

## REPORT ON THE 2013 LEGISLATIVE SESSION

The 108th General Assembly took action in its first session on findings and recommendations from two commission reports and one staff report and sent a number of bills to the Commission for study. In response to a recommendation in the Commission's October 2010 report *Safe Digging: Working Together to Prevent Damage to Underground Utilities* that the Tennessee Regulatory Authority and the Tennessee One-Call System Inc convene a stakeholder group to discuss ways to improve the state's underground utility damage laws, the legislature passed Public Chapter 65, creating a 20-member Underground Utility Damage Prevention Advisory Committee and tasking it with providing recommendations on how to best comply with federal laws, rules, and regulations regarding preventing underground utility damage. The committee's report is due to the Governor, the Speakers of the Senate and House, and the Comptroller by November 1, 2013. A copy of Public Chapter 65 is attached.

Based in part on the Commission's recommendation in its February 2013 report *Eminent Domain in Tennessee* that property owners should not be able to force local governments into binding arbitration, the House Civil Justice Subcommittee voted against House Bill 103. That bill, like Senate Bill 1266, which was sent to the Commission by the Senate State and Local Government Committee in 2012, would have allowed property owners to require local governments to submit to binding arbitration in order to determine the price of property to be taken by condemnation. Local governments would not have been able to object to this use of binding arbitration. The Commission's findings were cited during the discussion preceding the vote on House Bill 103.

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, which would have required certain water utility district boards in Lawrence County to be governed by elected boards.

The bulk of the bills referred this session pertain to annexation and Public Chapter 1101, Acts of 1998, the state's growth policy act. The legislature also referred bills pertaining to water rates and to insuring against breach of fiduciary duty by public officials and employees.

### **I. MUNICIPAL BOUNDARY CHANGES AND COMPREHENSIVE GROWTH PLANS**

It has been 15 years since the passage of Tennessee's Growth Policy Act (Public Chapter 1101, Acts of 1998), and questions remain about how well the Act has served its intended purpose and whether other improvements could be made to the annexation process. Public Chapter 441, enacted by the 108<sup>th</sup> General Assembly, directs the Commission to perform a comprehensive review and evaluation of the efficacy of state policies set forth in Title 6, Chapters 51 (municipal boundary changes) and 58 (comprehensive growth plans). A number of

bills that would amend portions of these chapters were also referred to the Commission for study this year.

## ***Comprehensive Review of Title 6, Chapters 51 and 58***

### **Public Chapter 441**

**Summary**—The original version of this bill (Senate Bill 279 by Watson, House Bill 475 by Carter) would have required a majority vote of qualified voters in the territory proposed for annexation prior to a municipality annexing within its urban growth boundary. The final version charged the Commission with completing a comprehensive review and evaluation of the efficacy of state policies set forth in Title 6, Chapters 51 and 58, by January 14, 2014, and placed a moratorium on unilateral annexations by ordinance of residential and agricultural property, effective April 15, 2013, through May 15, 2014.

### ***Annexation by Referendum***

#### **1. Senate Bill 731 by Watson [House Bill 230 by Carter]**

**Summary**—requires all annexations within a municipality's urban growth boundaries under an amended growth plan to be by referendum only and not by ordinance. Amends Tennessee Code Annotated Title 6, Chapters 51 and 58.

The bill was referred by the Senate State and Local Government Committee. It was taken off notice in the Local Government Subcommittee of the House Local Government Committee.

#### **2. House Bill 590 by Van Huss [Senate Bill 869 by Crowe]**

**Summary**—The original bill requires annexation ordinances to be approved by a vote of the majority of qualified voters residing in the territory proposed for annexation before it becomes operative. This requirement applies to annexations by ordinance initiated by municipalities and annexations by ordinance initiated at the request of a majority of the residents and property owners in a territory proposed for annexation. The bill further requires municipalities to send copies of proposed ordinances to the residents in the areas to be annexed 90 days prior to the referendum. The House Local Government Committee's amendment to the bill requires referenda before annexations by ordinance can become operative, but only for annexations initiated by municipalities and not for those initiated at the request of the residents and property owners. The amendment also requires municipalities to send copies of proposed ordinances to the residents of areas to be annexed 180 days prior to referenda. Amends Tennessee Code Annotate Title 6, Chapters 51 and 58.

The bill was referred by the House Finance, Ways and Means Subcommittee. Action was deferred until 2014 in the Senate State and Local Committee.

## ***Annexation of Agricultural Land***

### **Senate Bill 1316 by Bowling, House Bill 1249 by Van Huss**

**Summary**—Prohibits a municipality from annexing any land within its urban growth boundary that is zoned for agricultural use until there is a change in use triggered by a request for a non-agricultural zoning designation or by sale of the territory for use other than agricultural purposes. Amends Tennessee Code Annotated Title 6.

The bill was referred by the Senate State and Local Government Committee and the House Finance, Ways and Means Subcommittee.

## ***Notice of Annexation***

### **Senate Bill 1381 by Bowling, House Bill 1319 by Van Huss**

**Summary**— The Senate version and the original House version require municipalities to mail a copy of an annexation ordinance or resolution to each property owner within any territory proposed for annexation at least 90 days prior to a proposed annexation date. They also require any municipality annexing by ordinance to hold a minimum of three public informational meetings. The House Local Government Committee added two amendments, the first reducing the number of public informational meetings to one and requiring that property owners be sent notice of the time, date, and location of the public informational meeting, the second amendment requiring the notice to be sent by certified mail return receipt requested. Amends Tennessee Code Annotated Title 6.

The bill was referred by the Senate State and Local Government Committee and the House Finance, Ways and Means Subcommittee.

## ***Plan of Services***

### **Public Chapter 462**

**Summary**— Public Chapter 462 requires municipalities whose annexations become effective by court order to send written notice to all newly-annexed property owners by first-class mail, and prohibits municipalities from assessing property within annexed territories unless the property was annexed prior to January 1 of the year in which the assessment is to be made. Sections 5 and 6 of the original bill (Senate Bill 1054 by Kelsey, House Bill 1263 by Carr, D.) were deleted from the final version of the bill. These sections would have simplified the plan of services requirement imposed on annexing municipalities, deleting provisions that have been in the law since the 1970s, thereby easing the annexation burden on cities. These bill sections are related to the annexation issues raised by the bills sent to the Commission for study.

## ***Amending Growth Plans***

### **1. Senate Bill 732 by Watson [House Bill 231 by Carter]**

**Summary**—Restricts the ability of mayors of municipalities that have not annexed all territory within their urban growth boundaries to propose amendments to growth plans and to serve on coordinating committees reconvened or reestablished to amend growth plans. Amends Tennessee Code Annotated Title 6, Chapter 58.

The bill was referred by the Senate State and Local Government Committee. It was deferred until 2014 in the House Calendar and Rules Committee.

### **2. Senate Bill 613 by Yager [House Bill 1035 by Littleton]**

**Summary**—The bill specifies that the mayor of a municipality may propose to amend only the urban growth boundary of that mayor's municipality and a county mayor or county executive may propose to amend only the boundary between a planned growth area and a rural area. It also clarifies the procedures for amending growth plans. All other proposals to change growth plans are deemed revisions, which require resolutions by either the county legislative body or the governing bodies of municipalities containing at least half the population living in municipalities. Amends Tennessee Code Annotated Section 6-58-104.

The bill was referred by the Senate State and Local Government Committee. It was deferred until 2014 in the House Local Government Committee.

## **II. WATER RATES FOR NON-CITY RESIDENTS**

Cities often provide water and sewer services to residents outside their city limits at higher rates than city residents pay. Some residents feel the differential rate is excessive, and legislation was proposed to cap the rates charged by one city.

### **House Bill 600 by Hill, T. [Senate Bill 735 by Green]**

**Summary**—As introduced, prohibits Johnson City from raising water rates on consumers located outside the city limits within Sullivan County 50% or higher than the rate charged to consumers located within the city limits. Amends Tennessee Code Annotated Title 7, Chapter 35; Title 7, Chapter 82 and Title 68.

The bill was referred by the House Local Government Committee. It was deferred until 2014 in the Senate State and Local Government Committee.

### **III. INSURANCE IN LIEU OF SURETY BONDS**

Tennessee law requires the use of surety bonds to protect against the mismanagement or theft of public funds by public officials and employees and to ensure the faithful performance of their official duties. The Commission was sent a bill for study that would give governments the alternative to purchase insurance for this protection.

#### **Senate Bill 624 by Norris [House Bill 1004 by Todd]**

**Summary**—Authorizes any governmental entity to purchase insurance policies to protect against breach of fiduciary duty by public officials and employees. The Senate State and Local Government Committee amended the bill to direct the Commission to study “the issue of possible insurance policy coverage satisfying the requirement of an official surety bond.” Amends Tennessee Code Annotated Title 8 and Title 29.

The bill was referred by the Senate State and Local Government Committee. It was deferred until 2014 in the House State Government Subcommittee. A report is due to the Senate State and Local Government Committee by January 31, 2014.





**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 18 day of April 2013

  
BILL HASLAM, GOVERNOR