

**Research Plan: Senate Bill 1604, House Bill 366, Right-of-Way Dedications**

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Support:

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Deputy Executive Director Approval: Initial: Date:

Executive Director Approval: Initial: Date:

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**Purpose**

To study the law governing right-of-way dedications and determine whether changes should be made to it.

**Background**

New developments need infrastructure such as roads and utility service. Before subdivisions are built, local governments, including their planning commissions, may require property owners to dedicate land or authority to use a portion of their land through an easement for a right-of-way. It is common practice for local governments' planning commissions to adopt a dedication requirement as a part of the subdivision regulations and to require right-of-way dedication along existing roads that have an inadequate width to accommodate the new development. In the right-of-way, infrastructure can be built, or improvements can be made to existing infrastructure.

Local governments typically don't pay owners for dedications, but a right-of-way dedication could be a regulatory taking under the Takings Clause of the Fifth Amendment to the US Constitution if it is not reasonably related to the need for new roads and services created by the development. The Takings Clause prevents governments from taking property from the owner without just compensation, which means paying the owner fair market value for their property.

The Tennessee Association of Professional Surveyors is concerned about the constitutionality of requiring these dedications without compensating the owners and brought a bill to Senator Paul Bailey and Representative Ryan Williams. This legislative

session Senator Bailey filed Senate Bill 1604 and Representative Williams filed its companion, House Bill 366, which would require local governments to pay property owners if they take possession of rights-of-way. At the request of the bill sponsors, the Lieutenant Governor and House Speaker sent a letter to TACIR requesting that it do a study on the bill.

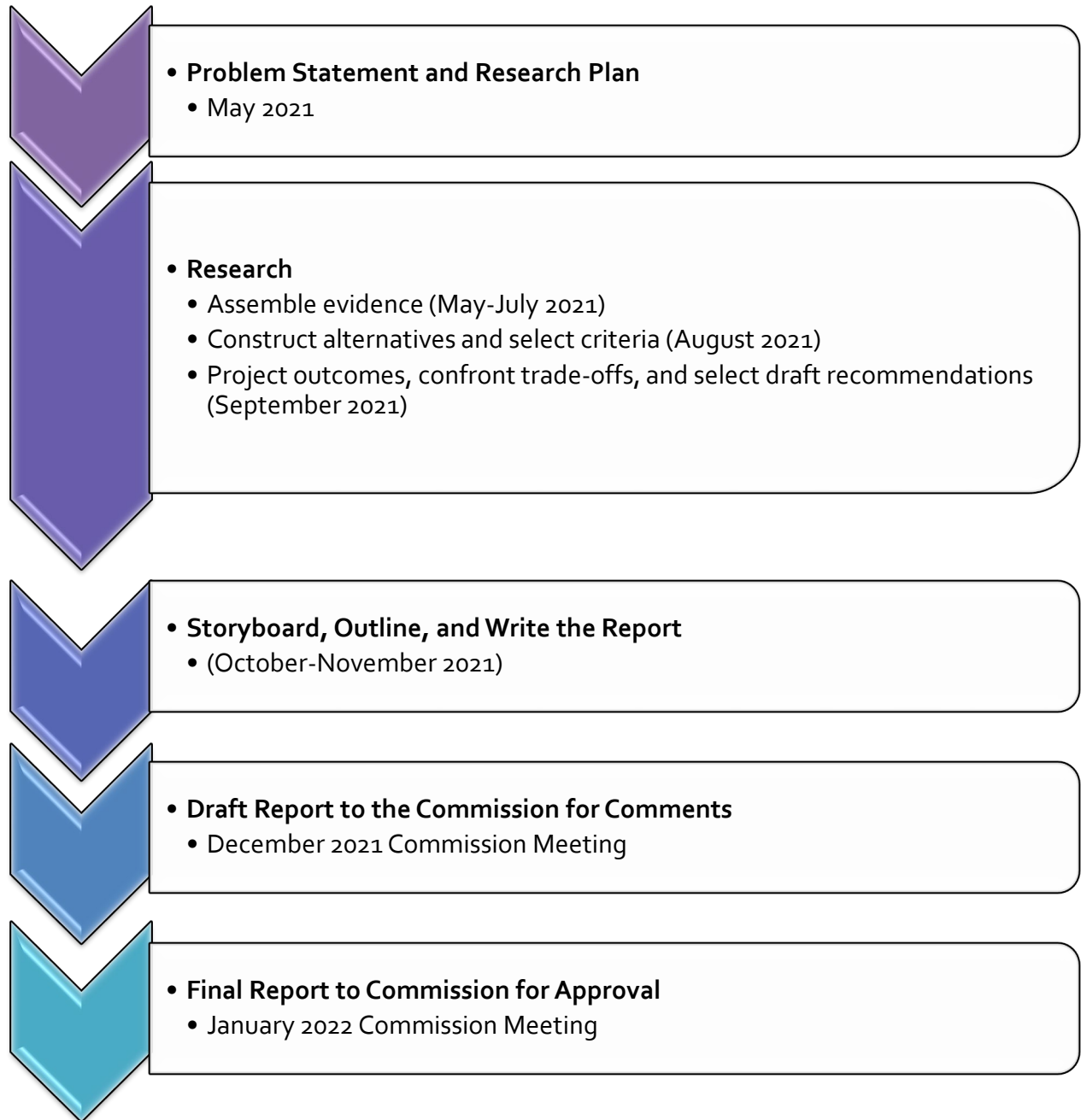
### **Define the Problem**

If a right-of-way dedication is too burdensome, it could cause economic harm for the property owner if they do not receive compensation from the local government.

### **Assemble Some Evidence**

- Review past and present legislation, statutes and case law potentially affecting the referred legislation, Senate Bill 1604/House Bill 366 and other related legislation.
  - Review committee hearings on legislation and summarize comments and concerns of committee members, bill sponsors, and others.
  - Interview bill sponsors.
  - Review fiscal notes. If needed, consult with Fiscal Review Committee staff and follow up with agencies submitting support forms to determine estimated cost and the methods and rationale for the estimates.
- Review relevant federal statutes and case law.
- Review similar laws and procedures in other states.
- Review relevant literature.
- Interview legislators, state officials, industry experts and other stakeholders. These include but are not limited to representatives of the
  - Tennessee Association of Professional Surveyors,
  - Tennessee County Services Association,
  - Tennessee Home Builders Association,
  - Tennessee Chapter, American Planning Association,
  - Tennessee Municipal League, and
  - Tennessee County Highway Association.

## Proposed Research Timeline



**RANDY McNALLY**  
LIEUTENANT GOVERNOR AND  
SPEAKER OF THE SENATE

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**CAMERON SEXTON**  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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April 1, 2021

TACIR  
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Suite 508  
Nashville, Tennessee 37243

To Whom It May Concern,

Speaker of the House Cameron Sexton and Speaker of the Senate Randy McNally formally request TACIR commission a study on HB366/SB1604 by Rep. Ryan Williams and Sen. Paul Bailey.

Thank you,

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**Randy McNally, Lieutenant Governor  
SENATE**

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**Cameron Sexton, Speaker  
HOUSE OF REPRESENTATIVES**

SENATE BILL 1604

By Bailey

AN ACT to amend Tennessee Code Annotated, Title 13;  
Title 62 and Title 66, relative to property located  
along existing rights-of-way.

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

SECTION 1. Tennessee Code Annotated, Title 13, Chapter 7, is amended by adding the following language as a new part:

13-7-701.

As used in this part:

(1) "Governmental entity" means this state or any political subdivision of this state, including, but not limited to, a municipal, county, or regional planning commission, or an applicable legislative body;

(2) "Major road plan" means the major road plan adopted by the applicable regional planning commission in accordance with § 13-3-402(a), whereby a certified copy of the major road plan has been filed in the office or offices of the county register or registers of the county or counties lying in whole or in part in the region;

(3) "Major street plan" means the major street plan adopted by the planning commission of a municipality in accordance with § 13-4-302(a), whereby a certified copy of the major street plan has been filed in the office of the county register of the county in which the municipality is located;

(4) "Regional planning commission" means any regional planning commission established under § 13-3-101; and

(5) "Right-of-way reservation" means:

(A) An agreement between a landowner and a governmental entity whereby the landowner is prohibited from erecting a permanent building within an area designated as the location of a future right-of-way in the major road plan or major street plan; and

(B) A reservation that does not affect the application of the existing right-of-way for determining the placement of easements or setbacks.

13-7-702.

(a) A governmental entity shall not require a right-of-way dedication that requires a landowner to transfer ownership of any portion of the landowner's property located along an existing public right-of-way to the governmental entity as a condition of approving any application made to the governmental entity.

(b)

(1) Subject to subdivisions (b)(2)-(5), a governmental entity may require a right-of-way reservation as a condition of approving any proposed subdivision of a property.

(2) If a governmental entity requires a right-of-way reservation pursuant to subdivision (b)(1), then the landowner has the choice of agreeing to a right-of-way reservation or a right-of-way dedication.

(3) If a landowner, who has agreed to a right-of-way reservation pursuant to subdivision (b)(2), transfers the applicable property to another person, then that new landowner may convert the right-of-way reservation into a right-of-way dedication through a process determined by the governmental entity.

(4) If the governmental entity diminishes the distance of the required right-of-way in the adopted major road plan or major street plan, as applicable,

following the creation of a right-of-way reservation, then the right-of-way reservation automatically diminishes to reflect the new distance in the adopted major road plan or major street plan, as applicable.

(5) If a governmental entity takes possession of the property covered by a right-of-way reservation, then the landowner of the property is entitled to just compensation as required by law.

SECTION 2. Tennessee Code Annotated, Title 62, Chapter 13, Part 4, is amended by adding the following as a new section:

Notwithstanding §§ 62-13-403, 62-13-404, and 66-5-206, a real estate licensee has no duty to inform any party to a real estate transaction concerning a right-of-way reservation or any rights attached to the real estate with regard to § 13-7-702.

SECTION 3. This act takes effect upon becoming a law, the public welfare requiring it.