Research Plan: House Bill 1223, Senate Bill 1362, Ad Valorem Payment in Lieu of Taxes

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Purpose

To study the economic benefits to counties and municipalities from the use of payment in lieu of ad valorem tax (PILOT) agreements and leases by industrial development corporations and limitations on these agreements and leases.

Background

Property owned by cities and counties is not subject to property tax in Tennessee. Sometimes these local governments will purchase property and working through industrial development corporations (IDCs) formed by the local governments will then lease the land to businesses. The IDCs will often negotiate agreements where the businesses agree to make payments in lieu of taxes (PILOTs).

Senate Bill 1362 by Senator Bailey and its companion, House Bill 1223 by Representative Hicks, directs the Commission to study PILOT agreements and leases entered into by IDCs organized by municipalities, and specifically, whether economic benefits are derived from limiting the length of term of an agreement or lease in the absence of county approval or an agreement by the corporation or municipality to pay the county a sum equal to the amount of real property tax that would have been assessed in the absence of the agreement or lease following the expiration of the initial term. In some counties, IDCs organized by municipalities are using PILOT agreements to attract retail businesses to tourist development zones (TDZs). Sales tax revenue collected in these TDZs are diverted to the municipalities depriving counties of revenue that could be used to finance schools. Unless an IDC is solely organized by a municipality that does not impose a property tax, counties lack the authority to stop these PILOT agreements.

The study shall include:

- The economic benefits to counties and municipalities from the use of payment in lieu of ad valorem tax agreements and leases by industrial development corporations organized by municipalities;
- Examining whether any economic benefits are derived from limiting the length of term of a payment in lieu of ad valorem tax agreement or lease to five or less years absent county approval or an agreement by the corporation or municipality to pay, each year after the initial five years, to the county a sum equal to the amount of real property tax that would have been assessed to a property if the agreement or lease had not been executed; and
- Any additional issues that the Commission deems relevant to meet the objective of the study.

The bill requires the Commission to submit a report to the State and Local Government Committee of the Senate and the Local Government Committee of the House of Representatives no later than February 1, 2018.

Industrial development corporations are nonprofit corporations formed by local governments. Cities and counties can individually or jointly create one. The corporations have the authority to lease and own property. Local governments can delegate to these corporations the authority to negotiate and accept PILOT agreements. There are few limits on PILOT agreements and leases in the law. Agreements and leases that are longer than 23 years require the approval of the Commissioner of Economic and Community Development and the Comptroller. A corporation organized solely by a municipality, which does not impose a property tax, may enter into a PILOT agreement or lease only if the county has approved it or the municipality or corporation agrees to pay the county the property taxes that would otherwise be due.

Step 1. Define the Problem

How to resolve disputes between city and county governments when they don't agree on PILOT agreements and leases entered into by industrial development corporations.

Step 2. Assemble Some Evidence

- Review referred legislation.
    - Review Senate Bill 1362, House Bill 1223 and related statutes and regulations to determine what the bill does.
    - Review committee hearings on the bill and summarize comments and concerns of committee members, the bill sponsors, and others speaking for or against the bill.
    - Interview the bill's sponsors, proponents, and other stakeholders to determine what is driving this issue.

    - Review the fiscal note. Consult with Fiscal Review Committee staff and follow up with agencies submitting support forms to determine the estimated cost and the method and rationale for the estimates.
- Review similar bills from previous general assemblies.
- Consult with the Tennessee Division of Property Assessment and the Tennessee State Board of Equalization and seek input from representatives of industrial development corporations, local government representatives, and others as required.
- Review current case law, the Tennessee Constitution, attorney generals opinions, and relevant statutes.
- Review similar laws or regulations in other states.
- Collect information on PILOT agreements and leases by industrial development corporations in the state.
- Review relevant literature and data sets.

Step 3. Construct Alternatives

Alternatives will be based on

- current law,
- proposed changes in the current law, and
- any additional alternatives drawn from the research and analysis in Step 2.

Each alternative will be described specifically enough to project outcomes in Step 5.

Step 4. Select Criteria

- Cost, Direct and indirect to
    - The state
    - County and municipal governments
    - Businesses
    - General public
- Economic effect
- Equity
- Estimate receptiveness of
    - State government
    - County and municipal governments
    - General public

    - Businesses
    - Other stakeholders

Step 5. Project Outcomes

- Estimate cost.
- Estimate effect on economy.
- Estimate the acceptability to the state and local governments, the general public, businesses and other affected stakeholders.

Step 6. Confront Trade-offs

- How will the differences between the current law and the other alternatives affect the public?
- What are the pros and cons of the potential solutions?

Step 7. Decide which alternatives to present to the Commission

Based on the results of Step 6, choose the alternatives that most practically and realistically resolve the problem.

Step 8. Produce the Draft Report

Develop and present a draft for review and comment to the Commission.

Revisit Steps 5 through 8.

- Respond to feedback from Commission regarding outcome projections, trade-offs, and selection of alternatives.
- Revise and edit the draft to reflect comments of the Commission.
- Submit final report to the Commission for approval.

- **Problem Statement and Research Plan**
  - April 2017
- **Research**
  - Step 2 (April 2017 through October 2017)
  - Steps 3-4 (October 2017)
  - Steps 5-7 (October 2017)
- **Storyboard, Outline, and Write the Report**
  - Step 8 (October through November 2017)
- **Draft Report to the Commission for Comments**
  - December 2017 Commission Meeting
- **Final Report to Commission for Approval**
  - January 2018 Commission Meeting

HOUSE BILL 1223
By Hicks

SENATE BILL 1362

By Bailey

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 53, Part 3, relative to industrial development corporations.

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

SECTION 1. Tennessee Code Annotated, Section 7-53-305, is amended by adding the following language as a new, appropriately designated subsection:

( ) Notwithstanding any other law to the contrary, an industrial development corporation organized by a municipality may enter into a payment in lieu of ad valorem tax agreement or lease for a period of more than five (5) years if:

(1) The county in which the municipality is located approved entry into a payment in lieu of ad valorem tax agreement or lease with respect to the property at issue; or

(2) Either the industrial development corporation or the municipality that organized the industrial development corporation agrees to pay the county each year that a payment in lieu of ad valorem tax agreement or lease is in effect, after the initial five (5) years, an amount equal to the amount of real property tax that would have been assessed to the property if the agreement or lease was not executed.

SECTION 2. Tennessee Code Annotated, Section 7-53-305(h), is amended by deleting the language "may only enter into a payment in lieu of ad valorem tax agreement or lease if" and substituting instead "may only enter into a payment in lieu of ad valorem tax agreement or lease for a period of five (5) or less years if".

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.