

Right- of -Way Dedication
HB0366 by Williams / SB1604 by Bailey

HB366/SB1604 is an act to amend Tennessee Code Annotated, Title 13; Title 62 and Title 66, relative to property located **along existing rights-of-way**. The legislation prohibits governmental entities from requiring right-of-way dedication as a condition of approving any proposed subdivision of a property by allowing for an option **between a ROW dedication and a ROW reservation**. The legislation also requires governmental entities taking possession of property within ROW reservations to justly compensate the property owner.

Why is this legislation needed ?

It is a violation of personal property rights according to the founding documents of the state of TN.

Tennessee State Constitution Article 1, Section 21 of the Declaration of Rights: “That no man’s particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefore.”

Loss of Property taxes collected:

The current dedication practice is grossly reducing the amount of taxable property statewide, and therefore adversely affects each county's incoming property taxes. Once the property is dedicated, the tax revenue is lost.

There is much confusion on how many counties actually perform major roadway improvements along existing ROWs:

Out of 95 total counties, approximately 15 of said counties actually perform Major Roadway Improvements that involve Property Acquisitions. Therefore, approximately 80 counties are in way adversely impacted by the proposed legislation, and more harm is being done to them under the current practices.

According to Knox County’s Director of Engineering and Public Works, the current practice of required right-of-way dedications has almost no positive impact on required property acquisitions during Major Roadway Improvements (less than 5%).

The option of ROW Reservation will leave a property tax revenue stream intact and place a reservation on the property that could possibly be needed someday for right-of-way purposes. Thereby minimizing costs associated with property acquisitions for the 15 +/- counties that do perform property acquisitions.

Why the ROW Reservation is good policy:

The reservation will allow the private property owner to retain their property, continue to pay property tax on it, and be put on notice that should the public right-of-way ever need to be widened the property will be purchased by the governing body just like everyone else along the right-of-way.

What if we leave things be?

If the current practice continues at some point an individual or group will sue the governing bodies for violation of personal rights. In fact most public right-of-ways are not owned in fee simple title by the governing body. Most public right-of-ways are easements because they never actually purchased title to the land the right-of-way encompasses. Only TDOT owns the majority of its right-of-way.

Fiscal Impacts created by HB366

The small percentage of cases this would apply:

Our guess based on internal research is that road improvements utilizing existing ROW dedications are almost never utilized. Statewide, probably less than 1%. In the more populated areas, the utilization of the ROW dedications is probably less than 10%.

See appendix (2017 Upper Cumberland Road Superintendents) of the 7 Road Superintendents from the Upper Cumberland that have not had any county roads widened that required purchasing additional ROW.

Opposition to this legislation claimed, “A precise increase in local expenditures is dependent upon multiple unknown factors such as: the extent of land acquired through eminent domain; the value of such land; the extent of court costs associated with eminent domain proceedings; and the number of occurrences statewide annually; however, each occurrence is estimated to result in an increase in local expenditures exceeding \$10,000.”

We would strongly disagree. While no one can guarantee that eminent domain claims can happen, they will be minimal. As for the number of occurrences statewide annually, only the heavily populated areas of the state are currently securing ROW for road improvement projects. The rural areas of the state limit their road improvement projects to current ROW limits.

Is there a way a formula can be created to see how many county roads have been required to purchase additional ROW? We believe that if every county was surveyed, that a very small percentage of the counties would have actually had to purchase ROW. Davidson County has their own system, so they would not be included. Clay County, Jackson County, and Pickett County do not have planning bodies, so they would also not need to be included

Diminishes the need for eminent domain suits:

The legislation did not prohibit ROW dedications, but provide property owners an option of creating a reservation for future ROW use. Because the Reservation area will be defined and current and future property owners will be placed on notice of the potential for ROW use, the need to utilize eminent domain will be minimized.

See attachment in Appendix: “right of way reservation Area Note” This example shows how the land owner will be notified of the ROW Reservation /legally informed and provided notice of the Right of Way Reservation.

Property taxes collected:

The current practices are taking properties off the property tax roles for potential ROW for years on end. The majority of the ROW's taken through the current practices are never utilized for ROW improvement projects. Therefore, the loss of revenue to the local governments by the current practices needs to be considered in the fiscal impact. The proposed legislation will keep properties on the tax roles for years on end thereby, generating revenue for ROW acquisitions when required.

Improvements:

The ROW Reservations acquisitions will be on undeveloped properties, thus minimizing acquisition costs when they do arise. The proposed legislation includes a mechanism that prevents the properties within the ROW Reservation from being improved with any major infrastructure. Thereby, limiting property acquisition costs by local governments in the event of ROW acquisitions to only unimproved properties.

Traffic Impact Studies and Large Developments:

There appears to be representation that large developments will cease to participate in existing infrastructure improvements that are affected directly by their development, placing this burden on the local governments. This is not true. When a development of significant size is considered, a traffic impact study is required. Required ROW improvements that result from large developments will be addressed at the time of the development and will continue to be incurred by the private developer.

If everyone is doing it how can it be wrong?

TDOT does not practice takings of property. Only local planning commissions practice this and they have it as part of subdivision regulation policy. Meaning that unless personal property is given, free of charge, to the benefit of the public then they will not approve a division.

Nashville- Davidson County Metropolitan Planning Commission is another good example of how property should be dedicated. Surveyors in metro Nashville are already using reservation along with dedication. In Their subdivision regulations, under "Requirements for Dedication, Reservations, or Improvements" (section 3-10, subsection 2 C) found on page 47 reads:

Developed Property. When property containing existing structures is being divided simply to place each structure on a separate lot and the future right-of-way will fall within the existing structure footprint, then the applicant shall be required to note on the face of the plat any additional area necessary for compliance with the Major Street Plan "reserved for future right-of-way." The plat shall also contain a note stating, "When any existing structure is demolished, the setback requirements for any new structure shall be measured from the reservation line."

Cole V. Dych, 535 S.W. 2d 315 (Tenn. 1976)

- The current practices by Planning Commissions, requiring the dedication of rights-of-way in exchange for plat approvals, is unconstitutional and should not be ongoing.
- There are very few, if any, jurisdictions that formally address this requirement for a dedication along an existing public right-of-way.
- Benjamin Moorman has addressed this with Knox County and City of Knoxville Law Departments and been told that while he was technically correct, they have never made a practice of formally accepting said rights-of-way and they have not altered their practices even upon being made aware of their shortcomings.

Supreme Court of Tennessee, Phillips V. Montgomery County

- Case law regarding the denial of subdivision based on the Major road plan by a planning commission. Highlights of the case:
- “In their complaint, the property Owners alleged that the Planning Commission's denial of their plat was based solely upon the fact that their land lies in the path of a potential future extension of State Highway 374 and that there are no current plans to begin construction or condemnation proceedings for the highway extension.”
- “Analysis of the case: The Property Owners argue that the denial of their subdivision plat constitutes a regulatory taking for which article 1 section 21 of the Tennessee Constitution requires compensation pursuant to the inverse condemnation statute, TN Code Annotated section 29-16-123.”
- “The Takings Clause does not prohibit the government from taking private property but instead places a condition on the exercise of that power, by requiring the government to pay just compensation for any property taken. The requirement of just compensation prevents the government from forcing some people alone to bear burdens which in all fairness and justice should be borne by the public as a whole.”
- “Conclusion: We hold that, like the Takings Clause of the US Constitution, article 1 section 21 of the Tennessee Constitution encompasses regulatory takings and that the Property Owners complaint is sufficient to allege a state constitutional regulatory taking claim.”

Appendix:

2017 Upper Cumberland Road Superintendents

The following information comes from Charles Wittenburg

I thought some great information would be the number of roads that have been widened in each of the surrounding counties that have planning. Each has been contacted and spoken with personally by Renita Sommers (CFO). They were each made aware of the bill, some already knew, and they supported it. They mostly said they have all the right-of-way they need to upkeep with the funds they have, and it has caused issues for them. For example, when a property owner says they have to install a culvert for them because the planner told them the right of way was 60 feet while the County Road List says 35 feet.

Putnam County	Randy Jones (931) 526-4864	7 years	Fact: NO widening
Overton County	James Norrod (931) 823-5631	5 years	Fact: NO widening
White County	Clay Parker (931) 837-2110	5 years	Fact: NO widening
Dekalb County	Wallace Agee (615) 597-4144	3 years	Fact: NO widening
Fentress County	Scott Norris (931) 879-7913	3 years	Fact: NO widening
Cumberland County	Scott Blaylock (931) 484-5424	7 years	Fact: NO widening
Smith County	Steve Coble (615) 683-3326	10 years	Fact: NO widening

Each said to their knowledge no widening had taken place on county roads prior to them taking their position as well, I would take this as opinion however. The above are facts.

If in fact no roads are being widened the taking of property is simply unnecessary.

