

# **TENNESSEE COUNTY GOVERNMENT HANDBOOK**

## **2006 SUPPLEMENT**

**This supplement contains changes and additions to the  
2006 edition of the Tennessee County Government Handbook  
reflecting changes in the law which have occurred since its publication,  
including acts passed during the  
2006 Regular Session of the Tennessee General Assembly**

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**COUNTY TECHNICAL ASSISTANCE SERVICE  
THE UNIVERSITY OF TENNESSEE  
INSTITUTE FOR PUBLIC SERVICE  
NASHVILLE, TENNESSEE**

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**July 2006 Supplement to the TENNESSEE COUNTY GOVERNMENT HANDBOOK, Tenth Edition, June 2006, modifying the following pages:**

**PAGE 2. Article VII, Section 1: Elected Officials and Governmental Form.** Delete the last sentence under this topic. (See *Bailey v. County of Shelby*, 188 S.W.3d 539 (Tenn. 2006)).

**PAGE 22. Sheriff. Qualifications.** Add the following as an additional paragraph:

Every person who is elected sheriff after August 1, 2006, in a regular August election for a four year term and is a first term sheriff, regardless of the person's previous law enforcement experience, must successfully complete the newly elected sheriff's school before September 1 immediately following their election. Thereafter the new sheriff must successfully complete 40 hours of appropriate annual in-service training. Any newly elected sheriff who does not fulfill these training obligations loses the power of arrest. Any cost associated with the newly elected sheriff attending the newly elected sheriff's school is paid by the county.

**PAGE 24. Sheriff. Deputies and Assistants.** Insert the following at the end of the first paragraph on this page:

Any person employed as a jail administrator, jailor, corrections officer, or guard in a county jail or workhouse must have qualifications similar to those required of deputy sheriffs if the person is hired on or after July 1, 2006. 2006 Public Chapter 849.

**PAGE 26. Assessor of Property. Compensation.** Add the following at the end of the last paragraph on this page:

Any assessor or deputy assessor who has been designated as a "Master Assessor" will receive from the state additional compensation of \$1,000 per year. 2006 Public Chapter 901, T.C.A. § 67-1-508.

**PAGE 38. Clerks of Court. Compensation.** Insert the following immediately before the last sentence of the paragraph:

The clerk and master is eligible for the additional 10% compensation if the clerk and master serves as clerk of the court that exercises probate jurisdiction, regardless of whether the chancellor or some other judge handles probate matters. 2006 Public Chapter 601.

**PAGE 43. County Board of Education.** In the last paragraph on this page listing the duties of the county board of education, delete the last sentence under item 4 and substitute instead the following:

Expenditures over \$10,000 must be publicly advertised and competitively bid. 2006 Public Chapter 664.

PAGE 55. **Purchasing Provisions and Chart of Accounts.** Delete "\$5,000" wherever it appears on the page and substitute "\$10,000".

PAGE 63. **Eminent Domain.** Delete the paragraph under this topic and substitute the following:

Counties, through the county legislative body, may condemn and take property, including land, buildings, privileges, rights and easements of individuals and private corporations and other private entities for county purposes. T.C.A. 29-17-101. Property owners must be compensated for damages involved in condemnation. The amount of payment may be agreed upon by the parties or determined by a court of law. T.C.A. § 29-17-701. 2006 Public Chapter 863 places limitations on the use of this power of eminent domain. This act generally excludes from the definition of public use for which this power may be used either private use or the indirect public benefits resulting from private economic development and private commercial enterprise, including increased tax revenue and increased employment opportunity. However, the following designated purposes are excepted and allowed even if there are private benefits:

1. The acquisition of any interest in land for a road, bridge, or other public transportation project
2. The acquisition of any interest in land necessary to the function of a utility.
3. The acquisition of property by a housing authority or community development agency for urban renewal or redevelopment under title 13, chapters 20 and 21.
4. Private use that is incidental to a public use if no land is condemned primarily to convey or permit the incidental private use.
5. The acquisition of property by a county or municipality for an industrial park under title 13, chapter 16, part 2.

An appraisal of property sought to be condemned is required. The appraisal must be based upon the highest and best use, its use at the time of the taking, and any other use to which the property is legally adaptable at the time of the taking. The appraiser must be a Member of the Appraisal Institute or be otherwise licensed and qualified under title 62, chapter 39, *Tennessee Code Annotated*. The condemning authority must deposit with the court the amount determined as the value by the required appraisal. The deposited amount does not fix the amount to be awarded, and any amount awarded in excess of the deposited amount bears interest from the date of the taking or possession.

The statute provides that under no circumstance may land used predominately in the production of agriculture be considered blighted. T.C.A. § 13-20-201. The county may exercise the power of eminent domain for an industrial park anywhere in the county and within urban growth boundaries and planned growth areas, and a municipality anywhere within its boundaries and urban growth area. A county and municipality, or both, operating a joint park may exercise the power

anywhere within the jurisdictional boundaries and within an urban growth boundary or planned growth area. T.C.A. § 13-26-207.

A certificate of public purpose and necessity is required for the exercise of eminent domain for an industrial park even if no funds will be borrowed and that the bonded debt limit does not apply. The issuance of the certificate must be based upon a finding that the local government has been unable to through good faith negotiations to obtain the property or other property that would be of comparable suitability. Good faith negotiation is established if the local government made an offer to purchase the property for an amount equal to or in excess of at least two appraisals by independent qualified appraisers. T.C.A. § 13-16-207.

Land acquired by eminent domain may be sold, leased, or otherwise transferred to another public entity or to a private person or entity if fair market value is received for the land. 2006 Public Chapter 863.

**PAGE 92. Nominations and Qualifying Deadlines.** Write-In Candidates. Delete this topic and substitute instead the following:

Write-In Candidates. Any person trying to receive a party nomination or be elected by write-in ballot must complete a notice to the county election commission of each county of the district requesting that his or her ballots be counted no later than 50 days before the primary (beginning January 1, 2007) or 20 days before a general election. T.C.A. §§ 2-7-133 and 2-8-113. The county election commission is required to promptly notify the state coordinator of elections and the registry of election finance as well as other candidates participating in the affected primary or election of the write-in notice. A write-in candidate will only have votes counted in counties where the notice was completed and timely filed. Write-in candidates for the offices of governor, United States Senator, and members of the United States House of Representatives are required to file their notice with the state coordinator of elections. In a primary election, a write-in candidate for that office must receive a vote equal to at least 5 percent of the total number of registered voters of the district, and receive more votes than any other candidate, to receive the party's nomination. T.C.A. § 2-8-113. Furthermore, a write-in candidate for county or municipal office must receive a minimum of 25 votes in the primary before being placed on the ballot for the general election, a requirement that cannot be modified by private act or charter. T.C.A. § 2-5-119. In an election where voting machines are used, a voter may write-in a name not listed on the ballot if the voter requests a paper ballot from the ballot judge before operating a voting machine. After receiving a paper ballot, a voter may not enter a voting machine. T.C.A. § 2-7-117.

**PAGE 96. Help America Vote Act.** Add the following as an additional paragraph:

County election commissions are required to purge voting registrations of all deceased registered voters appearing on the report transmitted by the coordinator of elections at least every 30 days, and beginning with the first day of

any period of early voting, purges must be made daily through the day of the election as the information is received from the coordinator of elections. 2006 Public Chapter 578. T.C.A. § 2-2-106.

PAGE 107. **Ethics.** Add the following as an additional paragraph:

Public officials, defined to include each person holding any local public office filled by the people, are prohibited from accepting honorariums for an appearance, speech, or article in such person's capacity as a public official. However, the official may receive actual and necessary travel expenses, meals and lodging expenses for these activities. 2006 Public Chapter 545.T.C.A. § 2-10-116.

PAGE 111. **County Charters.** Delete the second paragraph (beginning with "The General Assembly has not . . ." ) and substitute instead the following:

The Tennessee Supreme Court has determined that the Tennessee Constitution allows for three types or forms of county government: (1) the basic form which includes the constitutional offices, (2) consolidated city-county government, and (3) an alternative form, such as a county charter. The alternative form of county government authorized under the third paragraph of article VII, section 1 of the Tennessee Constitution may be created by the legislature without regard to the general type established in article VII provided the legislature's action is ratified by referendum. *State ex rel. Maner v. Leech*, 588 S.W.2d 534 (Tenn. 1979), *Bailey v. County of Shelby*, 188 S.W.3d 539 (Tenn. 2006).

The General Assembly has provided an alternative to the standard form of government provided in the first paragraph of article VII, section 1 of the Tennessee Constitution through the means of a county charter. The county charter enabling law is found in the *Tennessee Code Annotated*, title 5, chapter 1, part 2. County charters are often referred to as "home rule" charters due to the discretion given by the legislature to the citizens of the county to alter the form or structure of the county government through the charter writing and referendum approval process. The legislature has also granted to counties with charters the power to adopt ordinances in a manner similar to that of a city government. Charter counties may adopt ordinances relating to purely county affairs and cannot interfere with the local affairs of any municipality. The county legislative body is authorized to provide penalties for the violation of ordinances, but these penalties cannot exceed certain statutory maximums. T.C.A. § 5-1-211. The Tennessee Supreme Court has ruled that a county charter may impose term limits on certain county officials although none is required by general law. *Bailey, supra*.

PAGE 111. **County Charters.** Delete the last two sentences on this page (beginning with "State statutes provide an outline . . .") and substitute instead the following:

The state statutes enabling a county charter require that the charter contain provisions assigning the functions and duties of the officers of the county, and

state that the duties of the constitutional officers as prescribed by the general assembly cannot be diminished under the new charter government. T.C.A. § 5-1-210. The exact meaning of these provisions await further clarification by the courts.

**PAGE 115. Intergovernmental Agreements. Interlocal Agreements.** Add the following as an additional paragraph:

Any interlocal agreement that creates a local government joint venture must be filed with the comptroller of the treasury within 90 days of its execution. Also, any such agreement in effect on June 20, 2006, must be filed with the comptroller by October 20, 2006. Each county participating in a local government joint venture must file an annual statement with the comptroller stating the names of the parties to the agreement, the annual revenue and expenses of any entity created under the agreement and such other information as the comptroller may require. 2006 Public Chapter 923.

**PAGE 119. Property Taxes and In Lieu of Tax Payments. Property Tax. Property Tax Relief.** Delete the second paragraph (beginning with “The tax relief program for low income taxpayers . . .”) and substitute the following:

The state tax relief program for low income taxpayers 65 years old or older and for taxpayers who are totally and permanently disabled authorizes payment or reimbursement of taxes paid on the first \$25,000 of the full market value of the home, provided the taxpayer’s annual income from all sources does not exceed \$20,000 or such other amount as set forth in the annual state general appropriations act. 2006 Public Chapter 1019. T.C.A. §§ 67-5-702(a)(2), 67-5-703(a)(2). The tax relief program for disabled veterans and prisoners of war authorizes payment or reimbursement of taxes paid on the first \$175,000 of the full market value of the home. 2006 Public Chapter 1019. Property tax relief also applies to the home of the surviving spouse of a veteran whose death resulted from a service connected, combat related cause and the surviving spouse does not remarry. 2006 Public Chapter 978. There is no age or income limitation on this group of taxpayers T.C.A. § 67-5-704. Applications for property tax relief must be made to the collecting official (county trustee) by the taxpayer within 35 days after the delinquency date. The county trustee makes a preliminary determination of eligibility and forwards the application to the state for final approval. The trustee may give the taxpayer credit for the tax relief if the balance of taxes due is paid. If a taxpayer entitled to tax relief dies after applying for or receiving tax relief, the surviving spouse is qualified for the relief. T.C.A. § 67-5-701.

All counties are authorized to appropriate funds for tax relief for elderly low income homeowners, disabled homeowners, and disabled veterans as described in state law as noted above for the state tax relief program. The total tax relief from the state and local appropriations cannot exceed the total taxes actually paid. Only the taxpayers eligible for the state program are eligible for tax relief from a county appropriation. 2006 Public Chapter 739. T.C.A. § 67-5-701(j).

PAGE 127. **Severance Taxes.** Coal Severance Tax. *Distribution.* Delete items 1 and 2 and substitute the following:

1. 3 percent and all penalties and interest collected are retained by the department of revenue and credited to its current service revenue to cover administrative expenses and tax collection expenses.
2. 97 percent to the county in which the coal products were severed.
  - a. 50 percent for the educational systems of the county.
  - b. 50 percent for county highways and stream cleaning systems.  
2006 Public Chapter 989. T.C.A. § 67-710.

PAGE 129. **Sales and Use Taxes.** State Sales and Use Tax. *Distribution.* Delete items 1 and 3 and replace as follows:

1. 29.0246 percent to the state general fund.
3. 4.5925 percent to incorporated municipalities from which a small allocation is made to the University of Tennessee for operation of the Municipal Technical Advisory Service. 2006 Public Chapter 989.

PAGE 136. **Alcohol and Tobacco Taxes.** Alcoholic Beverage Tax. *Distribution.* Delete Item 3d. 2006 Public Chapter 989.

PAGE 137. **Alcohol and Tobacco Taxes.** Mixed Drink Tax (Liquor-by-the-Drink Tax) *Distribution.* Delete Item 2c. 2006 Public Chapter 989.

PAGE 138. **Alcohol and Tobacco Taxes.** Beer Tax (Barrels Tax). *Distribution.* Delete Item 1b(5). 2006 Public Chapter 989.

PAGE 142. **Business Taxes.** Excise Tax Applied to Banks. *Distribution.* Delete the last four sentences which begin with "Once the amount for distribution to counties . . ." 2006 Public Chapter 989.

PAGE 143. **Development Taxes and Infrastructure Funding.** Adequate Facilities Taxes. Delete the last paragraph under this topic and substitute the following:

Before 2006, some counties had levied adequate facilities taxes on the privilege of development under authority granted by private act. In 2006, the General Assembly authorized counties qualifying as "growth counties" to levy a county school facilities tax on residential development. A county may meet the criteria to be a growth county by one of two ways: (1) the county experienced a 20 percent or greater increase in population between the last two federal decennial censuses (or the county experiences that level of growth between any subsequent federal censuses); or (2) the county experienced a 9 percent or greater increase in population over the period from 2000 to 2004 (or over any subsequent four year period). Before the tax may be levied, the county is

required to have adopted a capital improvement program. The tax can then be levied by a resolution adopted by a 2/3 vote of the entire membership of the county legislative body at two consecutive, regularly scheduled meetings. The tax may be levied initially at a rate not to exceed \$1.00 per square foot. Square footage is determined based on the total heated or air-conditioned residential living space. Once adopted, the rate of the tax cannot be increased for four years. Once the four year period has run, the county legislative body may increase the rate, but by no more than 10 percent. After any increase, the rate is again frozen for a four year period. Public buildings, places of worship, barns and agricultural buildings, replacement buildings for structures damaged by disaster, buildings owned by 501(c)(3) nonprofit corporations, and buildings constructed in an area designated by the federal government as a blighted, distressed, or urban renewal zone are exempt from the tax.

All revenue from this tax is turned over to the county trustee for deposit. The revenue is required by law to be used exclusively for funding growth-related capital expenditures for education, including the retirement of bonded indebtedness. The act establishes this law as the exclusive authority for local governments to adopt any new or additional adequate facilities taxes on development. The act prohibits counties from enacting any impact fees or local real estate transfer taxes in the future by either public or private act. The act preserves existing development taxes and impact fees to the extent authorized by any private acts in effect when the act became a law. The act allows a city or county to revise the dedicated use and purpose of the tax levied by a pre-existing tax from public facilities to public school facilities. Counties that levy a development tax or impact fee by private act under prior law may not levy the school facilities tax authorized by this act so long as they are levying and collecting development taxes or impact fees under the authority of the private act. The act includes language that requires the General Assembly, in the 2010 legislative session, to review the provisions of the act to ascertain the effect on and the needs of those counties which did not qualify to levy the tax under the act.

PAGE 144. **Other Taxes.** Hall Income Tax. *Distribution.* Delete Item 2c. 2006 Public Chapter 989.

PAGE 147. **Other Taxes.** County Litigation Taxes. *Description.* Delete the word "eight" in the third sentence of the third paragraph and substitute "24".

PAGE 155. **Financial Management under the General Law.** Investment of County Funds. Delete the paragraph on this page and substitute the following:

Each county is directed by general state law to invest all idle county funds to the maximum practical extent. T.C.A. § 5-8-301(a). Counties are authorized to invest in instruments designated by general law as a safe temporary medium. These temporary investments must either be approved by the county legislative body, be in compliance with an investment policy adopted by the county legislative body, or be approved by an investment committee appointed by the county

legislative body. 2006 Public Chapter 693. T.C.A. §§ 5-8-301, -302. In a county that has adopted the County Financial Management System of 1981, the investment committee (or financial management committee) will set the policies and procedures for investing idle funds and the director of finance has the authority to make the investments within the guidelines set by law and the committee's policies. T.C.A. §§ 5-21-105(e), 5-21-107(a). The organization of the investment committee in counties with a county charter or metropolitan government charter may differ from that provided by the general law.

PAGE 156. **Financial Management under the General Law.** Investment of County Funds. Delete Item 6(D) from the first paragraph and substitute the following:

- (D) The federal home loan mortgage corporation; and
- (E) Any other obligations that are guaranteed as to principal and interest by the United States or any of its agencies.

PAGE 184 and 185. **General Sessions and Other Inferior Courts.** General Sessions Court. Delete the last (third) paragraph under this topic and substitute the following:

Beginning September 1, 2006, the compensation of the judges of courts of general sessions will be determined by the administrative office of the courts (AOC) in accordance with the provisions of 2006 Public Chapter 957 which provides that effective September 1, 2006, each judge will receive an increase in the amount of \$10,000 or 20% of their total annual compensation as of August 31, 2006, whichever is less, and further that the compensation of judges in each population classification are to be equalized in accordance with their jurisdictional supplements. In Class 1 the equalization is accomplished by raising the compensation of all judges to the salary of the highest paid judge in Class 1 who is paid under this general law. In Classes 2–7, judges with maximum supplements are raised to the compensation of the highest paid judge in that class with maximum supplements, and all other judges are grouped by jurisdiction and paid the same as the highest paid judge with the same jurisdiction in the same population class. On or before July 15, 2006, each general sessions judge was required to certify to the AOC the total amount of compensation received by the judge as of August 31, 2006, the jurisdictions exercised by such judge and the legal basis therefor, and whether the judge is compensated under the general law or a private act. The AOC will thereupon report to each judge the amount of compensation to be paid to such judge beginning September 1, 2006.

A county, by public or private act in effect on September 1, 2006, may compensate its judges in excess of the amount required under 2006 Public Chapter 957 (but not above state judges), but a judge is not to receive compensation based both on this law and a private act or other public act. No judge is to be paid a salary reflecting jurisdictional supplements the judge is not entitled to exercise. No general sessions judge who engages in the private practice of law will receive any increase under this law if such judge is prohibited

by law from engaging in private practice. 2006 Public Chapter 957 contains a special provision that only applies to Knox County. T.C.A. § 16-15-5003.

PAGE 185. **General Sessions and Other Inferior Courts.** Jurisdiction of General Sessions Court. Delete the first two sentences under this topic and substitute the following:

Beginning September 1, 2006, the jurisdictional limit of the general sessions court is \$25,000 in all civil cases in all counties, except in cases of forcible entry and detainer, where the court has unlimited original jurisdiction, including jurisdiction to award an alternative money judgment. Also, the general sessions court judges have jurisdiction to issue restraining orders and enforce penalty provisions for violation of these restraining orders. 2006 Public Chapter 722. T.C.A. § 15-15-501.

PAGE 186, **General Sessions and Other Inferior Courts.** General Sessions and Juvenile Court Interchange. Amend this topic to read “General Sessions Court and Interchange” and add the following at the end of this topic:

General sessions court judges may sit by interchange for municipal court judges, but not vice versa. 2006 Public Chapter 1004.

PAGE 193. **County Law Enforcement.** D.U.I. Convicts Performing Litter Removal. Delete everything under this topic and substitute the following:

When a person is convicted of driving under the influence of an intoxicant for the first time on or after June 15, 2006, litter pickup is a mandatory condition of probation. Each convict under this law must remove litter during the daylight hours from state route or state-aid county roads, unless relieved by the court due to physical limitations. The convict must report to the sheriff of the convict’s residence with appropriate documentation to schedule work crews. The sheriff must provide the D.U.I. offender with a list of scheduled times and dates for litter pickup. D.U.I. offenders may be worked separately or in conjunction with other county prisoner litter removal crews. Each D.U.I offender must wear a blaze orange or other distinctly colored vest with the words “I am a DRUNK DRIVER” stenciled or otherwise written on the back of the vest in letters no less than four inches in height. Other than the vest, D.U.I. convicts are required to furnish their own clothes and food while on the litter removal assignment. The sheriff is not responsible for the transportation of the convict/probationer to the work site. The sheriff may enter into agreements with any municipality in the county for D.U.I first offenders to pick up litter on state routes within the municipality; otherwise, the sheriff must work the crews in the unincorporated area of the county. An agreement with the municipality may provide for the municipality taking responsibility for the supervision and control of the offenders while working in the municipality. Also, if a governmental entity receives litter grant funds, the entity receiving such funds will have supervision of the D.U.I. first offenders; otherwise, the sheriff retains the responsibility to supervise these crews. These offenders are required to pay the jailer’s fee for misdemeanor convicts under T.C.A. §8-26-

105 for each day of litter pickup prior to the sheriff certifying that the condition of probation has been fulfilled. 2006 Public Chapter 880. T.C.A. 55-10-403.

PAGE 229. **Comprehensive Growth Planning.** 1998 Public Chapter 1101 and County Growth Plans. *Joint Economic and Community Development Board.* Insert the following sub-topic at the end of this topic:

Donation of Funds. A joint economic and community development board is authorized to transfer or donate funds that it has received from participating governments and outside sources to other public or non-profit entities within the county to be used for economic or industrial development purposes. 2006 Public Chapter 608. T.C.A. § 6-58-114.

PAGE 232. **Other Planning Provisions.** Regional Planning Commission. *Duties and Powers of the Planning Commission.* Delete the following sentence from the second paragraph of this topic:

Any county register who records a plat of a subdivision without prior approval by the planning commission is guilty of a misdemeanor. T.C.A. §§ 13-3-402, 13-4-302.

PAGE 233. **Other Planning Provisions.** Regional Planning Commission. *Duties and Powers of the Planning Commission.* Insert the following at the end of the first paragraph on this page:

Amendments, modifications, and corrections to recorded subdivision plats must have the approval of the appropriate regional or municipal planning commission to be eligible for recording with the county register of deeds, except that a survey of an easement or survey attached to an easement granted to a governmental entity may be recorded without planning commission approval, even if it modifies a plat of a recorded subdivision. 2006 Public Chapter 644. T.C.A. §§ 13-3-402, 13-4-302.

PAGE 237. **Industrial and Economic Development.** Industrial Development Corporations. Add the following as a new paragraph at the end of this topic.

Counties and municipalities are authorized to appropriate funds to make contributions or loans with reasonable interest, to industrial development corporations in the county. County legislative bodies are authorized to borrow funds for the purpose of making contributions or loans to industrial development corporations. 2006 Public Chapter 670. T.C.A. § 6-54-118.

PAGE 258. **Miscellaneous Personnel Matters.** Insurance. Add the following at the end of the first paragraph:

Counties are authorized to make payroll deductions for the employee portion of health insurance premiums upon request of the employee. 2006 Public Chapter 590. T.C.A. § 50-1-308.

PAGE 273. **Purchase, Sale, and Lease of County Property.** Add the following as a new paragraph at the end of the topic:

Before the county may sell, lease, exchange, option or make any material disposition of the assets of a hospital owned or operated by the county, the county must comply with the Public Benefit Hospital Sales and Conveyance Act of 2006. This act requires the county to give written notice to the state attorney general containing such information regarding the proposed action as the attorney general may require and then to publish this notice in a newspaper of general circulation in the county. The attorney general will examine the proposed transaction and report on it. 2006 Public Chapter 930.

PAGE 278. **Storage and Disposition of County Records.** County Public Records Commission. Insert immediately after the words “county register” in the first line on this page the following:

(or his or her designee, beginning January 1, 2007)

PAGE 278. **Storage and Disposition of County Records.** County Public Records Commission. Add the following as a new paragraph at the end of this topic:

All counties with a county public records commission are authorized to establish and collect, through all entities creating public records, except the register of deeds and clerks of court, an archives and records management fee of up to \$2.00 per document filed. Monies collected through this fee must be designated exclusively for duplicating, storing, and maintaining any records required by law to be kept permanently. 2006 Public Chapter 651. T.C.A. § 10-7-408.