



Smith Harris & Carr

Smith Harris & Carr  
511 Union Street, Suite 710  
Nashville, TN 37219  
(615) 255-2643 phone  
(615) 254-4866 fax

## Memo

**To:** TAHRA  
**From:** Anne Carr & Lou Alsobrooks  
**Date:** June 1, 2017  
**Re:** 2017 Legislative Wrap-up

---

The first session of the 110th Tennessee General Assembly adjourned on May 10, 2017 and was the latest adjournment of the state legislature since 2011. The main reason for this year's late adjournment was the months long process of passing Governor Bill Haslam's Improve Act which raises the state tax on gasoline by six cents per-gallon and the state tax on diesel fuel by 10 cents per-gallon over a three-year period. The Improve Act also cuts the state sales tax on groceries from 5% to 4%, gives manufacturers a break on franchise and excise taxes and cuts the Hall Income Tax from 5% to 4%. Due to the fact the Improve Act had such a significant impact on this year's \$37 billion dollar state budget, the final vote on the state budget did not take place until early May.

2017 also saw several key changes in the top leadership positions of the Senate and the House of Representatives. In the Senate, Senator Randy McNally (R-Oak Ridge) took over the position of Lt. Governor after the retirement of longtime Lt. Governor Ron Ramsey. Senator Jim Tracy (R-Shelbyville) took over the position of Speaker Pro Tempore from Senator Bo Watson. Senator Bo Watson (R-Hixon) is now the Chairman of the Senate Finance Ways and Means Committee, which was previously chaired by current Lt. Governor Randy McNally.

In the House of Representatives, Representative Glen Casada (R-Franklin) is now the House Majority Leader, a position previously held Rep. Gerald McCormick (R-Chattanooga) who is now the Chairman of the House Finance Subcommittee. Rep. Ryan Williams (R-Cookeville) is now the Chairman of the House Republican Caucus, a position previously held by current House Majority Leader Glen Casada.

## The Tennessee Budget: FY 2017-18

As it is constitutionally required, the 110th Tennessee General Assembly passed a \$37.1 billion dollar budget for FY 2017-18. Passing the budget is always a process of give and take between the Senate and the House and the first session of the 110th Tennessee General Assembly was no different, but in the end both chambers were able to reconcile their differences and come up with a conservative spending plan to keep state government up and running. This year's budget acknowledged nearly a \$1 billion dollar surplus in recurring revenues and more than \$1 billion dollars in one-time revenue. With states across the country dealing with budget shortfalls, Tennessee lawmakers found themselves in the enviable position of how to allocate the aforementioned surplus. One key highlight of this year's budget included a \$132 million dollar contribution to the state's Rainy Day Fund bringing the state's reserve fund up to a balance of \$800 million dollars. The commitment to keeping a robust balance in the state's Rainy Day Fund has been key to Tennessee maintaining its AAA bond rating. When combined, the state's Rainy Day Fund and TennCare Reserve Fund leave the state with nearly \$1 billion dollars in reserves.

Other highlights in the FY 2017-18 budget include:

- \$8 million dollars in recurring funds for DIDD private provider rate increases
- \$55 million dollars in non-recurring funds allocated to Tennessee's 95 counties for road and bridge improvements
- \$30 million dollars in non-recurring funds to the Aeronautics Economic Development Fund for airport improvement projects
- \$2.6 million dollars in recurring funds for DCS private provider rate increases
- \$2 million dollars in recurring funds for mental health prevention and treatment
- \$11.8 million dollars in non-recurring funds to pay the TVA for lost electric power revenues over the next 20 years on the Ocoee River because the utility allows the river to run free for six months a year for whitewater recreation
- \$550,000 dollars in non-recurring funds for the private single point of contact providers of wraparound services to the victims of human trafficking
- \$40 million dollars in non-recurring funds to help fund the construction of a new State Library and Archives

## Legislation of Interest to TAHRA

### Trespassing in Common Areas of Apartment Complexes

Public Chapter 135 by Senator Lee Harris (D-Memphis) and Representative Joe Towns (D-Memphis) makes changes to Tennessee law concerning criminal trespass in the common areas of apartment complexes. Prior to the enactment of Public Chapter 135, a person committed criminal trespass if the person entered or remained on property, or any portion of the property, without the consent of the owner. Consent could be inferred in the case of property that was used for commercial activity available to the general public or in the case of other property when the owner had communicated the owner's intent that the property was open to the general public. It was a defense to prosecution that:

- 1.) A person entered or remained on the property that the person reasonably believed to be property for which the owner's consent to enter had been granted;
- 2.) The person's conduct did not substantially interfere with the owner's use of the property; and
- 3.) The person immediately left the property upon request.

Additionally, prior to the enactment of Public Chapter 135, the defenses set out in (1)-(3) were inapplicable to a person if the property owner posted the property with signs that were visible at all major points of ingress to the property and the signs were reasonably likely to come to the attention of the person entering the property.

Public Chapter 135 adds that there will be no interference of the owner's consent and no defense in (1)-(3) above will be available to a person entering and remaining on the grounds, or in the common areas, such as lobbies, hallways, courtyards, and parking lots of a housing or apartment complex having signs posted as described above unless the person:

- 1.) Has the actual consent of the owner;
- 2.) May lawfully enter the property by virtue of the person's occupational duties; or
- 3.) Has a contractual right to enter the property or is an invitee of someone with a contractual right to make invitations to enter the property.

### **Inclusionary Zoning**

SB 363 / HB 1143 by Senator Ferrell Haile (R-Gallatin) and Representative Glen Casada (R-Franklin) would have amended Tennessee law for inclusionary zoning. The House passed HB 1143, but the Senate delayed action on SB 363 until 2018. The legislation remains alive in the Senate for 2018 and would become law should the Senate pass SB 363.

Present Tennessee law prohibits a local governmental entity from enacting, maintaining, or enforcing any zoning regulation, requirement, or condition of development imposed by land use or zoning ordinances, resolutions, or regulations or pursuant to any special permit, special exception, or subdivision plan that requires the direct or indirect allocation of a percentage of existing or newly constructed private residential or commercial rental units for long-term retention as affordable or workforce housing. Current Tennessee law does authorize a local governmental entity to create or implement an incentive-based program designed to increase the construction and rehabilitation of moderate or lower-cost private residential or commercial rental units.

The legislation that passed the House amends current Tennessee law for inclusionary zoning. The legislation prohibits a local governmental entity, or any subdivision or instrumentality thereof, from enacting, maintaining, or enforcing any ordinance, resolution, regulation, rule or other requirement that:

- A.) Requires the direct or indirect allocation of existing or newly constructed private residential or commercial rental units to be sold or rented at below market rates;
- B.) Conditions any zoning change, variance, building permit, or any change land use restrictions or requirements, on the allocation of existing or newly constructed private residential or commercial rental units to be sold or rented at below market rates; or
- C.) Requires a person to waive the person's constitutionally protected rights related to real property in order that the local governmental entity can increase the number of existing or newly constructed private residential or commercial rental units that would be available for purchase or lease at below market rates within the jurisdiction of the local governmental entity.

Further, the legislation would authorize a local governmental entity to create or implement a purely voluntary incentive-based program designed to increase the construction or rehabilitation of workforce or affordable private residential or commercial rental units, which may include providing local tax incentives, subsidization, real property or infrastructure assistance, or any other incentive that makes construction of affordable housing more economical, so long as no power or authority granted to the local governmental entity to regulate zoning or land use planning is used to incentivize or leverage a person to develop, build, sell, or rent housing at below market value.

Finally, the legislation would declare as void and unenforceable any local regulations that are in conflict with this legislation should it become law.

### **Broadband Internet**

Public Chapter 288 by Senator Mark Norris (R-Collierville) and Representative David Hawk (R-Greeneville) represents the Haslam administration's program to increase access to broadband Internet access for the state's most rural areas. The language set forth in the Public Chapter coupled with Governor Haslam's budget provides \$45 million dollars in funding over a three-year period. Public Chapter 288 establishes a grant program that will provide \$30 million dollars over a three-year period to broadband providers to encourage deployment to rural homes and businesses. Additionally, the Public Chapter will provide a tax credit to private service providers totaling \$15 million dollars over a three-year period based on the purchase of broadband equipment used to provide broadband access in the state's most rural areas.

In addition to the grants and tax credits provided by the program, Public Chapter 288 authorizes the state's electrical cooperatives to provide broadband Internet. Prior to the change in the law, electrical cooperatives were prohibited from providing broadband Internet. The change in the law does however restrict electric cooperatives from using the electric system assets to subsidize broadband Internet services so as not to limit consumer choice in the broadband Internet marketplace.

Finally, the program provides grant-funding opportunities to the state's local libraries to help residents in rural areas improve their digital literacy skills and maximize the benefits of broadband Internet.

### **Eminent Domain**

Public Chapter 422 by Senator Frank Niceley (R-Strawberry Plains) and Representative Andrew Farmer (R-Sevierville) makes changes to Tennessee law concerning eminent domain. The Public Chapter deletes the takings exception in Tennessee law for industrial parks thus eliminating the provision under which a local governmental entity could condemn private property for the development of an industrial park under the definition of "public use" in Tennessee law. Public Chapter 422 also provides that any property taken using eminent domain must fall under the strict definition of "public use" in Tennessee law. The Public Chapter also requires the condemning local governmental entity to compensate landowners for engineering fees, appraisal costs, and in certain circumstances, legal fees that may result from a condemnation action, but excludes roads, transportation projects, and utilities from these costs.

### **Study of PILOT Agreements by TACIR**

Public Chapter 431 by Senator Paul Bailey (R-Sparta) and Representative Gary Hicks (R-Rogersville) directs the Tennessee Advisory Commission on Intergovernmental Relations "TACIR" to perform a study of the payment in lieu of ad valorem tax agreements and leases entered into by industrial development corporations organized by municipalities, and specifically, whether economic benefits are derived from limiting the length of term of an agreement or lease in the absence of county approval or an agreement by the corporation or municipality to pay the county a sum equal to the amount of real property tax that would have been assessed in the absence of the agreement or lease following the expiration of the initial term.

The TACIR study must include the following:

- (1) The economic benefits to counties and municipalities from the use of payment in lieu of ad valorem tax agreements and leases by industrial development corporations organized by municipalities;
- (2) Examining whether any economic benefits are derived from limiting the length of term of a payment in lieu of ad valorem tax agreement or lease to five or less years absent county approval or an agreement by the corporation or municipality to pay, each year after the initial five years, to the county a sum equal to the amount of real property tax that would have been assessed to a property if the agreement or lease had not been executed; and
- (3) Any additional issues that TACIR deems relevant to meet the objective of this study.

Public Chapter 431 requires all appropriate state agencies and departments to assist TACIR upon the request of the executive director of TACIR. TACIR must seek input from representatives of industrial development corporations, municipalities, and other types of local governments in conducting the study.

Public Chapter 431 requires TACIR to submit a report disclosing the findings of the study and recommendations, including any proposed legislation or interim reports, to the State and Local Government Committee of the Senate and the Local Government Committee of the House no later than February 1, 2018.

### **Prohibition of Firearms in Local Government Buildings**

The most controversial and heavily lobbied piece of gun related legislation from the first session of the 110th Tennessee General Assembly was Public Chapter 467 by Representative William Lamberth (R-Portland) and Senator John Stevens (R-Huntingdon). Public Chapter 467 prevents local governmental entities from prohibiting or restricting a handgun carry permit holder from bringing their weapon into a local government building unless certain security conditions are met. Additionally, the Public Chapter creates a private cause of action for an adversely affected party by allowing the adversely affected party to file suit against a local governmental entity for not complying with the provisions in the Public Chapter.

Prior to the passage of Public Chapter 467, local governmental entities could prohibit guns in buildings owned, occupied or controlled by the local governmental entity if the building was posted with a sign stating that guns were prohibited in the building.

After passage of the Public Chapter, local governmental entities can no longer only post a sign to prohibit a handgun carry permit holder from entering the building with their gun. In order for a local governmental entity to prohibit a handgun carry permit holder from entering a local governmental entity building with their gun, the local governmental entity is required to have a security guard present at every public entrance to the building. The security guard is required to have a metal detection device and is required to search any bags or containers brought into the building.

As with any piece of legislation, concessions were made by the sponsors of the legislation to accommodate concerns from various stakeholders. Initially, the legislation applied to state and local governmental entity buildings, but state government buildings were amended out of the legislation. The legislation was also amended to exempt school buildings, hospital and mental health facilities, group homes contracting with the Department of Children's Services, libraries, buildings housing law enforcement agencies, parks that hold school related activities, buildings where judicial proceedings are held, and buildings housing head start programs. Public Chapter 467 goes into effect on July 1, 2017.

### **Reporting for Tax Increment Financing**

Public Chapter 17 by Senator Richard Briggs (R-Knoxville) and Representative Andrew Farmer (R-Sevierville) makes changes to the reporting requirements associated with Tax Increment Financing "TIF" agencies.

Under present law, the Uniformity in Tax Increment Financing Act of 2012 requires each tax increment agency to file with the comptroller of the treasury:

- (1) A copy of a description of all property within the area subject to the plan (including parcel numbers with respect to real property);
- (2) A copy of each resolution of each taxing agency approving the plan and the base tax amount with respect to all property subject to the plan; and
- (3) By October 1 each year, a statement of all tax increment revenues allocated to the tax increment agency with respect to each plan.

Public Chapter 17 revises the above-described requirement described above in (3) to specify that the agency must only include information with respect to each "active" plan. Public Chapter 17 defines "active plan" as a plan that is currently producing tax increment revenues.

A "tax increment agency" is a housing authority, industrial development corporation, and/or community redevelopment agency.

### **Open Records Requests**

Public Chapter 233 by Senator Mike Bell (R-Riceville) and Representative Courtney Rogers (R-Goodlettsville) makes several changes to open records law in Tennessee. The Public Chapter requires governmental entities to accept e-mailed requests to inspect or get copies of public records if the governmental entity uses e-mail to transact official business.

Public Chapter 233 further specifies that a governmental entity may temporarily decline to fulfill a request to inspect records if a requester has made two previous requests within a 6-month period for which the requester has failed to show up to view the record within 15 business days of the record being made available to view. The governmental entity can decline to fulfill requests for a period of 6 months from the date of the second "unviewed" request. This language is permissive, and the governmental entity can determine there was good cause for failure to view and continue to fulfill requests.

Finally, the Public Chapter permits a governmental entity to decline to fulfill a request for copies of public records if a requester has not paid for copies under a previous records request. However, this provision only applies if the requester had been provided with an estimated cost of the records and had agreed to pay that estimated cost.

### **Housing Authorities and Transit Projects**

Public Chapter 254 by Senator Steve Dickerson (R-Nashville) and Representative Darren Jernigan (D-Nashville) authorizes a housing authority to carry out a transit-oriented redevelopment project. The language in Public Chapter 254 came from MDHA. The Public Chapter requires the governing body of a municipality, or agency designated by the governing body or empowered by law to act to approve a transit-oriented redevelopment project prior to the authority initiating the project and requires the governing body to hold a public hearing to determine the necessity for the adoption of the plan.

Public Chapter 254 prohibits a housing authority from using eminent domain to eliminate transit-deficient areas but authorizes the use of eminent domain to acquire land, or interests in land. The language of the Public Chapter further authorizes the housing authority to make land in a transit-oriented redevelopment project available for use by private enterprise or public agencies in accordance with the plan and authorizes the authority to adopt a plan that contains a tax increment financing "TIF" provision. Finally, Public Chapter 254 authorizes a housing authority to borrow money or accept contributions from the federal government to assist in undertaking transit-oriented redevelopment projects.

### **F&E Tax Credits**

Public Chapter 417 by Senator Doug Overbey (R-Maryville) and Representative Cameron Sexton (R-Crossville) establishes that for the purposes of franchise and excise (F&E) tax credits allowed for financial institutions providing loans, investments, grants, or contributions to eligible housing entities for eligible activities, eligible housing entities include entities created and controlled by Tennessee 501 (c) (3) nonprofit corporations or by public housing authorities, and wholly-owned subsidiaries of such corporations or authorities, if such entities and subsidiaries engage in eligible activities on behalf of such corporations or authorities.

Public Chapter 417 merely clarifies existing law regarding F&E tax credits and does not expand the list of eligible housing entities.

### **Local Zoning and Building Design Elements**

SB 520 / HB 476 by Senator Becky Massey (R-Knoxville) and Representative Marc Gravitt (R-East Ridge) was legislation offered by the trade association for Tennessee's homebuilders. As drafted, the legislation would prohibit, with limited exceptions, municipal and county zoning and development regulations relating to building design elements from being applied to certain one-family or two-family dwelling structures. This legislation was opposed by several local governmental entities, most notably the City of Franklin, TN, and was also opposed by the Tennessee Municipal League which represents Knoxville, Chattanooga, Memphis, and Nashville. The Senate and House both decided to defer action on the legislation until 2018. We will continue to monitor this legislation closely for TAHRA during 2018.



### **What's Next?**

The second session of the 110th Tennessee General Assembly will convene on Tuesday, January 9, 2018 at Noon. 2017 is a non-election year in Tennessee for state office holders.

### **Public Chapters**

The public chapters are accessible via <http://www.tn.gov/sos/acts/index.htm> by number or subject matter.