The Tennessee Advisory Commission on Intergovernmental Relations

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MEMORANDUM

TO: Commission Members

FROM: Lynnisse Roehrich-Patrick
Executive Director

DATE: 25 May 2016

SUBJECT: Legislative update

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. The 109th General Assembly in its second session passed or considered legislation on several issues related to the Commission's work, some dealing directly with findings and recommendations from commission reports. The General Assembly also passed one public act requiring a study by the Commission and passed a senate joint resolution requiring another, and several of its committees requested that the Commission produce other studies.

Legislative Action on Issues Studied by the Commission

Blight—Public Chapters 224 and 727

Public Chapter 224, Acts of 2016, consistent with the recommendation in the Commission's 2012 report, *Dealing with Blight: Strategies for Tennessee's Communities*, to extend existing land bank authority to other jurisdictions, extended that authority to the city of Kingsport. Two other pieces of legislation considered this session addressed the Neighborhood Preservation Act, another program discussed in the 2012 report. That program allowed any neighbor or interested party in Shelby and Davidson counties to sue the owner of any unoccupied property not maintained to community standards. PC 727, Acts of 2016, expanded the applicability of the Neighborhood Preservation Act to include occupied buildings and residential properties. Senate Bill 450 by Gardenhire and House Bill 525 by Hazlewood, which did not pass, would have applied the Neighborhood Preservation Act to Hamilton County.

Zoning—Public Chapters 577 and 693

Zoning, one of the issues discussed in the Commission's June 2013 report, *Land Use in Tennessee: Striking a Balance*, and central to the October 2015 report, *Community-based Land-use Decisions: Public Participation in the Rezoning Process*, was the subject of several bills introduced this session. Public Chapter 693, Acts of 2016, changed the allowed size for boards of zoning appeals in cities and non-charter counties from 3 or 5 to 3, 5, 7, or 9, and Public Chapter 577, Act of 2016, reduced from 30 days to 15 the notice Davidson County must provide prior to a public hearing on an amendment to a county zoning ordinance, making its notice requirement consistent with that for other counties. Another piece of legislation, Senate Bill 912 by Johnson and House Bill 919 by Daniel, which would have increased the required notice for those other counties from the current 15 days to 30, was recommended by the Senate State and Local Government Committee but taken off notice in the House.

Three other bills related to zoning were also considered but did not pass. Senate Bill 2369 by Watson and House Bill 2387 by Carter would have required a local government (or state regulatory agency) to pay damages for any rezoning that lowered the value of a property if a jury found that a taking had occurred. Senate Bill 2112 by Johnson and House Bill 2548 by Durham would have increased the minimum continuing education training required for board of zoning appeals members from four hours per year to five hours per year. Senate Bill 549 by Niceley and House Bill 775 by Daniel would have required that cities obtain written consent from owners before rezoning private property. The bill was taken off notice in March 2015, but Chairman Wirgau of the House Local Government Committee requested by letter that the Commission study this bill. In its October 2015 report, the Commission said that requiring owner consent for rezonings would disrupt the dispute resolution process embodied by zoning laws and the local government structure created to support it. The legislation was discussed again this session but was ultimately taken off notice again.

Valuating Low-Income Housing—Public Chapter 642

Public Chapter 642, Acts of 2016, addresses property taxes for low-income housing, the subject of the Commission's January 2015 report *Assessing the Value of Low-Income Housing for Property Tax Purposes: Whether and How to Consider the Value of Low-Income Housing Tax Credits.* Public Chapter 642 clarifies that non-governmental entities, such as low-income housing developers, are required to pay property taxes when they are the lessee of a housing authority and are contractually able to acquire the property for a nominal charge before or at the end of the lease. Before the Act was passed, it was clear that lessees of cities and counties had to pay property taxes in such a situation, but not clear that lessees of housing authorities had to. Two other pieces of legislation discussed but not passed, Senate Bill 2600 by Norris, House Bill 2036 by Faison and Senate Bill 2599 by Norris (no House companion), concerned housing properties that qualify for federal low-income-housing tax credits (LIHTCs). Senate Bill 2600 and House Bill 2036 would have limited the appraised value of LIHTC properties (as well as certain properties purchased with loans from the US Department of Agriculture) to the present use-value determined by the property's gross income from rents, which by law and

contract are restricted. Senate Bill 2599 by Norris would have capped the appraised value of LIHTC properties at the value indicated by an income approach that utilizes market or unrestricted rent for comparable property.

Insurance as an Alternative to Surety Bonds—Public Chapter 749

Tennessee law has long required various local officials, mostly those serving county governments, to execute individual surety bonds as a prerequisite to taking office; the law requires the county government to pay for the bonds. Since 2013, county governments have also been required to provide blanket coverage for all employees not covered by individual surety bonds. Both of these requirements were discussed in the Commission's January 2014 report, *Insurance as an Alternative to Surety Bonds for Public Officials*. With passage of Public Chapter 749, Acts of 2016, county governments now have the option to continue using a combination of individual surety bonds for certain offices and blanket coverage for other employees or instead buying an insurance policy that provides government crime coverage, employee dishonesty insurance, or equivalent coverage that insures the faithful performance by officials and their employees of their fiduciary duties and responsibilities. The policy, provided by either an insurance company or by agreement with an administrative entity or pool, must have minimum coverage of $400,000 per occurrence. The Act also specifies that tort limits will not increase for a governmental entity that uses the insurance option. The 2014 report, which analyzed an insurance option like that authorized by Public Chapter 749, explained that insurance, unlike surety bonds, does not hold public officials personally liable and that the $400,000 minimum amount of coverage is much less than the bond amounts for many public officials. It also said that there could be significant differences in coverage from county to county using insurance policies and that governmental entities and taxpayers are liable for losses not covered by insurance pools.

County Employees Serving on Their County Commissions—Public Chapter 1072

Public Chapter 1072, Acts of 2016, addresses concerns that county employees serving on their own county legislative body might have conflicts of interests when voting on certain items, a topic discussed in the Commission's January 2016 report, *County Employees Serving on their County Commissions: Managing Conflict of Interest to Maintain Integrity and Trust*. Consistent with one of the ways described in that report to manage conflicts of interest, the Act forbids any member of a county legislative body who is also an employee of the same county or whose spouse is an employee of the same county to vote on matters that would increase the pay or benefits of that member or that member's spouse. It does not prohibit voting by those members of county commissions on budgets, appropriation or tax rate resolutions or amendments unless the vote is on a specific amendment to the budget or a specific appropriation or resolution in which the member has a conflict of interest. Two related bills, Senate Bill 1772 by Beavers and its companion, House Bill 1719 by Pody, and Senate Bill 1288 by Hensley and its companion, House Bill 1278 by Butt, were considered this session but did not pass. Senate Bill 1772 and House Bill 1719 would have prohibited a county employee serving as a member of a county budget or finance committee for the county that employs that member. Senate Bill 1288 and House Bill 1278 would have prohibited voting by members

of a city or county governing body who are employees of the city or county or whose immediate family is an employee of that city or county on matters in which the member has a conflict of interest.

Protecting the Interests of Homeowners—Public Chapter 866

Public Chapter 866, Acts of 2016, deals with homeowners' associations, a topic discussed in the Commission's January 2015 report, *Protecting the Interests of Homeowners in Planned Developments: Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair and Adequate Regulation*. The Act lowers the priority of liens and encumbrances placed on properties by condominium homeowners' associations for six months of delinquent assessments to below first or other contemporaneous mortgages or deeds of trust recorded before the assessment became delinquent. The Act broadens the homeowners associations' requirement to notify homeowners before publication of an advertisement of a foreclosure sale to require them to also notify any other interested parties. The Act does not change the timing of the notification requirement; the 2015 report recommended requiring homeowners associations to notify homeowners as soon as liens attach for unpaid fines and assessments attachment rather than waiting until foreclosure.

Three other bills, all sent to summer study, also addressed homeowners associations. Two of those bills, Senate Bill 405 by Overbey and its companion, House Bill 610 by Carter, and Senate Bill 1950 by Yager and its companion, House Bill 1883 by Daniel, were comprehensive bills governing many aspects of homeowners' associations for single family developments. The third bill, Senate Bill 1908 by Gardenhire and its companion, House Bill 2384 by Carter, would have created various causes of action for members against their homeowners' associations and authorized declarants (developers) to retain full control of the subdivision until it is transferred to the control of the homeowners' association.

Fiscal Capacity—Public Chapter 1020

Public Chapter 1020, Acts of 2016, made several changes in the state's formula for funding its Basic Education Program (BEP). Among those was formalizing the weighting of the two models used to determine local government's capacity to fund their share of the BEP formula, the Commission's fiscal capacity index and the tax capacity index produced by the University of Tennessee's Center for Business and Economic Research (CBER), at 50% each, a practice that has been in place since 2008 when the CBER index was first introduced. This practice was supposed to have been phased out, with the CBER index eventually replacing the TACIR index; this legislation removes that requirement.

Annexation and Growth Planning Policies

The 109th General Assembly considered four bills related to topics addressed by the Commission's January 2015 report, *Municipal Boundaries in Tennessee: Annexation and Growth Planning Policies after Public Chapter 707.* Consistent with recommendations in that report, Senate Bill 2583 by Norris and House Bill 2587 by Todd, which passed in the Senate but not in

the House, would have allowed cities to unilaterally retract their urban growth boundaries subject to county approval and required existing county growth plans to be reviewed periodically.

Also largely consistent with recommendations in the 2015 report, Senate Bill 749 by Watson and House Bill 779 by Carter would have allowed citizens to initiate deannexation from cities by referendum and required county approval and municipal compensation for deannexation of roads and other public rights of way. Unlike the Commission's recommendation, the proposed legislation would not have required failure to provide services as a pre-condition for deannexation by referendum nor would it have limited deannexations to areas on the city border, a policy recommended to avoid creating donut holes, and entire areas as originally annexed rather than scattered individual parcels. An amendment to the Senate bill would have prohibited donut holes. Amendments in the House would have limited deannexations to specific cities in Marshall, Washington, Sullivan, Hamilton, Knox, and Shelby counties. The amended legislation would also have enabled cities to annex at the request of owners noncontiguous properties contained entirely by that city's urban growth boundary and to be used for industrial or commercial purposes or future residential development.

Two bills would have extended authorization granted to cities in Williamson County by Public Chapter 512, Acts of 2015, to allow cities in the state's other non-metropolitan government counties, with owner permission, to annex areas inside their growth boundaries but not adjacent to the city. This legislation was based on suggestions in the Commission's 2015 report to help cities and counties alleviate the problems created by corridor annexation to reach areas appropriate for commercial or industrial development without affecting residents or landowners who don't want to be annexed. Senate Bill 1817 by Jackson was recommended by the Senate State and Local Government Committee, but its companion, House Bill 2307 by Carter, was withdrawn when similar provisions for noncontiguous annexation were added as an amendment to House Bill 779. Senate Bill 2428 by Crowe was assigned to General Subcommittee; its companion, House Bill 2242 by Van Huss, was taken off notice.

Eminent Domain

The Commission's February 2013 report, *Eminent Domain in Tennessee*, was discussed in the Civil Justice Subcommittee of the House during consideration of House Bill 986 by Rogers, which would have changed the current law giving condemnees a right of first refusal to repurchase condemned property if the condemner decided to sell it. The current law was enacted with passage of Public Chapter 851, Acts of 2014, which, based in part on the Commission's recommendation, limits the right to the former property owner only and within ten years from the date of condemnation and sets the price based on fair market value. House Bill 986 would have set the price at the lower of fair market value or the price paid at condemnation plus costs and extended the right to instances when the local government used the property for a purpose other than that for which it was condemned. The bill was taken off notice in the House, and its companion, Senate Bill 880 by Haile, was withdrawn in the Senate.

Three other pieces of legislation that were considered but not passed dealt with property owner rights and notification in cases of condemnation by eminent domain. Drawing on discussion of these issues in the Commission's report, Senate Bill 1481 by Haile and House Bill 1507 by Rogers would have required the Office of Attorney General and Reporter to write and post on its website the rights of property owners whose real property is acquired through eminent domain. It would have also required that information on accessing the statement of rights be included with any petitions for condemnation sent to property owners. Senate Bill 438 by Haile and House Bill 428 by Rogers were the same as Senate Bill 1481 and House Bill 1507 except that they would have required the mailing of actual copies of the statement of rights to affected owners. Senate Bill 1371 by Kyle and House Bill 1230 by Towns would have required that notification of condemnation by certified mail and inclusion of information about owners' rights to appeal or contest condemnation. They also would have increased the time between notice and any additional steps in the condemnation proceedings from 30 to 90 days.

Legislative Requests for Further Studies by the Commission

The General Assembly passed two pieces of legislation requiring new commission studies, a public chapter calling for a study of privilege taxes and a senate joint resolution calling for a study of legislative compensation. Committees and subcommittees of the legislature asked the Commission to study four additional bills pertaining to transitory vendors, trailer registration and fees, a franchise tax credit for certain shippers, and cybersecurity.

Studies Directed by Public Acts

I. Adequacy of Current Legislator Compensation

Senate Joint Resolution 463 directs the Commission to survey legislative bodies in states bordering Tennessee during fiscal year 2015-2016 to determine their members' salary, per diem reimbursement rates, mileage reimbursement rates, and other expenses and compare them to like categories of compensation and reimbursement paid to members of the Tennessee General Assembly during that same period to determine whether Tennessee legislators are being adequately compensated and fully reimbursed for expenses. Tennessee state legislators currently earn $20,884 per year, except for the speakers of the Senate and the House of Representatives, who receive $62,652 per year. Legislators also receive a $1,000 stipend per month to cover costs of operating district offices. In addition to salary and stipend, General Assembly members receive $204 for each day they are in session, which covers the expense of food, incidentals, and lodging. Members living 50 miles or less from the capital, however, are not compensated for lodging and receive a per diem allowance of only $59. Legislators also receive state employee benefits such as health insurance, life insurance, and retirement. The report is due January 1, 2017.

II. Application of the Professional Privilege Tax

Public Chapter 1024, Acts of 2016, directs the Commission to study and make recommendations relative to the professional privilege tax, considering the application of the

tax—or its non-application as the case may be—to various occupations, businesses, and professions, including those not listed in Tennessee Code Annotated, Section 67-4-1702, and to both residents and nonresidents. The Commission is directed to study Senate Bill 1919 by Senator Bowling and its companion, House Bill 1951 by Representative Hazlewood, which would have exempted nonresident licensees from the professional privilege tax, Senate Bill 167 by Bowling and its companion, House Bill 601 by Durham, which would have exempted audiologists and speech pathologists from the tax, and the original language of Senate Bill 556 by Bowling and its companion House Bill 678 by VanHuss, which became Public Chapter 1024. As introduced, the legislation that became Public Chapter 1024 would have decreased the privilege tax annually by 20% over the next five years, eliminating it in 2019 and thereafter, and would have prohibited the tax from being applied more than once for a single person having multiple professions affected by the tax. It also would have prohibited any new tax upon the privilege of engaging in certain professions, businesses, and occupations. The current tax rate is $400 per year, and the Department of Revenue reports that there are approximately 200,000 taxpayers that would have been affected by this bill.

Public Chapter 1024 also requires the study to examine the history and intent of the professional privilege tax, other states' laws imposing a professional privilege tax or similar tax, and alternatives for eliminating or phasing it out. The report is due January 1, 2017.

Studies Requested by Committees and Subcommittees

One additional study was directed by legislation that passed in the Senate but not the House, and three were requested by single subcommittees:

- Senate Bill 1942 by Yager passed as amended, directing the Commission to study the effects that transitory vendors have on counties and local businesses and recommend solutions to assist county bodies in regulating those vendors. The companion bill, House Bill 2345 by Calfee, was taken off notice in the House Local Government Subcommittee.
- House Bill 1522 by Matlock, which would have deleted various provisions that distinguish different types of trailers, redefined *trailer*, imposed the registration tax on all trailers, and changed the amount of the tax, was referred to the Commission for study by the House Transportation Subcommittee. The bill would have authorized county clerks to collect an additional fee of $1.00 for each initial issuance of registration and registration plates for trailers. The companion bill, Senate Bill 1634 by McNally, was referred to the Senate Transportation and Safety Committee.
- House Bill 1962 by Camper, which would have established a franchise and excise tax credit equal to 2% of qualified transportation expenditures made by a shipper who establishes a turn-around policy that meets certain requirements, was sent to the Commission for study by the House Transportation Subcommittee. The companion bill, Senate Bill 2587 by Norris, was assigned to the general subcommittee of the Senate Finance Review Subcommittee.

- House Bill2209 by Powell, which would have required the Comptroller of the Treasury to create a report regarding cybersecurity, was sent to the Commission for study by the House State Government Subcommittee. The companion bill, Senate Bill 2411 by Yarbro, was sent to the Senate Judiciary Committee.