

**STATUS OF LEGISLATION OF IMPORTANCE TO THE
TENNESSEE CHAPTER, AMERICAN PLANNING ASSOCIATION BEFORE
THE 2nd SESSION OF THE 106th TENNESSEE GENERAL ASSEMBLY**

Many members of the legislature had hoped to finish this session by mid to late April. Apparently, this won't happen. The latest information appears to put adjournment into mid May. However, many committees are beginning to shut down, subject always to the call of the chair. The Senate State and Local Government Committee and the House Local Government Subcommittee have closed. Next week could be the last meeting of the House State and Local Government Committee. Most of the legislation in which TAPA has an interest has passed or been amended in some ways. Check the summaries below.

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April 9, 2010

Latest action indicated by yellow highlight

PLANNING BILLS

HB 2709 by *Turner M (*SB 2576 by *Haynes)

Planning, Public - As introduced, extends the requirement that any land use decisions made by a legislative body or planning commission after the adoption of a general regional plan be consistent with the plan to also apply to a board of zoning appeals when such board is exercising its powers on matters other than variances. - Amends TCA Section 13-3-304(b) and Section 13-4-202(b)(2)(B)(iii).

Summary

Current law provides that after adoption of the general plan by the legislative body, all land use decisions of the planning commission and the legislative body shall be consistent with the plan. There is no mention of the board of zoning appeals.

A board of zoning appeals also makes land use decisions in carrying out their statutory functions. When the statute was amended to include the language requiring land use decisions of planning commissions and legislative bodies to be consistent with the plan, the board of zoning appeals was left out. This amendment corrects that oversight.

A variance is excluded from this requirement because a variance is related to the physical condition of a particular parcel of land or the shape or size of a particular lot created prior to the adoption of the zoning ordinances. Such variances are site specific and are not a land use decision that would be addressed in a general plan.

The bill was amended on the floor to make the effective date July 1, 2011 in order to overcome an objection to the bill.

Status

House: Filed; on Local Gov. Sub. calendar for Feb. 10; passed subcommittee; passed full committee on 2-16; on to Calendar and Rules; passed C & R, on floor for 2-22; **passed House.**

Senate: Filed; on State & Local Gov. Committee calendar for 2-17; passed committee; on Senate Calendar for 2-22, **passed Senate.**

Now Public Chapter 648.

HB 2710 by *Turner M (*SB 2577 by *Haynes)

Planning, Public - As introduced, changes reference from "regional planning commission" to "municipal planning commission" in regard to which entity's regulations have to have been met in order for the municipal planning secretary to be authorized to approve the subdividing of a tract into no more than two lots, without having to have approval of the entire commission. - Amends TCA Section 13-4-302(a).

Summary

Current law provides that a subdivision that divides a tract into no more than two lots and staff certifies that the plat complies with all regulations governing the subdivision of land, then the approval of the plat can be made by staff rather than the planning commission

This particular code section is within the municipal statutes; however, the word regional was mistakenly inserted where the word should have municipal. This amendment corrects the language.

Status

House: Filed; on Local Gov. Sub. calendar for Feb. 10; passed subcommittee; passed full committee on 2-16; on to Calendar and Rules; passed C & R; on floor consent calendar for 2-22; **passed House.**

Senate: Filed; on State & Local Gov. Committee calendar for 2-17; passed committee; on Senate consent calendar for 2-22; **passed Senate.**

Now Public Chapter 625.

HB 2711 by *Turner M. (*SB 2578 by *Haynes.)

Planning, Public - As introduced, authorizes planning commissions to promulgate provisions in its subdivision regulations, and recommend amendments to the zoning ordinance, for the establishment of review and approval powers for site plans and the establishment under zoning

provisions for the review and approval of sustainable design and development of property. - Amends TCA Title 13, Chapter 3, Part 4 and Title 13, Chapter 4, Part 3.

Summary

Current law provides that planning commissions may adopt subdivision regulations and recommend a zoning ordinance, which is adopted by the legislative body. However, current law does not mention site plans, planned unit developments, overlay districts or the other types of developments noted in the above highlights. The law also does not mention holding bonds to guarantee private improvements such as sidewalks, paved areas or landscaping.

This bill provides that:

- A regional or municipal planning commission shall have the power to promulgate provisions in its subdivision regulations and recommend amendments to the zoning ordinance for the establishment of such review and approval powers for site plans and the establishment under the zoning provisions for review and approval of planned unit developments, overlay districts, mixed use developments, condominiums and other types of sustainable design and development of property.
- The infrastructure and internal development improvements such as but not limited to public and non-public roads, water and sewer lines, landscaping, green space, sustainable design features and other improvements as required by the planning commission either through its subdivision regulation or through the local government's zoning ordinance shall be subject to bonding or other methods of guaranteeing their installation.
- The planning commission may set and hold these guaranteeing instruments or may designate another governmental body that duty and function.
- The amendment will also authorize a planning commission to set and hold a bond or other types of securities to guarantee the installation of infrastructure to serve the public in developments where the infrastructure will be owned by the developer, landowner or a landowner's association.

Status

House: Filed; on Local Gov. Sub. calendar for Feb. 10; passed subcommittee; passed full committee on 2-16; on to Calendar and Rules; passed C & R; on floor for 2-22; reset for 3-1; reset for 3-4; **passed House.**

Senate: Filed; on State & Local Gov. Committee calendar for 2-17; passed committee; on consent calendar for 2-22; **passed Senate.**

Now Public Chapter 634.

HB 2712 by *Turner M. (*SB 2580 by *Haynes.)

Planning, Public - As introduced, revises various provisions governing the organization, rules, appointment of director and staff, and disbursement of funds of municipal and regional planning commissions.

Summary – This bill has been amended. The summary below reflects the amendment, which was agreed to by TAPA, TML and TSCA.

This bill provides:

- Each planning commission shall elect its chair from among the appointed members and shall have a term of one year with eligibility for reelection.
- Each planning commission shall adopt rules for the transaction of business which shall include but not be limited to the selection of additional officers from among the members it deems appropriate, the requirements for the planning commission to make findings of fact, statements of material evidence and reasons for its actions as part of each motion or action of the commission, the keeping of a record of its resolutions, transactions, motions, actions and determinations, which shall be a public record.
- Any existing provision relating to the appointment of a planning director contained in any municipal, city, town, metropolitan or county charter, private act or interlocal agreement must be utilized in appointing a planning director.
- In the absence of the above provision the chief executive officer of a municipality, who shall be the city manager or administrator, where one exists, or the mayor if there is no manager or administrator, or the county mayor, county executive or metropolitan mayor or executive shall have the power to appoint and fix the compensation, within the funds appropriated by the legislative body, of a planning director, who shall be qualified by training, experience, membership in the American Institute of Certified Planners, or education in city, regional or state planning or related academic fields.
- Any person serving as a planning director on the effective date of this act shall not be required to meet the qualifications stated above.
- Where allowed under the prevailing local authority, the planning director shall have the power and authority to hire and fix the compensation, within the funds appropriated by the legislative body for this purpose, of such other employees and staff as he or she may deem necessary for the work of the planning commission.
- Where allowed under the prevailing local authority, the planning commission may also contract with planners or other experts for such services as it may require within the funds appropriated by the legislative body for this purpose.
- The appropriate financial official of the municipality, city or town or the trustee or other appropriate financial official of the county or metropolitan government, within the funds appropriated by the legislative body for this purpose, will disperse funds for the salary or salaries of the planning director and staff and the operational expenses of the planning office and the contracted services of planners or other experts retained to provide assistance to and studies, plans, reviews and reports for the regional planning commission.
- The municipal planning commission or a regional planning commission serving a single county may also, through the legislative body, receive and expend funds from grants, gifts, contracts, fees, and appropriations from federal, state, other local governments or private sources for the purpose of carrying on its planning functions.

- A multi-jurisdictional regional planning commission may receive and expend funds from grants, gifts, contracts, fees, and appropriations from federal, state, other local governments or private sources for the purpose of carrying on its planning functions in accordance with the provisions of the interlocal agreement which created the commission.

The existing TCA § 13-4-102 (municipal) provides for election of a chair, term of office, adoption of rules for transactions, findings and determinations, which shall be a public record. It also provides that the planning commission may appoint such employees and staff as needed and may contract with planners and consultants for services it may require. The expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated by the legislative body.

The existing TCA § 13-3-103 (regional) provides for election of a chair, term of office, adoption of rules for transactions, findings and determinations, which shall be a public record and the provision to create and fill other offices. It has the power to appoint and fix the compensation of an executive engineer secretary, provided that such appointment shall be subject to the approval of the Department of Economic and Community Development. It also has the power to appoint and fix the compensation of other employees and may contract with planners and other experts. All expenditures of the commission must be within an amount approved by the department.

A major problem with the current law is that only the planning commission is given the authority to appoint employees and fix their compensation. In actual practice this is not usually done, and it puts the hiring practices of most cities and counties in violation of these sections of the code. Another problem is found in the regional language (13-3-103) where the commission is authorized to appoint an "executive engineer secretary" but not a planning director. The term executive engineer secretary is antiquated and has no real meaning. An additional problem in the regional authority is that the Department of Economic and Community Development is designated to approve the hiring of the engineer/secretary and to approve all expenditures of the commission. This also is not done.

Passage of this bill will rectify those problems and make the code sections applying to both municipalities and counties in agreement to contain the same language.

Status

House: Filed; on Local Gov. Sub. calendar for Feb. 10; action deferred for one week pending amendments; action deferred again in Local Gov. Sub. On 2-17; deferred until 2-24; deferred until 3-3, passed subcommittee; on full committee calendar for 3-9; passed committee; on floor calendar for 3-15; **passed House**.

Senate: Filed; on State & Local Gov. Committee calendar for 2-17; deferred until 3-3; deferred until 3-10; deferred again until 3-17; passed committee; on floor calendar for 3-22; **passed Senate**; **signed by Governor**.

HB 2714 by *Turner M. (*SB 2579 by *Haynes.)

Planning, Public - As introduced, revises provisions governing legislative approval of amendments to general regional plan or zoning ordinance. - Amends TCA Section 13-3-304(b)(2)(A); Section 13-4-202(b)(2)(A); Section 13-7-104; Section 13-7-105(a); Section 13-7-203(b) and Section 13-7-204.

Status

Withdrawn, both House and Senate.

*HB 2893 by *Turner M (SB 3722 by *Haynes)

Planning, Public - As introduced, adds to the purposes of zoning regulations a requirement to insure that a planned community does not violate any of the covenants as presented and approved by a planning commission. - Amends TCA Title 13.

Summary

This bill amends the regional zoning regulations to add under the purposes of zoning regulations the clause "insuring that a planned community does not violate any of the covenants as presented and approved by the planning commission." It appears that the intent is to permit a planning commission under the zoning ordinance to provide for the enforcement of all requirements imposed on a planned community (which is not defined).

Status

House: Filed; held on desk as caption bill;

Senate: Filed;

*HB 0187 by *Casada. (SB 0135 by *Ketrone.)

Workers Compensation - As introduced, increases from 10 to 15 days the period of time after expiration of a building permit that the county building commission has to return a certificate of insurance or a workers' compensation policy to the person who obtained the permit. - Amends TCA Title 13.

Summary

This is a caption bill that opens up all of Title 13. Rep. Casada has indicated that it simply a place holder in case anybody needs the caption late in the session. However, since it opens all of the planning statutes, it must be watched closely.

He noted this year that if anyone wants to use the caption to file an amendment to make a new bill, he will give that representative the bill.

The bill has now been amended to authorize the South Central Development District to construct and finance buildings for the use of the agency.

Status

This bill is a holdover from last year but can be brought up at any time.

House – Caption bill; held on desk; no action; **NEW ACTION:** Assigned to Rep. Marsh who intends to amend it to apply to a development grant situation; on full State & Local Gov. Committee calendar for 3-9; passed committee; on floor calendar for 3-15; **passed House.**

Senate: On calendar for State & Local Gov. Comm. for 3-10; passed committee; on floor calendar for 3-24; **passed Senate.**

ZONING BILLS

HB 3956 by *Stewart (*SB 3430 by *Henry)

Zoning - As introduced, allows multifamily residential property to destroy present facilities and reconstruct new facilities even after a change in zoning. - Amends TCA Title 13. {13-7-208(d)}

Summary

This bill adds to the present law zoning provisions to allow multifamily residential property, whether owned or leased as rental property, that is permitted to operate under zoning regulations or exceptions to regulations immediately preceding a change in zoning to destroy present facilities and reconstruct new facilities necessary to the conduct of such residential property subsequent to the zoning change. However, no destruction and rebuilding may occur that acts to change the use classification of the land as classified under any zoning regulations or exceptions thereto in effect immediately prior to or subsequent to a change in the zoning of the land area on which such multifamily residential property is located. This bill specifies that no building permit or like permission for demolition, construction or landscaping may be denied to an owner of a multifamily residential property seeking to destroy and reconstruct facilities necessary to the continued conduct of the activities of that residential property, where such conduct was permitted prior to a change in zoning, so long as there is a reasonable amount of space for such expansion on the property situated within the area which is affected by the change in zoning, so as to avoid nuisances to adjoining landowners.

Please note that this bill has some possible downsides since it introduces another type use given the protection of 208.

The bill is to be amended to provide that in any reconstruction the original density and setback requirements will have to be observed.

Passed Senate with the amendment on.

Status

House: Filed; on calendar for Local Gov. Sub. For 3-10; action deferred until 3-17; deferred until 3-24; deferred until 3-31; passed subcommittee on 4-7; on calendar for full committee on 4-13;

Senate: Filed; on calendar for State & Local Gov. Comm. for 3-3; passed committee; on floor calendar for 3-11, deferred until 3-17; passed Senate.

*HB 3381 by *Sontany. (SB 3716 by *Haynes.)

Zoning - As introduced, authorizes municipalities with zoning regulations to adopt ordinance to terminate nonconforming establishments or uses following a period of amortization from five to 20 years. - Amends TCA Title 13, Chapter 7, Part 2.

Summary

This bill authorizes the legislative body of any municipality or metropolitan form of government that has adopted zoning regulations to establish by ordinance a method for the termination or elimination of a nonconforming industrial, commercial or business establishment or use following a period for amortization of the nonconforming establishment or use. The period of amortization must be between five and 20 years. The period of amortization must commence from the date the establishment or use attained legally nonconforming status but the period may not be less than two years from the effective date of the ordinance adopted pursuant to this bill.

Status

House: Filed; assigned to Local Gov. Subcommittee;

Senate: Filed; assigned to State & Local Gov. Committee;

PUBLIC CHAPTER 1101 GROWTH PLANNING (Title 6, Chapter 58)

HB 3864 by *Mumpower. (*SB 3489 by *Ramsey.)

Growth Boundaries - As introduced, allows a municipality to expand its urban growth boundaries to include tracts of land that are 10 acres or smaller when certain criteria are met. - Amends TCA Section 6-58-104.

Summary

This bill amends the procedure to amend an urban growth boundary if certain requirements are met. It provides:

- A municipality may extend its urban growth boundary to include a tract ten acres in size or smaller if;
- The tract is contiguous to an existing urban growth boundary that has already been annexed;
- The tract is being provided with water and sewer services; and
- The owner of the tract consents to the change.

If a municipality uses the above procedure, action of the coordinating committee is not required nor is the approval of the other governmental entities in the county. The approval of the Local Government Planning Advisory Committee is not required. The approval of the municipality is all that is required.

Obviously, this type action completely by-passes all the existing procedural and planning requirements of the act. The bill appears to address a specific situation in some community.

The sponsor has indicated that this is intended to apply to a specific subdivision in Kingsport where the developer wants to add a small piece of land currently outside of but adjoining the subdivision and the growth boundary. The procedure established here completely by-passes all the other procedures for amending a growth plan including review and approval by other governmental units.

We asked for and received Senator Ramsey's agreement that the bill will have a sunset provision.

Status

House: Filed; on calendar for Local Gov. Subcommittee on 4-7; passed subcommittee; on full committee calendar for 4-13;

Senate: Filed; on calendar for State & Local Gov. Comm. For 3-24; passed committee; on floor for 3-29; approved by Senate with sunset amendment.

SB 3634 by *Burchett. (*HB 3695 by *Niceley.)

Air Pollution - As introduced, prohibits county designated as non-attainment county from proposing planned growth areas that include certain agricultural property. - Amends TCA Title 6, Chapter 58,

Part 1; Title 7, Chapter 53, Part 1; Title 29, Chapter 16; Title 65, Chapter 15 and Title 68, Chapter 201.

Summary

This bill amends PC 1101 to prevent a legislative body in any county designated as non-attainment by EPA from proposing a planned growth area to the coordinating committee and prevents the committee from approving a planned growth area if the areas contain any Class I, II or III agricultural area as defined by the U. S. Department of Agriculture. It further provides that the state Air Pollution Control Board shall promulgate rules to implement the act.

It would appear that the bill is designed to address a specific situation regarding agricultural land and a designation of a planned growth area.

Note: A discussion with Rep. Nicely indicates that his intent is protect the best quality soils from being developed since these soils are very limited in extent and the best soils for growing food. The bill will likely be amended.

Status

House: Filed; on calendar of Local Gov. Sub. For 2-24; deferred until 3-10; discussed and then deferred until 3-17; passed subcommittee; **taken off-notice in full committee stopping the bill.**

Senate: Filed; assigned to Environment & Conservation Committee; on calendar for 3-23; deferred to 3-30; **placed in General Subcommittee stopping action on the bill.**

ANNEXATION BILLS

SB 2581 by *Haynes. (HB 2713 by *Turner M.)

Annexation - As introduced, revises provisions governing a municipality annexing by ordinance territory outside its urban growth boundary. - Amends TCA Section 6-58-111.

Summary

Under present law, a municipality may not annex territory by ordinance beyond its urban growth boundary without following the procedure described below:

- (1) If a municipality desires to annex territory beyond its urban growth boundary, the municipality must first propose an amendment to its urban growth boundary with the coordinating committee under procedures specified in present law; and
- (2) As an alternative to proposing a change in the urban growth boundary to the coordinating committee, the municipality may annex a territory located in the county's planned growth area or

rural area by referendum.

This bill rewrites the above-described provisions. Under this bill:

(1) Prior to a municipality annexing by ordinance territory outside its existing urban growth boundary whether the territory desired for annexation is within another municipality's urban growth boundary or a county's planned growth area or rural area, it must first amend the growth plan by having its desired change to the urban growth boundary submitted to the coordinating committee and then receive a recommendation for or against the amendment from the coordinating committee. The coordinating committee then must submit the proposed amendment with its recommendation to all the legislative bodies for approval. If the amendment to the growth plan is approved by the legislative bodies or by the dispute resolution panel, it will then be submitted to the local government planning advisory committee for its approval; and
(2) As an alternative to a municipality annexing in a county's planned growth area or rural area by first amending the growth plan as described in (1), a municipality may annex within a county's planned growth area or rural area, but the annexation must be by referendum only and not by ordinance.

A recent decision of the Court of Appeals in the case *City of Harriman, Tennessee v. Roane County Election Commission, et al* has the practical effect of allowing municipalities to annex territory outside of their urban growth boundary by ordinance without fulfilling the amendment process specified in TCA § 6-58-104. The court decided that a municipality only has to propose an amendment to its urban growth boundary and that an actual amended growth plan is not required by the statute. Another effect of this decision is the probability of reintroducing "annexation wars" between cities once again since all a city has to do to annex outside of its urban growth boundary is to propose an amendment to the boundary.

This amendment will put back in place the specified procedure for amending a growth plan prior to annexation by ordinance outside of its urban growth boundary.

Status

House: Filed; on calendar of Local Gov. Sub. for 2-10; action deferred until the committee schedules an annexation calendar for all related bills; on calendar for Local Gov. Subcommittee on 4-6; passed subcommittee; on full committee calendar for 4-13;

Senate: Filed; on State & Local Gov. Committee calendar for 2-17; deferred until 3-3; deferred until 3-10; deferred until 3-17; passed committee; on floor calendar for 3-22; passed Senate.

SB 2402 by *Watson. (*HB 2429 by *Cobb J.)

Annexation - As introduced, requires election to be held by voters who reside in territory proposed for annexation for ordinance initiated by municipality to become operative; restores the right to trial by jury in quo warranto actions contesting the validity of municipal annexation. - Amends TCA Title 6, Chapter 51 and Title 6, Chapter 58.

Summary

Under present law, a municipality may extend its corporate limits by annexation of such territory adjoining its existing boundaries as may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole. The municipality may undertake such annexation:

(1) When petitioned by a majority of the residents and property owners of the affected territory; or
(2) Upon its own initiative, by ordinance, when it appears that the prosperity of such municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property endangered. When utilizing this method, there must be notice and a public hearing. Such an ordinance does not become operative until 30 days after its final passage. During this 30-day period, the municipality must notify the county mayor in whose county the territory being annexed is located that territory located in the unincorporated part of the county is being annexed by the municipality. The notification must include a copy of the annexation ordinance and a map of the area being annexed.

This bill establishes additional requirements to be followed when annexation is to be accomplished by the municipality upon its own initiative by ordinance, as described above in (2). Under this bill, the ordinance would not become operative until an election is held at the expense of the proposing municipality for approval or disapproval of such annexation by the qualified voters who reside in the territory proposed for annexation. The operation of the ordinance would be subject to approval of the voters who reside in such territory.

The county election commission would hold an election on the ordinance, providing options to vote "For" or "Against" the ordinance, not less than 45 days nor more than 60 days after the receipt of a certified copy of such ordinance, and a majority vote of those voting in the election would determine whether the ordinance is to be operative. If the vote is for the ordinance, the ordinance would become operative 30 days after the date that the county election commission makes its official canvass of the election returns. If the ordinance is rejected, then all relevant provisions in present law would apply to the question of annexation in such county.

Under present law, any aggrieved owner of property that borders or lies within territory that is the subject of an annexation ordinance prior may file a suit in the nature of a quo warranto proceeding to contest the validity of the annexation ordinance.

The present law governing comprehensive growth plans specifies the following:
(1) A municipality may use any of the methods described in present law to annex territory within a municipality's approved urban growth boundaries; and
(2) If a quo warranto action is filed to challenge the annexation, the party filing the action has the burden of proving that an annexation ordinance is unreasonable for the overall well-being of the communities involved or the health, safety, and welfare of the citizens and property owners of the municipality and territory will not be materially retarded in the absence of such annexation. This bill removes the provisions of (2).

Under present law, in any such quo warranto action, the action must be tried by the circuit court

judge or chancellor without a jury. This bill adds the option of having a trial by jury.

This bill would apply to any pending or future actions involving annexation as of this bill's effective date.

This bill would basically remove many of the provisions of PC 1101 that were negotiated in 1998 in the drafting and compromising on the law.

Status

House: Filed 11-24-09; placed on calendar of Local Gov. Subcommittee for 4-7; passed subcommittee; on full committee calendar for 4-13;

Senate: Filed 12-15-09; on calendar of Senate State & Local Gov. Comm. For 3-24; deferred until 4-7; bill failed in committee.

HB 3779 by *Todd. (*SB 2695 by *Ketrone.)

Annexation - As introduced, prohibits annexing municipalities from providing garbage collection services to newly annexed territories for five years from date of annexation unless collectors who served territory prior to annexation are contracted with for such services or are otherwise compensated. - Amends TCA Title 6, Chapter 51 and Title 7, Chapter 3.

Summary

This bill prohibits an annexing municipality from providing garbage and rubbish collection services to residents in an annexed territory for five years from the date the territory was annexed unless the municipality:

- (1) Compensates every private garbage and rubbish collector that served at least 5 percent of the residents of the annexed area in the two years immediately prior to the date of annexation in an amount equal to 24 times the average gross monthly revenue that the private garbage or rubbish collector derived from the annexed area during the three months immediately preceding the date when such annexation became effective; or
- (2) The municipality offers to contract with each private garbage and rubbish collector that served at least 5 percent of the residents of the annexed area for a period of at least two years immediately prior to the date of annexation to continue to provide garbage and rubbish collection services in the annexed area on behalf of the municipality for a period of at least five years from the date the territory was annexed. Any such offer to contract must be made in good faith and include the following terms:
 - (A) The garbage and rubbish collector must continue to serve as many residents as it served on the date of annexation;
 - (B) The garbage and rubbish collector must perform collection services of a substantially similar nature to those performed by such collector in the annexed area prior to annexation;

(C) The rate paid by the municipality to the garbage and rubbish collector in the first year of the contract may not be less than 95 percent of the average of rates paid for garbage and rubbish collection services in the annexed area in the year prior to the date of annexation; and
(D) The rate paid by the municipality in each subsequent year of the contract must increase by a percentage not less than the consumer price index for the previous year.

Similarly, this bill prohibits a metropolitan government from providing garbage and rubbish collection services within any geographical territory not served by a municipal government or special sanitation district for five years from the date the metropolitan government was created and established unless:

- (1) The metropolitan government compensates every private garbage and rubbish collector that served at least 5 percent of the residents not served by a municipal government or special sanitation district in the two years immediately prior to the date of the metropolitan government's creation and establishment in an amount equal to 24 times the average gross monthly revenue that the private garbage or rubbish collector derived from the geographical territory not served by a municipal government or special sanitation district during the three months immediately preceding the date when such metropolitan government was created and established; or
- (2) The metropolitan government offers to contract with each private garbage and rubbish collector that served at least 5 percent of the residents not served by a municipal government or special sanitation district for a period of at least two years immediately prior to the date of the metropolitan government's creation and establishment to continue to provide garbage and rubbish collection services in the geographical territory not served by a municipal government or special sanitation district on behalf of the newly formed metropolitan government for a period of at least five years. Any such offer to contract shall be made in good faith and shall include the following terms:
 - (A) The garbage and rubbish collector must continue to serve as many residents as it did on the date the metropolitan government was created and established;
 - (B) The garbage and rubbish collector must perform collection services of a substantially similar nature to those performed by such collector in the geographical territory not served by a municipal government or special sanitation district prior to the metropolitan government's creation and establishment;
 - (C) The rate paid by the metropolitan government to the garbage and rubbish collector in the first year of the contract may not be less than 95 percent of the average of rates paid for garbage and rubbish collection services in the geographical territory not served by a municipal government or special sanitation district in the year prior to the date the metropolitan government was created and established; and
 - (D) The rate paid by the metropolitan government in each subsequent year of the contract must increase by a percentage not less than the consumer price index for the previous year.

Status

House: Filed; on Local Gov. Subcommittee calendar for 2-17; deferred until 2-24; deferred until special annexation calendar; on calendar for 4-7; passed subcommittee; on full committee calendar for 4-13;

Senate: Filed; on calendar for State & Local Gov. Committee for 3-30; deferred until 4-7; deferred until 4-21;

TRANSPORTATION

OTHER BILLS

***HB 3382 by *Sontany. (SB 3717 by *Haynes.)**

Nuisances - As introduced, adds zoning violations and violations of building codes to definition of types of nuisances that can be abated by the courts. - Amends TCA Title 29, Chapter 3.

Summary

This bill amends the section of TCA dealing with nuisances to add not only zoning and building code violation but also a list of other offenses including houses of prostitution, unlawful sale of alcohol, controlled substances and gambling.

Status

House: Filed; on calendar for Civil Practice Sub of Judiciary for 3-10; deferred until 3-17; on calendar for 3-24; taken off-notice stopping the bill.

Senate: Filed; on calendar for Judiciary Committee for 3-16; deferred until 4-6; deferred again;

HB 3630 by *Fincher (SB 3479 by *Jackson)

Nuisances - As introduced, enacts the "Rural Land Protection Act."

Summary

This bill provides protection for certain types of land use activities that were perceived to be appropriate to an area but later became objectionable due to urbanization of the area, failure of a government entity to enforce regulations at the time the activity commenced, or upon the enactment of new regulations governing the activity. It restricts the ability of new property owners from insisting on the restriction or abolishment of the activities that existed prior to the new owners'

purchase. Protected activities will include: raceways, drag strips, golf driving ranges, shooting ranges, quarries, motocross courses, farm activities, normal farming activities, hunting clubs, horse riding stables and similar activities. When these activities have been in existence for seven years, no person or government entity may bring an action to enjoin or restrict or abolish such use. The landowner is further declared to be immune from the enforcement of any government or any doctrine of nuisance notwithstanding whether the use was a permitted use at the time it began.

Obviously, this is a very dangerous bill from the perspective of zoning enforcement and the ability of "new" property owners to protect their property.

Status

House: Filed; on Civil Practice Subcommittee calendar for 2-17; deferred until 3-10; **taken off notice most likely stopping all action on the bill.**

Senate: Filed;

***HB 2154 by *McCord (SB 2154 by *Finney L)**

Nuisances - As introduced, declares that any activity that is conducted and any condition that exists subject to the terms and conditions of a permit issued by any agency, office, or department of the state shall not be found to be a nuisance. - Amends TCA Title 29, Chapter 3.

Summary

This bill would prevent any landowner or government entity from bringing a nuisance suit against any person or business that has obtained a permit from the state. It is directed at the Tennessee Department of Environment and Conservation and its enforcement activities. The permits would include an ARAP permit or a landfill operation permit for example.

Status

This bill is a holdover from last year but it is still active and may be brought up at any time. It went through the full committee process but didn't pass.

House: Action deferred in Civil Practice Sub. of Judiciary to a summer study committee.

Senate: Assigned to Gen. Sub. of Judiciary. **No further action on this bill.**

SB 3090 by *Burchett. (*HB 3058 by *Niceley.)

Eminent Domain - As introduced, requires fair market value of property to be taken by eminent domain be based on the highest and best use of such property. - Amends TCA Section 7-56-207; Title 64, Chapter 2, Part 3; Title 65, Chapter 6, Part 1 and Title 65, Chapter 14, Part 1.

Bill Summary

This bill requires that the fair market value of property to be taken by eminent domain by a rail service authority, railroad company, or railroad terminal corporation, as authorized in present law, be based on the highest and best use of such property. "Highest and best use" means the most profitable use after all improvements have been made to the property, without regard to that use which is legally allowable.

Status

House: Filed; assigned to Civil Practice Subcommittee of Judiciary; on calendar for Civil Practice Subcommittee for 3-17; deferred until 3-24; deferred until 3-31; on calendar for 4-13;

Senate: Assigned to Judiciary Comm.;

SJR 0306 by *Watson, Berke.

General Assembly, Directed Studies - Establishes the North Hamilton - Rhea County Creek Management Task Force to study land use practices to manage long-term flooding and develop workable solutions for citizens and governmental entities in the area. -

Fiscal Summary

Increase State Expenditures - \$700 Increase Local Expenditures - \$100/Permissive

Bill Summary

ON JUNE 18, 2009, THE SENATE ADOPTED AMENDMENT #1 AND ADOPTED SENATE JOINT RESOLUTION 306, AS AMENDED.

AMENDMENT #1 removes the legislator members of the North Hamilton - Rhea County Creek Management Task Force and instead urges those legislators to participate in the meetings of the task force and to assist the task force.

Status

Just found this one. Could be interesting if it is actually appointed and goes to work.

House: On calendar for Environment Sub of House Conservation for 3-23; deferred until 3-30; passed subcommittee; passed full committee on 4-6; on calendar of Budget Subcommittee for 4-14;

Senate: Passed Senate on 6-18-09.

A sunset date of June 30 2012 was added by amendment.