



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM: Lynnisse Roehrich-Patrick
Executive Director

DATE: 19 June 2012

SUBJECT: Legislative Update

The attached report on the second session of the 107th General Assembly, as it relates to the Commission, is provided for your information. The legislature sent a large number of bills to TACIR for study. The report reviews these bills as well as a number of bills that addressed the same subject or would have amended the same code sections.

REPORT ON THE 2012 LEGISLATIVE SESSION

The second session of the 107th General Assembly produced a large number of bills that were sent to TACIR for study. In addition to the bills formally referred to TACIR, there were also a number of bills that addressed the same subject or would have amended the same code sections. These additional bills also need to be taken into consideration to assess the overall effect of all of the proposed legislation. Research plans will include an examination of the circumstances that generated the bills.

I. Eminent Domain

The use of eminent domain powers by local governments continues to be controversial. During the session this year three bills were introduced, and an additional one was held over from last year.

1. SB 1566 by Ketron / HB 1576 by Carr, Faison, Womick, Gotto

(The bill was passed by the Senate Judiciary and referred to the Finance Committee, which in turn referred it to TACIR for study. It passed in the House Judiciary Committee and was taken off notice in the House Finance Committee.)

Eminent Domain—Amends Tennessee Code Annotated Title 7, Chapter 31; Title 13, Chapter 20; Title 29, Chapter 17; and Title 29, Chapter 16.

Summary—As described, this bill revises present law regarding eminent domain of counties and municipalities and details the procedure by which counties and municipalities may take property by eminent domain. It provides details regarding the determination of compensation and specifies landowner rights.

2. SB 2745 by Johnson / HB 2877 by Gotto

(The bill was referred to TACIR by the Subcommittee of the House State and Local Government Committee. It was assigned to the General Subcommittee of the Senate State and Local Government Committee.)

Eminent Domain—Amends Tennessee Code Annotated Title 12, Title 13, and Title 29.

Summary—This bill specifies that, beginning July 1, 2012, and thereafter,

- If a municipal or county governing body approves a housing project, redevelopment project or urban renewal project proposed by a local housing authority, then that governing body, and not the housing authority, would have the power of eminent

domain to acquire real property to vest in the housing authority, including improvements and fixtures thereon, which the governing body deems necessary for such project.

- Whenever the power of eminent domain under this bill is exercised, in estimating the damages, the jury or jury of view must give the value of the land or rights taken without deduction, together with incidental damages, if any. Where the removal of furniture, household belongings, fixtures, merchandise, stock in trade, inventories, equipment or machinery is made necessary by the taking, the reasonable expense of such removal must be considered in assessing incidental damages.
- The governing body must provide the opportunity for owner occupants of residential property so acquired for a redevelopment project to relocate within the project area if or at such time as residential units are constructed and offered for sale to the general public as a part of the project.
- No governing body would have the power to take by eminent domain private property in an urban renewal area for the purpose of resale, if the owner of such property desires to develop such owner's own property and if the designated reuse of the property in the urban renewal plan is such that the owner's parcel can be redeveloped by itself without affecting the objectives of the urban renewal plan as to the owner's parcel or adjoining or adjacent properties thereto, and the owner signs an agreement with the taking entity to abide by the urban renewal plan, in any development thereof.

3. SB 3409 by Beavers / HB 3573 by Womick

(The bill was referred to the Senate Judiciary Committee but was not brought up for debate. It was taken off notice in the House Judiciary Subcommittee. Not sent to TACIR but related to others by subject matter or code section.)

Eminent Domain—As introduced, restricts counties, municipalities, and other legally recognized forms of government from exercising eminent domain power beyond the jurisdictional boundaries of each entity. Amends Tennessee Code Annotated Title 5; Title 6; Title 7; and Title 29.

4. SB 0548 by McNally / HB 0952 by Dunn

(The bill was referred to the Judiciary Committees in the Senate, but no action was taken. It was referred to the General Subcommittee of House Judiciary, but no action was taken. Not sent to TACIR but related to others by subject matter or code section.)

Eminent Domain—As introduced, grants property owner, or a deceased owner's heirs or assigns, whose land is taken by eminent domain the right to repurchase such property if the condemning entity does not use the property for the purpose for which it was condemned or if the entity sells the property within 10 years of condemnation.—Amends Tennessee Code Annotated Title 29, Chapter 17, Part 10.

II. LAND USE REGULATION

Many of the bills listed below affect the ability or the authority of local governments to adopt and enforce land use regulations. Some would increase that authority, and some would cause it to decrease. These bills may be separated into two basic subject areas: subdivision regulation and zoning regulation and may be further classified into sub-categories. This study will also explore the role that planning has had in the development of communities in Tennessee and throughout the country.

Subdivision Regulation

There are eight bills that address some aspect of subdivision regulation including one that is related to a bill studied last year on adoption of regulations within an urban growth boundary.

Regional Subdivision Authority

SB 3119 by Yager / HB 3041 by Elam

(The bill was referred to the Senate State and Local Government Committee, but no action was taken. The bill was referred to TACIR by the House Subcommittee of the State and Local Government Committee.)

Municipal Government—Amends Tennessee Code Annotated § 6-58-106(d).

Summary—This bill removes the provision in Tennessee Code Annotated § 6-58-106(d) requiring a municipality to seek approval from a county legislative body, but only in a county that has no zoning, for the right of its municipal regional planning commission to review subdivision plats and enforce subdivision regulations within the jurisdiction of that regional planning commission. (Note: 47 counties do not have zoning.)

Defining a Subdivision

1. SB 2878 by Southerland / HB 2818 by Faison

(The bill was referred to the Senate State and Local Government Committee, but no action was taken. The bill was referred to TACIR by the House Subcommittee of the State and Local Government Committee.)

Planning, Public—Amends Tennessee Code Annotated Title 13, Chapter 3, Part 4.

Summary—This bill amends Tennessee Code Annotated Title 13, Chapter 3, Part 4 by adding a new section (C) and provides a new definition of a subdivision in any county **in which county-wide zoning has not been enacted**. It states in part, “subdivision means the division of a tract

or parcel of land into two or more lots or sites greater than one acre This means that any lot under one acre in size is not a subdivision but any lot over one acre is a subdivision.

2. SB 3167 by Haynes / HB 3042 by Elam

(The bill was referred to the Senate State and Local Government Committee, but no action was taken. The bill was referred to TACIR by the House Subcommittee of the State and Local Government Committee.)

Planning, Public—Amends Tennessee Code Annotated §§ 13-3-401 and 13-4-301.

Summary—This bill will change the definition of a subdivision in both municipalities and counties so that only divisions of property 25 acres or greater in size are exempt from subdivision regulations but any division that involves new street and utility construction will not be exempt.

Subdivision Roads

1. SB 2876 by Southerland / HB 3105 by Faison

(The bill was referred to the Senate State and Local Government Committee, but no action was taken. It was referred to TACIR by the House State and Local Government Subcommittee.)

Planning, Public—Amends Tennessee Code Annotated Title 13.

Summary—This bill prohibits local or regional planning commission from prohibiting private road maintenance agreements in residential developments. It states that land being developed for owner-occupied dwellings may have private roads with maintenance agreements between the developer and purchasers that may be entered into among the parties. The agreement would be recorded with restrictive covenants and run with the land.

2. SB 3171 by Haynes / HB 3040 by Elam

(The bill was referred to the Senate State and Local Government Committee, but no action was taken. The bill was referred to TACIR by the House Subcommittee of the State and Local Government Committee.)

Planning, Public—Amends Tennessee Code Annotated §§ 13-3-403 and 13-3-405.

Summary—This bill recognizes the authority of the municipal regional planning commission to establish its own street construction specifications for subdivision streets within its region, grants it the authority to enforce its regulations and inspect the street during and after construction to ensure compliance with its regulations. The bill requires that within the

municipal regional planning commission's regional jurisdiction, a platted street can only be accepted as a public street by the municipality's legislative body and not the county's legislative body. The bill gives the municipal attorney the authority to enforce a bond, assessment or other method of assurance relative to the street construction and maintenance. Once the street is accepted by the municipality's chief legislative body then the municipality becomes responsible for its maintenance, repair and other normal and necessary public street work.

Public Notice

1. SB 3572 by Southerland / HB 3641 by Faison

(The bill was referred to the Senate State and Local Government Committee, no action was taken. It was taken off notice in the House State and Local Government Subcommittee. Not sent to TACIR but related to others by subject matter.)

Growth and Development—Amends Tennessee Code Annotated Title 5, Title 6, Title 7, and Title 13.

Summary—This bill increases the public notice requirements for final actions on zoning amendments, subdivision plat approvals, and annexation to 60 days. Further, it requires that notice be provided to “affected” property owners within a one-mile radius, including in any adjoining jurisdiction.

2. SB 3636 by Roberts / HB 3397 by Maggart

(The bill was referred to the Senate State and Local Government Committee, but no action was taken. It passed in the House State and Local Government Committee with an amendment and was referred to the Finance Committee. The bill passed in subcommittee but was taken off notice in full committee. Not sent to TACIR but related to other issues.)

Planning, Public—Amends Tennessee Code Annotated Title 5; Title 6; and Title 7.

Summary—This bill requires a city or county to provide notice to citizens residing in an abutting city or county within a one-mile radius of a proposed facility that is to be built if the facility may be a danger to the health, safety or welfare of the citizens of such city or county. It was amended in House State and Local Government Committee to “urge” the mayor of the city or county where the facility is to be built to notify the mayors of other jurisdictions.

Duration of Approvals

SB 3648 by Tracy / HB 3696 by Gotto

(The bill was referred to the Senate State and Local Government Committee and assigned to General Subcommittee. It was taken off notice in the House State and Local Government Subcommittee. Not sent to TACIR but related to others by code sections.)

Planning, Public—Amends Tennessee Code Annotated Title 13, Chapter 3, Part 4; Title 13, Chapter 4, Part 3; Title 13, Chapter 7, Part 2; and Title 13, Chapter 7, Part 1.

Summary—This bill specifies that

- municipal or county development regulations in place at the time a development application is submitted are the regulations that govern decisions made on the development; no new or different regulations may be applied to the development except those that address a life threatening safety hazard;
- preliminary approval of a subdivision, planned development, site plan or specific plan zoning will be effective for five years; no changes in development regulations adopted during that period may be applied, and extensions may be granted; and
- in phased projects preliminary approval of the first section will be effective for five years; as long as the application for the next section is filed within that period, no changes in development regulations may be made to each succeeding section.

Zoning

Eight bills address zoning. However, five of them involve just one section of the code, the nonconforming use protections provided by Tennessee Code Annotated § 13-7-208 or “grandfather” clause.

Nonconforming Uses

1. SB 3118 by Yager / HB 3043 by Elam

(This bill was referred to the Senate State and Local Government Committee, but no action was taken. The bill was referred to TACIR by the House Subcommittee of the State and Local Government Committee.)

Zoning—Amends Tennessee Code Annotated § 13-7-208.

Summary—This bill deletes the current provisions regarding the establishment of the 30-month period that allows a property owner to rebuild without meeting current zoning requirements for a structure’s setback, bulk, height and other physical location requirements

on a lot. The bill further provides for the following: requires the governmental entity that enforces the land use regulation on the property to establish the beginning and ending dates of the 30-month abandonment period. The governmental entity establishes this by the following factors; utility connection information, deteriorating structure, information indicating vacancy or change in use, information indication lack of ownership activity reactivating the use, dated picture indicating abandonment, or affidavits of local officials indicating that the use has been abandoned. Additional factors relevant to the site may also be considered. This evidence produced by the government is a rebuttable presumption of abandonment that can be overcome by the owner.

2. SB 3114 by Yager / HB 2989 by Haynes

(The bill was referred to the Senate State and Local Government Committee and assigned to General Subcommittee. It was taken off notice in the House State and Local Government Subcommittee. Not sent to TACIR but related to others by subject matter.)

Zoning—Amends Tennessee Code Annotated Title 13, Chapter 7, Part 2.

Summary—This bill deletes the existing provision that limits nonconforming use to land owned and used for a particular business at the time of a zoning change and prohibits expansion of such use to land acquired thereafter. The bill replaces that provision with one that permits expansion of the nonconforming use to contiguous land under common ownership “for the extraction of diminishing assets” and, for any use, to contiguous land owned at the time of the zoning change.

3. SB 3646 by Ketron / HB 3694 by Gotto

(The bill was referred to the Senate State and Local Government Committee and assigned to General Subcommittee. It was taken off notice in the House State and Local Government Subcommittee. Not sent to TACIR but related to others by subject matter.)

Zoning—Amends Tennessee Code Annotated Title 13, Chapter 7.

Summary—This bill deletes the current subsections (b) through (i) of Tennessee Code Annotated § 13-7-208 and replaces them with a new Part 5. It rewrites the law dealing with nonconforming uses and makes non-conforming uses a private property right that runs with the land.

4. SB 3650 by Tracy / HB 3695 by Gotto

(The bill was referred to the Senate State and Local Government Committee, but no action was taken. It was taken off notice in the House State and Local Government Subcommittee. Not sent to TACIR but related to others by subject matter.)

Zoning—Amends Tennessee Code Annotated Title 5, Title 6, and Title 13.

Summary—This bill adds a new introduction to Tennessee Code Annotated § 13-7-208(a)(1) but the language doesn't really change anything. However, the bill does add on-site signs to the exemption already in the act for off-site signs that prohibits the application of any new zoning requirements.

5. SB 3651 by Tracy / HB 3698 by Gotto

(The bill was referred to the Senate State and Local Government Committee, and it passed with an amendment. It was re-referred to the Calendar Committee and was not re-scheduled. The bill was taken off notice the House State and Local Government Subcommittee. Not sent to TACIR but related to others by subject matter.)

Zoning—Amends Tennessee Code Annotated § 13-7-208.

Summary—This bill adds the words “Notwithstanding subsection (d),” to the amended section, but that language doesn't really change anything. What the bill does do is exempt on-site signs from any new zoning requirements. In other words, on-site signs that are rebuilt may “non-conform” if the signs they replaced non-conformed.

Limitations on Zoning

1. SB 3079 by Yager / HB 3258 by Haynes

(The bill was referred to the Senate Energy and Environment Committee. It was referred to the House Conservation Committee. No action was taken in either body. Not sent to TACIR but related to others by subject matter or code section.)

Zoning—Amends Tennessee Code Annotated Title 13, Chapter 7, and Title 59, Chapter 8, Part 2.

Summary—This bill applies to the reclamation of mineral mining operations and specifies that no local zoning regulations to the reclamation work shall apply.

2. SB 3267 by Tracy / HB 3624 by Sparks

(The bill was referred to the Senate State and Local Government Committee, but no action was taken. It was taken off notice in the House State and Local Government Subcommittee. Not sent to TACIR but related to others by subject matter or code section.)

Zoning—As introduced, defines agricultural uses. Amends Tennessee Code Annotated Title 13 and Title 43.

Summary—This bill adds a section to Tennessee Code Annotated § 13-7-114 to define agriculture to mean any land, machinery, buildings, recreational and educational activities for the commercial production of farm products and nursery stock for purposes of certain zoning provisions and references Tennessee Code Annotated § 43-1-113.

3. SB 3752 by Ford / HB 3674 by Towns

(The bill was referred to the Senate State and Local Government Committee, but no action was taken. It failed in the House State and Local Government Subcommittee. Not sent to TACIR but related to others by subject matter or code section.)

Zoning—Amends Tennessee Code Annotated Title 6, Chapter 54; Title 7, Chapter 3; and Title 13, Chapter 7.

Summary—This bill requires a public notice and a hearing before an establishment that may be detrimental to the neighborhood can begin operations. It specifies that it applies to nuclear plants, truck stops, refueling stations, adult oriented establishments and any business that emits foul odors and other uses.

III. Homeowners Associations

All condominium developments and many new developments of attached and detached housing require the homeowner to be a member of and pay dues to a homeowners association. A number of issues emanate from these associations.

HR 0170 by Moore

(After passing the House Commerce Committee, the resolution passed the House with a floor vote, and it was signed by the Speaker.)

General Assembly, Directed Studies—Directs TACIR to conduct a study relative to homeowners associations.

Summary—The resolution directs the study to include, but not be limited to, rules and regulations adopted by homeowners associations that control homeowners' use and enjoyment of their property, state and local regulations covering homeowners associations, and the responsibility of the associations to insure their obligations against the event of damages, including repair of association owned property.

IV. Blight

Last year TACIR completed a draft study on the issue of blight. These new bills related to the same issue were introduced.

1. SB 2933 by Norris / HB 2996 by Parkinson

(This bill was referred to TACIR by the Subcommittee of the House State and Local Government Committee. It was assigned to the General Subcommittee of the Senate State and Local Government Committee.)

Real Property—Amends Tennessee Code Annotated Title 13.

Summary—This bill requires municipalities to report the owner and address of unfit, blighted and deteriorated commercial properties to the secretary of state for publication on secretary's web site until such condition is cured.

2. SB 3501 by Tate / HB 3647 by Camper

(The bill was referred to the Senate State and Local Government Committee, but no action was taken. It was taken off notice in the House State and Local Government Subcommittee. Not sent to TACIR but related to others by subject matter or code section.)

Local Government, General—Amends Tennessee Code Annotated Title 6, Chapter 54, Part 1.

Summary-Under this bill, corporate authorities of each municipality may hold responsible for maintaining and securing a vacant property:

Any owner of property;

Any previous owner of property who conveyed the property during the time it was vacant and failed to comply with any ordinance regarding the registration of vacant property, any trust beneficiary, or other trustee who holds a deed of trust on the property;

Any mortgagee who holds a mortgage on the property; and

Any assignee of any such owner, beneficiary, trustee, or mortgagee.

V. Governmental Transparency

These two bills address the issue of transparency in government, particularly financial details.

1. SB 2831 by Ketron / HB 3327 by Carr

(This bill was referred to TACIR by the Senate Finance Committee and then sent to General Subcommittee. It was in the House Finance Subcommittee and placed behind the budget.)

Budget Procedures—Amends Tennessee Code Annotated Title 9, Chapter 4, Part 51.

Summary—This bill requires the department of finance and administration to create and maintain a searchable budget database web site detailing where, for what purpose, and what revenues are achieved for all taxpayer investments in state government. The Web site required by this bill would be available to the public at no cost. This bill requires that the web site initially be available no later than January 1, 2013, and include data for fiscal year 2012-2013. Beginning July 1, 2013, this bill requires that the database be updated with the data for the prior fiscal year within 30 days of the conclusion of the prior fiscal year.

2. SB 2832 by Ketron / HB 3328 by Carr

(The bill was referred to TACIR by the Subcommittee of the House State and Local Government Committee. It was assigned to the General Subcommittee of the Senate State and Local Government Committee.)

Local Government—Amends Tennessee Code Annotated Titles 5, Title 6, Title 7, and Title 49.

As introduced, creates the Local Government Transparency Act.

Summary—This bill would require each county, city, and school district to post certain information on their website by July 1, 2014. Requires contact information, annual budget ordinances, the procedures for applying for a building permit, any financial audit, all revenue reports, detail list of taxes and fee imposed, and all information about bids over \$25,000 to be located on their website. It requires the entities to maintain a single, searchable expenditure and revenue web site database that will contain public records. It also allows citizens to sue a unit of local government if they fail to comply with his act.

VI. Bills Related to Past TACIR Studies

The following bills are related to subject areas of past studies that have been completed.

Delinquent Property Taxes

SB 0743 by Norris / HB 0882 by Haynes

(This bill was assigned to the General Subcommittee in the Senate State and Local Government Committee. The bill passed in the House State and Local Government Committee and was referred to the House Finance Subcommittee, but no action was taken.)

Comptroller, State—Amends Tennessee Code Annotated Title 67, Chapter 5.

Summary—This bill would require the comptroller to study the statutory law and cases involving the manner in which delinquent property taxes are reported by the trustee and collected by delinquent tax attorneys. The study was to focus on developing a more efficient

and timely method for the trustee to report taxes that are delinquent with the goal of more quickly obtaining the revenue due from the unpaid taxes.

Tax Incentives

1. SB 0800 by Overbey / HB 0851 by Swann

(The bill was a caption bill and was held on the desk in the House. It was assigned to General Subcommittee in the Senate State and Local Government Committee.)

General Assembly, Directed Studies—Amends Tennessee Code Annotated Title 67.

Summary—This bill would direct the commissioner of economic and community development, in consultation with MTAS and CTAS, to study the effects of state and local tax incentives on the economic development of municipalities and counties. The report was to assess the manner in which such incentives have served to facilitate the economic development of the state within the past two years. The report would also make recommendations concerning the development of additional incentives to facilitate such initiatives.

2. SB 3512 by Tate / HB 3261 by Camper

(The bill was referred to the Senate Commerce Committee, but no action was taken. It was taken off notice in the House Subcommittee of the Commerce Committee.)

Economic and Community Development—Amends Tennessee Code Annotated Title 7, Chapter 53, and Title 7, Chapter 88.

Summary—This bill would direct the commissioner of economic and community development, in consultation with MTAS and CTAS, to study the effects of state and local tax incentives on industrial and tourist development. The report was to assess the manner in which such incentives have served to facilitate industrial and tourist development of the state within the past two (2) years. The report would also make recommendations concerning the development of additional incentives to facilitate such initiatives.

Reimbursement for Holding State Inmates

SB 2533 by Yager, Finney L. / HB 2637 by Ramsey

(The bill passed in Senate State and Local Government Committee but was sent to the General Subcommittee of Finance, Ways and Means. The bill was taken off notice in the House General Subcommittee of Finance.)

State Inmates—Amends Tennessee Code Annotated § 41-8-106.

Summary—This bill establishes reimbursement rate for counties holding state inmates as adjusted based upon the percentage of change in the average consumer price index as published by the United States Department of Labor. Generally, present law authorizes the commissioner of correction to compensate any county that has not contracted with the state under present law regarding the housing of state prisoners for that county's reasonable, allowable cost of housing felons, at the rate determined by the appropriations bill. This bill specifies that the amount of such compensation may not be less than \$35.00 per day. Beginning, July 1, 2013, and each succeeding July 1, the reimbursement rate must be adjusted based upon the percentage of change in the average consumer price index between the two preceding calendar years, except that no reduction of the rate may be made on account of any decrease in the average consumer price index.

Voting by Absentee Ballot

SB 2692 by Haynes, Ford / HB 2709 by Turner M.

(The bill failed in the Senate State and Local Government Committee and was taken off notice in the House State and Local Government Committee.)

Election Laws—Amends Tennessee Code Annotated Title 2, Chapter 6 and Title 2, Chapter 3.

Summary—This bill would allow any registered voter in Tennessee to vote by absentee ballot and revised other voting provisions. This bill would expand the right to vote absentee by mail to all voters. Such a person desiring to vote by absentee ballot must comply with the present law requirement that each person who registers by mail must appear in person to vote in the first election the person votes in after such registration becomes effective; before voting at the appropriate polling place or election commission office, such person must present satisfactory proof of identity. This provision does not apply to a person who is on the permanent absentee voting register under present law.

Service Delivery

SB 1397 by Burks / HB 1927 by Williams R, Coley

(The bill was referred to the Senate Delayed Bills Committee, but no action was taken. It was taken off notice in the House State and Local Government Committee.)

General Assembly, Studies—As introduced, creates special joint committee to study the delivery of community services by various agencies.

Summary—This bill creates a special joint committee to study the sources of funding for, the functions of, and the services provided by community service agencies, development districts, human resource agencies, and all other organizations that provide community services

statewide, with the goal of finding duplication and gaps in service. When making its final report, the special joint committee must outline inefficiencies in the present delivery of services and make recommendations for a more efficient service delivery system.