on the new Public Acts. You should receive notification of the dates, times, and places of these workshops from the Center for Government Training.

Note: The designation "Chapter No. ( )" indicates that the Act has not yet been assigned a public chapter number.

### FINANCE

Chapter No. 533 Natural gas distribution systems -- payments to municipality. Allows any municipality with a natural gas distribution system which has retired all bonds issued for the system pursuant to the Revenue Bond Law to devote surplus revenues of the system to any municipal purpose if no contractual obligations are violated. Before doing this, however, operating expenses of the gas system must be paid, improvements and contingencies provided for, a cash working fund established, obligations incurred in the operation and maintenance of the system must be provided for, and other payments outlined in the Revenue Bond Law must be made.

Some concern has been expressed that implementation of this Act could retard industrial development in and around municipalities that use it. The fear of some is that the gas system will be used to produce general fund revenues and to keep property taxes at unnaturally low levels. This could hit especially hard at industries which use natural gas and which are located just outside the corporate limits. It seems unlikely that municipalities would purposefully try to discourage industrial development. Before implementing this Act, therefore, municipalities should study its possible impact on existing industries and industrial recruitment.

The Act took effect on March 13, 1986.

Chapter No. 625. Capital outlay notes. Allows municipalities to issue capital outlay notes for an original period of 3 years with 3 three-year extensions rather than 2 three-year extensions as under prior law. Municipalities may also have an original issue for a period of up to 12 years. Principal must be amortized in an amount of 1/12 each year.

The Act also provides for private negotiated sales of capital outlay notes under regulations of the director of local finance, who must approve the sale. If the director disapproves, the municipality may sell the notes at a competitive public sale.

This Act also applies to the issuance of capital outlay notes by counties. One possible bad side effect of the Act for cities with municipal school systems is that it might exacerbate the problem of counties using capital outlay notes rather than bonds to finance school projects. Since counties are not required to share the proceeds of capital outlay notes with city school systems, cities with school systems could see even fewer dollars coming from counties for school purposes.

The Act took effect on April 1, 1986.

Chapter No. 699. Business tax -- transient vendors. Enacts a minimum \$50.00 business tax on transient vendors for each 14 day period the vendor does business in a municipality. The Act provides that transient vendors are not subject to the gross receipts portion of the business tax.

The Act takes effect July 1, 1986.

Chapter No. 770. "Local Government Public Obligations Act of 1986" enacted. This very long, comprehensive Act authorizes municipalities and counties to issue general obligation bonds, revenue bonds, general obligation refunding bonds, revenue refunding bonds, and notes for public works projects. The Act consolidates many of the current bond and note statutes which are scattered throughout the code.

The Act will permit general obligation refunding bonds to be sold at a private negotiated sale. The Act permits the issuance of capital outlay notes for a period of 12 years to conform to amendments made by Public Chapter 625 (see above).

This Act was passed at the urging of the office of the Comptroller. They plan to leave all other bond statutes in effect for a period of time to allow any bugs to be worked out of this Act. Then the other bond authorization statutes will be repealed.

The Act takes effect July 1, 1986.

Chapter No. ( ). Gas tax and other petroleum taxes increased. The Act which increased the gasoline tax by \$.04 per gallon also increased the taxes on compressed natural gas and liquified gas by \$.044 per gallon and the tax on diesel fuel by \$.03 per gallon, with \$.02 of the increase in the diesel fuel tax beginning June 1, 1986, and \$.01 beginning June 1, 1987.

The Act provides that municipalities and counties get to keep revenues from the \$.01 which was set aside for them in the 1985 gas tax increase. Maintenance of effort requirements will still apply to monies received from the 1985 increase. The \$.01 from 1985 had been scheduled to revert to the regular formula whereunder municipalities get only 14.3% of revenues.

Of the 1986 increase of \$.04 in the gasoline tax, local governments do not get any of the first \$.03 except for \$3,000,000 which is allocated for mass transit projects. They do get all revenues from the fourth cent. This will mean an extra \$7.4 million for municipalities statewide. Maintenance of effort requirements do not apply to this money. Local governments also receive all revenues from \$.01 of the increase in the tax on liquified gas, which will not amount to a great deal.

From the 1986 increase in taxes on diesel fuel and compressed natural gas, local governments will receive no revenues. From the increase of \$.01 in the tax on diesel fuel which is to take effect June 1, 1987, municipalities will get their regular share of 12.38% unless this is changed later.

The Act also provides for specific road projects. The gasoline tax increases and other tax increases, except a portion of the diesel fuel tax increase, take effect on June 1, 1986. One cent of the 3-cent diesel fuel tax increase takes effect June 1, 1987.

In addition to the above Acts relative to municipal finance, the General Assembly passed several exemptions to the state and local sales taxes, as they do every year. Most of these exemptions are not significant by themselves, but taken together they erode the sales tax base significantly. This year exemptions were passed for utility pole rentals (PC 567), factory-manufactured structures (PC 733) and purchases of food with food stamps (PC ), among several others. It is estimated that all exemptions passed this year will cost the state about \$19 million in revenue from the state sales tax and municipalities about \$4.5 million from the local sales tax and their share of the state sales tax.

The fact that exemptions from the sales tax are passed each year and that our combined state and local sales tax rates are the highest in the nation should be of concern to local officials.

## HEALTH AND SANITATION

Chapter No. 832. Sanitation, litter control, and animal control -- enforcement officers. Authorizes municipalities to appoint enforcement officers by ordinance or resolution to issue ordinance summonses in the areas of sanitation, litter control, and animal control. The ordinance summons will be treated as a citation in lieu of arrest.

The Act took effect on April 18, 1986.

## LAW ENFORCEMENT

Because of the number of Acts dealing with law enforcement, the summaries will necessarily had to be abbreviated. Copies of this portion of this technical bulletin should be shown to the municipality's police chief. He or she can then request copies of the full Acts as provided on the first page of this bulletin.

Chapter No. 606. Use of force on intruder in one's house. Essentially justifies the use of deadly force or force likely to cause great bodily harm against an intruder in one's home when the person using the force knew or had reason to believe an unlawful and forcible entry occurred. The Act declares any homicide justifiable which is committed pursuant to provisions of the Act.

The Act took effect on March 24, 1986.

Chapter No. 630. Crimes -- adult abuse. Enacts new criminal provisions relative to the abuse of persons who are over 18 years of age and who because of mental or physical dysfunctioning or advanced age cannot care for themselves.

Effective date: July 1, 1986.

Chapter No. 635. Racketeer Influenced and Corrupt Organization (RICO) Act of 1986 enacted. Among other things, this Act provides that property used in violating the Act or derived from racketeering activity is subject to forfeiture to the state. "Racketeering activity" means to commit, attempt to commit, conspire to commit, or solicit, coerce, or intimidate another person to commit an act for financial gain which is a criminal offense involving controlled substances if the amount of the controlled substance constitutes a class X crime.

Effective date: July 1, 1986.

Chapter No. 685. Gun control -- municipalities' power restricted. Prohibits any municipality from regulating the transfer, ownership, possession, or transportation of firearms, ammunition, or their components. The Act does not prohibit municipalities from regulating the carrying of guns. The Act grandfathers in existing regulations of guns or ammunition, or both.

This Act was an initiative of the National Rifle Association in response to bans on ownership of guns in some Illinois cities. The Act will hamper cities which in the future decide they need tighter regulations on guns.

The Act took effect on April 8, 1986.

Chapter No. 698. Contracts with sheriff for enforcement of ordinances. Authorizes any municipality to contract with the sheriff, general sessions court, and county governing bodies to enforce the municipality's ordinances. Existing contracts are ratified.

Effective date: April 8, 1986.

Chapter No. 710. Confiscated firearms -- new serial number. Provides a procedure whereby new serial numbers may be obtained for firearms which do not have serial numbers. This will allow the sale of the firearm.

Effective date: April 8, 1986.

Chapter No. 754. Domestic violence. Outlines procedures which must be followed by police officers on domestic violence calls.

Effective date: July 1, 1986.

Chapter No. 774. Prostitution. Enacts new regulations relative to prostitution. The Act prohibits municipalities from enacting any ordinance prohibiting promoting prostitution. Municipalities may enact ordinances relative to prostitution itself and patronizing prostitution, but the provisions of the ordinances must be the same as provided in this Act and the penalties cannot be greater. Municipalities may prohibit and penalize public solicitation of sexual conduct and enact health laws to prohibit the spread of venereal disease.

Effective date: July 1, 1986.

Chapter No. 846. Correctional facilities -- Loans by Local Development Authority. Authorizes the Local Development Authority to make loans to municipalities for the construction of correctional facilities.

Effective date: April 18, 1986.

Chapter No. 866. Mandatory seat belts. Requires most people over 4 years old who ride in a car to wear seatbelts. The Act makes exceptions for: certain physically disabled people; rural letter carriers; certain automobile salespersons and mechanics who make test-drives; utility workers and water, gas, and electric meter readers; newspaper carriers; and persons in the back seat of a car. The Act does not make exceptions for police officers.

The Act prohibits a citation or arrest warrant from being issued for a violation of the Act unless a person is stopped and cited or arrested for a separate violation of law. The Act provides that for initial violations the officer must issue a warning only.

Effective date: April 21, 1986.

## TORT LIABILITY

Chapter No. 726. Board members -- immunity from suit. Grants immunity from suit to all members of boards, commissions, agencies, or other governing bodies of governmental entities arising from the conduct of the affairs of the board, commission, etc. The Act limits its application to boards, commissions, etc., or to governmental entities created by public or private act. The wording of the Act makes it difficult to tell whether the board, commission, or other governing body has to be created by public or private act or whether the governmental entity has to be created by public or private act. Either way, some board members, commission members, etc., are left out. The immunity does not extend to willful, wanton, or gross negligence.

The Act does not take effect until July 1, 1986.

Chapter No. 772. Asbestos removal -- immunity for education employees. Provides local education employees, board members, superintendents, teachers, and staff members immunity from liability arising from the detection, management, or removal of asbestos from school buildings if the local education agency has complied with EPA regulations. The immunity does not apply in cases of gross, willful, or malicious or criminal negligence or in cases where the employee acted for personal gain. The Act authorizes the Attorney General to defend local education agencies and their employees from such suits on request of the employee.

The Act took effect April 15, 1986.

Chapter No. 822. Police pursuit. Provides that municipalities and their officers and employees are not liable for injuries caused to an actual or suspected violator of a law or ordinance who is fleeing pursuit by law enforcement personnel. The Act also provides that the fact that law enforcement personnel pursue a suspected or actual violator of a law or ordinance will not render the municipality or its employees liable to third parties unless the law enforcement personnel are negligent in their conduct of the chase and the negligence was a proximate cause of injuries to the third party.

The Act took effect Aril 15, 1986.