

Tennessee Association of Utility Districts Comments on Senate Bill 1604/House Bill 366

As I read this bill, it does two things:

1. The bill seems to prohibit a local government from requiring a landowner to transfer ownership of a portion of the landowner's property as a condition of getting approval on any kind of application to a local government. The bill does not just include a subdivision application, but any type of application to the local government for anything.

From the utility perspective, I don't really see any problem with this. These right-of-way dedications made outside the context of the subdivision approval process can cause problems for utilities because they may have lines in easements in the right-of-way dedicated. This sets the stage for a battle on down the road as to who must pay the relocation costs of the utility line which was originally in an easement outside the right-of-way which is now in the right-of-way. The utility can be completely unaware of this right-of-way dedication when a subdivision is not involved. As written, this would prevent this scenario from happening. This issue is even a bigger problem when the utility's line is outside of the right-of-way but there is no written, recorded easement. When the right-of-way dedication is made and covers the utility line, the utility has no choice to pay for the relocation when the right-of-way is needed in the future. Again, all this happens without the utility knowing about it unless the "application" is a subdivision application. As you know, there are a few places in Tennessee where there is no planning commission (Grundy County for example); therefore, the issue I reference above is a problem there with any right-of-way dedication required by Grundy County for a subdivision plat.

2. In lieu of a right-of-way dedication, the bill creates an alternative called a "right-of-way reservation." The new TCA 13-7-702(b) describes when a planning commission can require a right-of-way reservation in connection with a proposed subdivision. I am not sure TAUD has a position on this less burdensome "right-of-way reservation." The utility's problem is essentially the same.

The only thing which TAUD might want to do is take the opportunity to request language be added to the bill to make it clear that any right-of-way acquisition or right-of-way reservation does not diminish or change any existing easement rights of a utility in the area dedicated or reserved.

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