

REPORT ON THE 2014 LEGISLATIVE SESSION

The 108th General Assembly took action in its second session on findings and recommendations from three commission reports and sent a large number of bills to the Commission for study. As suggested in the Commission's November 2012 report *Dealing with Blight: Strategies for Tennessee's Communities*, the legislature extended the Tennessee local land bank pilot program being tested in Oak Ridge to additional communities. Public Chapter 793, Acts of 2014, authorizes Sevier and Blount counties, any home rule county, and any county with a metropolitan form of government to participate in the program.

Based in part on the Commission's recommendation in its February 2013 report *Eminent Domain in Tennessee*, the legislature passed Public Chapter 851, Acts of 2014, giving condemnees the right of first refusal to repurchase condemned property if the condemner decides to sell it. As recommended by the Commission, the Act limits the right to ten years from the date of condemnation, limits it to the former property owner only, and sets the price based on appraisals of fair market value.

The most publicized legislative action this past session related to a Commission report was the passage of Public Chapter 707, Acts of 2014, which eliminates cities' authority to annex by ordinance. Beginning May 16, 2015, all annexations in Tennessee will require some form of consent from owners or residents. Annexations with less than 100% owner consent will require the existing referendum process for approval. The Act forbids cities to annex property used primarily for agricultural purposes without the owner's written consent.

Public Chapter 707 also, as recommended by the Commission in its December 2013 report *Municipal Boundary Changes and Growth Planning in Tennessee: An Interim Report on Public Chapter 441, Acts of 2013*, extended the comprehensive review of municipal boundary changes and comprehensive growth plans initiated under Public Chapter 441. This continued study, which evaluates the efficacy of state policies set forth in Tennessee Code Annotated Title 6, Chapter 51 (Change of Municipal Boundaries) and 58 (Comprehensive Growth Plan), will be presented to the Commission for review and comment at the winter 2014 meeting and for approval in January 2015 in order to meet the General Assembly deadline of February 15, 2015.

The legislature referred bills pertaining to fire sprinklers in rural churches, alteration of school board administrative budget proposals, taxation of property tax credits for affordable housing, homeowners associations, civil causes of action for invasion of privacy, and uninsured motorist identification and passed two bills requiring further work by the Commission pertaining to abusive conduct in the workplace, and funding for emergency-911 services.

I. Fire Sprinkler Exemptions for Certain Places of Worship

The Dyson Grove Baptist Church congregation in Johnson County, Tennessee, built a new, larger building for its growing membership on a rural site without access to a public water supply and without the approval of its plans by the Tennessee Department of Commerce and

Insurance's Division of Fire Prevention. A Tennessee-licensed architect volunteered his services to design the building but failed to submit the building plans for approval as required by Chapter 0780-02-03 of the Rules of Department of Commerce and Insurance Division of Fire Prevention. The Division must approve plans before construction of any place of assembly, including churches, having a capacity of 300 or more persons can begin. The problem was discovered by a state electrical inspector who noticed during his inspection of the completed building that it did not have a fire sprinkler system as required by state building and fire codes and reported the violation to the state Fire Prevention Division. Upon review, the State Fire Marshal granted the church temporary occupancy so that it could keep its doors open while the architect and church members find a solution to comply with code.

House Bill 1649 by T. Hill (Senate Bill 1749 by Niceley)

Summary—The bill would have exempted single-story places of worship located in unincorporated areas from requirements to have fire protection sprinkler systems as long as they met certain requirements. An amendment that passed in subcommittee but was never adopted would have made it permissive for counties with fewer than 25,000 people to exempt single story churches and assemblies from fire code standards.

The bill was referred to the Commission for summer study by the House Local Government Subcommittee. No due date was given. Its Senate companion was referred to the Commerce and Labor Committee where no action was taken.

II. Alteration of School Board Administrative Budget Proposals

Currently, when local boards of education in Tennessee propose their budgets to the local legislative body, such as the county commission or city council, the legislative body can direct the school board to reduce the budget by some amount but cannot specify exactly what will be reduced. Legislation referred to the Commission for study would alter this relationship by granting legislative bodies power to alter or revise the administrative portions of the budget when administrative spending exceeds 10% of the total proposed budget.

Senate Bill 1935 by Johnson (House Bill 2250 by Casada)

Summary—The bill would have granted local legislative bodies the power to alter or revise school board administrative budget proposals when administrative spending exceeds 10% of the total proposed budget. Debt service requirements and other expenditures required by law would be excluded from the calculation of the 10% threshold.

The bill was referred by the Senate State and Local Government Committee, and a report is due by the second committee meeting of the 2015 legislative session. It was recommended by the House Local Government Committee and placed on the House Education Committee calendar, but no further action was taken.

III. Taxation of Property Tax Credits for Affordable Housing

In 2003, a Tennessee Court of Appeals decision (*Spring Hill, L.P., et al. v. Tennessee State Board of Equalization, et al.* 2003 Tenn. App. Lexis 952) ruled that local property assessors can include the value of the low income housing tax credits (LIHTC) in a property's appraisal/assessed value; assessors in 12 to 15 counties include at least a portion of the LIHTC in their appraisals and assessments. Although there has been no overall shortage of developers seeking to build affordable housing projects, the Tennessee Housing Development Agency and others have expressed concern that including the LIHTC in property values eliminates a large part of the credit's benefit and takes away the incentive for private sector developers to build and maintain affordable rental housing.

House Bill 1390 by Faison and Senate Bill 1671 by Southerland

Summary—The bill would have prohibited local property assessors from including the value of the federal Low Income Housing Tax Credit (LIHTC) in a property's assessed/appraised value.

The bill was referred for summer study by the House Finance, Ways and Means Subcommittee and by the Senate Finance, Ways and Means Committee.

IV. Homeowners Associations

Homeowners associations (HOA) are created to make and enforce rules for properties in subdivisions, planned communities, or condominiums, and are in many ways small, private governments. Not only can they administer rules, they can also charge monthly fees or dues to pay for the upkeep of common spaces, levy special assessments on property owners to pay for unexpected repairs and other expenses, and place a lien on property in order to secure payment. Many HOA communities begin as planned unit developments (PUD), which are large, integrated developments that allow a mix of residential and nonresidential land uses and more compact development, provide broader housing choices, and can permanently preserve common open space. In exchange for design flexibility, developers are better able to provide amenities and infrastructure improvements and find it easier to accommodate environmental and scenic attributes. Some of these developments started before the housing bubble burst and have since stalled, and roads and other basic infrastructure still have not been completed. In many cases, the developers have gone out of business and construction bonds have been allowed to expire, leaving homeowners and their associations with no recourse for completing the construction except through local governments and potentially taxpayers.

House Bill 2070 by Farmer (Senate Bill 2110 by Bowling)

Summary—The bill would have required sellers to disclose whether their property is located in a planned unit development (PUD) and, if so, whether the PUD is complete. An amendment adopted by the Senate State and Local Government Committee added a section that would have directed TACIR to complete a comprehensive study of the laws and regulations, or lack

thereof, regarding homeowners associations (HOAs) in Tennessee. The study was to include issues involving taxes, structure, administration, and accounting practices of HOAs.

The bill was referred by the House Local Government Subcommittee with no due date. It was recommended by the Senate State & Local Government Committee as amended and placed on the Senate Regular Calendar, but no action was taken.

V. Civil Causes of Action for Invasions of Privacy

The old common law rule *cuius est solum, eius est usque ad coelum et ad inferos*, that whoever owns the soil, it is theirs all the way up to Heaven and down to Hell, has been chipped away at over the centuries to balance the needs of the individual against those of the world around him so that power lines and aircraft fly overhead and water lines and subways run beneath our private property. The modern rule is that a landowner "owns at least as much of the space above the ground as he can occupy or use in connection with the land," and invasions of that airspace "are in the same category as invasions of the surface." *United States v. Causby* 328 U.S. 256 (1946). We can still exclude our neighbors and strangers from physically invading our property, but can we exclude them from virtually invading it? What if our airspace is invaded with cameras or other recording devices? What if those images are posted on the World Wide Web?

House Bill 1855 by Ryan Williams (Senate Bill 1840 by Norris)

Summary—The bill would have created civil causes of action against any person who physically invaded the privacy of another or attempted to capture a visual image, sound recording, or any other physical impression of a person engaging in personal or familial activities. The bill would have imposed civil liability, under limited circumstances, for the publication or other use of images or recordings captured through such violation. It would have established exceptions for law enforcement and related activities and as amended by the House Civil Justice Committee, for regular or contract employees of established news media outlets whose employees are members of recognized professional or trade associations.

The bill was assigned to the General Subcommittee by the Senate Judiciary Committee. A report is due to the House Civil Justice Committee by January 2015.

VI. Uninsured Motorist Identification

Although the Tennessee Financial Responsibility Law of 1977 requires that all vehicles registered in the state have adequate insurance or other proof of coverage, an estimated 1.1 million (21%) of the state's 5.5 million motor vehicles are operated by uninsured motorists. According to a 2006 briefing paper by the Comptroller's Offices of Research and Education Accountability, *An Analysis of Tennessee's Motor Vehicle Liability Insurance Limits*, most southern states take "a more preemptive approach to financial responsibility and require proof of insurance at vehicle registration, when an accident occurs, and at all times in the vehicle.

Ten southern states require proof of insurance at registration of a vehicle as a means to prevent uninsured vehicles, Tennessee does not.”

House Bill 2457 by Lundberg (Senate Bill 2517 by Ketrone)

Summary—The bill would have created the Uninsured Motorist Identification Database Program, administered by the Department of Revenue with the assistance the cooperation of the departments of safety and commerce and insurance, and maintained by a contractor. The Department of Safety would use the database to revoke registrations of uncovered motorists and otherwise enforce compliance with the state’s Financial Responsibility Law, which requires drivers to have insurance or other coverage (including a cash deposit or bond held by the Department of Safety).

The bill was referred for summer study by the House Transportation Subcommittee. No due date was given. The Senate Commerce and Labor Committee created a separate summer study committee for the companion bill.

VII. Abusive Conduct in the Workplace

The Healthy Workplace Act, Senate Bill 2226 by Kyle and House Bill 1981 by Parkinson, which has been signed by the Governor but not yet chaptered, requires the Commission to consult with the Department of Human Resources and municipal and county organizations including but not limited to the Tennessee Municipal League, the Tennessee County Services Association, the Municipal Technical Advisory Service, and the County Technical Assistance Service to create a model policy by March 1, 2015, for employers to prevent abusive conduct in the workplace. The policy would help employers recognize and respond to abusive conduct in the workplace and prevent retaliation against any employee who has reported such conduct. If a state agency or local government adopts the model policy or one that conforms to its requirements, then the employer is immune from suit for any employee's abusive conduct that results in negligent or intentional infliction of mental anguish.

VIII. Funding For Emergency-911 Services

Public Chapter 795, Acts of 2014, replaces the current two-tier funding system characterized by different 911 surcharge rates for wireline phones to fund local emergency communications districts (ECD) and wireless phones to fund the Tennessee Emergency Communications Board (TECB) and its support to local ECDs with a flat-rate surcharge of \$1.16, effective January 1, 2015. The surcharge will apply to wireline, wireless, and prepaid wireless services. Emergency communications districts will receive a distribution based on the amounts they received from the TECB and from direct remittances for fiscal years 2010, 2011, and 2012. ECDs that had a local surcharge in effect as of July 1, 2011, that was less than the maximum allowed can apply to the TECB for an increase in their base amount. The TECB will also distribute a minimum of fifty percent (50%) of any revenue collected in excess of its annual fiscal requirements to the emergency communications districts in accordance with policies adopted by the board.

The Act requires the Commission to study funding, functionality, and other effects of the changes and report conclusions to the Joint Committee on Government Operations on or before September 15, 2017.