

TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM:  Winnisse Roehrich-Patrick
Executive Director

DATE: 19 June 2013

SUBJECT: Legislative Update, Work Program Amendment, and Research Plans

Each year at this time, the Commission reviews legislative action on issues related to past studies and amends its work program to add issues submitted to it by the General Assembly. Action was taken in this session directly related to findings and recommendations in three reports. Public Chapter 65 (attached) created a committee to review Tennessee's underground utility damage prevention program as recommended in the Commission's October 2010 report *Safe Digging: Working Together to Prevent Damage to Underground Utilities*. The House Civil Justice Subcommittee, relying in part on the Commission's February 2013 report *Eminent Domain in Tennessee*, voted against House Bill 103 by Representative Joe Carr, which would have allowed property owners to force local governments into binding arbitration to determine the price of condemned property. And the House Business & Utilities Subcommittee, acting in part on the January 2012 staff report *Appointment v. Election of Utility District Commissioners*, voted against House Bill 691 by Representative Barry Doss, which would have required certain water utility district boards in Lawrence County to be governed by elected boards. These and other actions are described more fully in the legislative report behind tab 3A.

Nine bills were referred to the Commission for study and are included in the revised work program behind tab 3B, which is submitted for your approval. As presented, the work program combines seven bills sent for study that relate to annexation and growth planning into the smaller study added by the Commission last February to determine the status of plans at the end of 20 years and analyze potential improvements to the growth planning process. This broader study now includes all of Tennessee Code Annotated, Title 6, Chapters 51 and 58, as required by Public Chapter 441, Acts of 2013, and by request of the Senate State and Local Government Committee (see attached letter from Senator Ken Yager). The report is due by

January 14, 2014. Other studies added at the direction of the General Assembly include House Bill 600 by Representative Timothy Hill, which would cap the rates Johnson City charges water and sewer customers outside its corporate boundaries, and Senate Bill 624 by Senator Mark Norris, which would authorize insurance as an alternative to surety bonds to protect against breaches of fiduciary duties by public officials and employees. Research plans for all of these studies are included in tab 3C.



State of Tennessee
PUBLIC CHAPTER NO. 65

SENATE BILL NO. 851

By Ketron

Substituted for: House Bill No. 940

By Calfee

AN ACT to amend Tennessee Code Annotated, Title 65, relative to Underground Utility Damage Prevention.

WHEREAS, the United States Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) is charged, by federal law, to determine if Tennessee complies with federal law in establishing an effective underground utility damage prevention program; and

WHEREAS, the Tennessee General Assembly adopted Chapter 470 of the Public Acts of 2009 directing the Tennessee Advisory Commission on Intergovernmental Relations to study the effectiveness of Tennessee's underground utility damage prevention program; and

WHEREAS, the Tennessee Advisory Commission on Intergovernmental Relations, in an October 2010 report, identified several compliance issues with Tennessee's underground utility damage prevention program and recommended that the Tennessee Regulatory Authority and the Tennessee One-Call System convene representatives of all stakeholder groups to discuss ways of enhancing underground utility damage prevention; and

WHEREAS, Tennessee's Comptroller of the Treasury, in a July 2012 performance audit, found that penalties under the Tennessee underground utility damage prevention program were not compliant with federal law and risked the loss of federal funding; and

WHEREAS, in December 2012, the Comptroller convened the Tennessee Regulatory Authority, the Tennessee One-Call System and representatives of all stakeholder groups to hold discussions on ways of enhancing underground utility damage prevention to improve public safety and to avoid the loss of federal funding; now, therefore,

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

SECTION 1. Tennessee Code Annotated, Title 65, Chapter 31, is amended by adding the following language as a new section:

(a) There is created the underground utility damage prevention advisory committee, to be composed of twenty (20) members as follows:

(1) The executive director of the Tennessee regulatory authority or the director's designee;

(2) The commissioner of transportation or the commissioner's designee;

(3) The president of Tennessee 811 or the president's designee;

(4) The executive director of the Tennessee county services association or the director's designee;

(5) The executive director of Tennessee Municipal League or the director's designee;

(6) The executive director of the Tennessee Association of Utility Districts or the director's designee;

(7) The executive director of the Tennessee Electric Cooperative Association or the director's designee;

- (8) The executive director of the Tennessee Municipal Electric Power Association or the director's designee;
- (9) A designee of the Tennessee Cable and Telecommunications Association;
- (10) A designee of the Tennessee Road Builders Association;
- (11) A designee of the Tennessee Farm Bureau;
- (12) A representative from the Rail Road industry;
- (13) A representative of the natural gas interstate pipeline industry and a representative of the liquid petroleum interstate pipeline industry;
- (14) A designee of the Associated Builders and Contractors of Tennessee;
- (15) A designee of the Tennessee Gas Association;
- (16) A representative from a large Tennessee incumbent local exchange carrier;
- (17) A representative from a small Tennessee incumbent local exchange carrier;
- (18) A designee of the Tennessee Association of General Contractors; and
- (19) An engineer designated by the American Council of Engineering Companies.

(b) The underground utility damage prevention advisory committee shall study the nine (9) elements identified at 49 U.S.C. § 60134(b) for an effective damage prevention program and any rules or regulation promulgated by the United States department of transportation's pipeline and hazardous materials safety administration (PHMSA) and shall make recommendations on how Tennessee can best comply with the federal law, rules, and regulations. The committee shall report its findings and recommendations to the governor, speaker of the senate, speaker of the house of representatives, and comptroller of the treasury no later than November 1, 2013. The committee's report shall include the following:

- (1) A recommendation on which agency or agencies in state government shall be responsible for administration, enforcement, and adjudication of a compliant underground damage prevention program. Such recommendation shall address ongoing stakeholder participation in the process;
- (2) A recommendation addressing the amount of civil penalties and the application of such penalties to major and minor offenses and offenders;
- (3) A recommendation on how such underground prevention program should be funded and how civil penalties should be distributed. Such recommendation shall include funding for improved education and training to prevent underground damage;
- (4) A recommendation to accomplish mandatory membership including a definition of a utility for membership purposes and a timeline for phasing in mandatory membership;
- (5) A review and recommendation on the appropriate definitions of activities subject to the underground damages statute;
- (6) A recommendation for reporting underground utility damage incidents to include the form and content of such reports. Such reports should include an analysis of causes of damage and effectiveness of prevention measures;
- (7) A recommendation for a process to assist in underground utility location in the design phase of construction projects; and
- (8) A recommendation for deploying mandatory electronic underground utility locating technology for future utility construction.


(c) The members of the Underground Utility Damage Prevention Advisory Committee shall serve without compensation.

SECTION 2. Upon completion of its report of recommended legislation, the Underground Utility Damage Prevention Advisory Committee shall cease to exist.

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

SENATE BILL NO. 851

PASSED: March 14, 2013



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 1st day of April 2013



BILL HASLAM, GOVERNOR

RECEIVED
MAY 08 2013

BY: EPO



KEN YAGER
STATE SENATOR

TENNESSEE SENATORIAL DISTRICT 12
CAMPBELL, FENTRESS, MORGAN, RHEA,
ROANE AND SCOTT COUNTIES

Senate Chamber

State of Tennessee

NASHVILLE

May 6, 2013

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Executive Director Lynnisse Roehrich-Patrick
Tennessee Advisory Council on Intergovernmental Relations
226 Capitol Boulevard Building, Suite 508
Nashville, TN 37243

Dear Executive Director Lynnisse Roehrich-Patrick,

On April 2, 2013, the Senate State and Local Government Committee directed 6 bills pertaining to Public Chapter 1101 be sent to the Tennessee Advisory Commission on Intergovernmental Relations. As you may know, Public Chapter 1101 was enacted in 1998 as a vision and solution to growth policy in Tennessee. We are now 13 years into the plan that was to govern growth in this state through 2020. Public Chapter 1101 is a very substantive and complicated act that was the result of a deliberate process. It is my opinion that changing Public Chapter 1101 piece by piece via legislation may have unintended consequences and complications.

It is requested by the Committee that TACIR complete a comprehensive review and evaluation of the efficacy of state policies set forth within Title 6, Chapters 51 and 58, and submit a written report of findings and recommendations, including any proposed legislation, to the speaker of the senate and the speaker of the House of Representatives by January 12, 2015. It is requested that in this study, TACIR review the following bills: SB279 by Senator Watson, SB613 by Senator Yager, SB731 by Senator Watson, SB732 by Senator Watson, SB1316 by Senator Bowling, and SB1381 by Senator Bowling

The Committee will hear these bills on the first available calendar pending the TACIR report.

I greatly appreciate TACIR's support and willingness to help in this matter. Thank you for all that you do.

Sincerely,

Ken Yager
Chairman, Senate State and Local Government Committee