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## One-Way Lawmaking

Road contractors are trying to sneak an expensive entitlement bill through the General Assembly

by **Christine Kreyling**

Among the flotsam and jetsam floating around the halls of the Tennessee General Assembly is the draft of a bill that insiders call the "Get Nicely" bill. The "Act to Amend the Tennessee Code Annotated, Titles 3, 4 and 54 relative to transportation" bears no official sponsor. But the intention of its provisions is clear: to give the legislature more control over the Tennessee Department of Transportation (TDOT) at the expense of TDOT commissioner Gerald Nicely, and to return the department to its old Roads-R-Us monoculture.

The legislative power grab couldn't come at a worse time for Nicely. Since December he's been serving as interim commissioner of the Tennessee Department of Safety, charged by Gov. Bredesen with cleaning up cronyism and political patronage in the state's Highway Patrol. While Nicely still wears his TDOT hat, meeting weekly with the department's senior staff and troubleshooting as necessary, his attention is obviously divided. This bill, however, is a surefire attention grabber.

The primary provision in the draft bill calls for the establishment of a "joint committee on transportation" to be composed of the members of the House and Senate transportation committees—two groups long dominated by good ol' white boys from rural, road-loving areas. This new committee would employ a "transportation liaison director," who would hire his/her own staff and apparently function as a sort of shadow commissioner. The joint committee would get new approval power over TDOT's long-term transportation plans and line-item review of TDOT's budget.

Another provision instructs the TDOT commissioner to create a 10-year transportation plan, to be updated annually. Never mind that TDOT was already in the final stages of preparing a 10-year "strategic investment plan." The legislators want to tell the commissioner just what to put in the plan: roads, roads, roads.

The draft bill mandates that, in the 10-year plan, 55 percent of TDOT's annual expenditures must be devoted to road maintenance and construction. That percentage would not cover money to acquire rights-of-way, relocate utilities, mitigate environmental impacts, or pay for consultant services or design costs. In other words, over half of TDOT's budget would go into the pockets of road builders.

TDOT spokesperson Kim Keelor says that, over the last 10 years, highway projects have accounted for 65.9 percent of TDOT expenditures. But Keelor points out "the proposed legislation would eliminate funds needed for 'complete projects.'" Without money to buy the land and deal with utilities, environmental requirements and inspection, "there would be no project." She adds, "A flat percentage of the department's budget geared toward construction contracts does not take into account these necessary tasks and requirements."

The draft bill also demands that, by 2017, TDOT must complete the construction of four-lane highways to each of the state's 95 county seats—an old promise of former Gov. Ned Ray McWherter's—and widen all interstates to a minimum of six lanes. According to figures supplied by Paul Degges, TDOT's chief engineer, these two provisions would cost approximately \$18.5 billion—that's with a "b"—or \$1.85 billion a year. Given that TDOT's current annual budget is \$1.6 billion, the numbers don't add up, even if TDOT did nothing else for 10 years. "And we couldn't do that even if we wanted to," Degges explains. "Much of our federal money comes with requirements as to how it's spent, for bridges and safety programs,

for example. We have discretion over less than \$500 million a year.”

Another provision ensures that, even if TDOT experienced a budgetary windfall, public transit wouldn't benefit. The draft decrees that no money shall be spent on the operational costs of mass transit in counties with a population of more than 100,000. The affected counties collectively contain more than half of the state's population.

The impact on Nashville would be direct and immediate. The 2007 budget for the city's Metro Transit Authority (MTA) projects \$3.6 million from the state for operations. MTA director Paul Ballard says without that sum the authority will have to cut bus service. “Because of higher fuel costs, we just raised fares to \$1.25,” he explains. The loss of these funds—“about 10 percent of our operating budget”—would be “a severe setback” at a time when ridership is up. “Since the rise in fuel prices, we've gone from an average daily ridership of 22,000 to 23,000 to 29,000 to 30,000,” Ballard says. “And the partnerships we've developed with Belmont and Vanderbilt—[student and staff bus passes paid for by the universities]—have been working very well. Last month, we had 23,000 Vanderbilt riders.”

In addition to the blow to existing public transit in Tennessee's large metropolitan areas, this provision would also stifle the expansion of transit in the state's “smaller urban areas, which are growing and becoming more in need of alternatives to driving single-occupancy vehicles,” says Diane Davidson, TDOT's director of public transportation.

The most obvious proof that the transportation legislators want to meddle in Nicely's internal affairs is contained in a provision that reserves for the joint committee the power to “recommend to the department salary levels for [TDOT] engineers.” This is a gesture of solidarity with those traffic engineers who'd grown accustomed to quarterbacking TDOT plays and have become increasingly disgruntled with Nicely's forcing them to share the field with environmental, planning and communications experts.

The draft bill as a whole wasn't filed by last week's deadline for legislation to be considered during this session. But that's no guarantee that all its provisions won't come up for a vote. To pass controversial legislation, one time-honored strategy is to break up a bill into innocuous pieces so that the intention of the whole is less obvious. Some pieces can be filed as separate bills. Other pieces of the draft bill can later be attached to unrelated legislation.

One House representative explains that bills before the General Assembly frequently have very generic “captions” or titles to enable such maneuvers. “With a broad enough caption, you can attach stuff that has nothing to do with the rest of the bill. And legislators often don't read the fine print of the attachment, so it gets passed.”

In an opening salvo, last week two pieces of the draft bill were pulled out and filed separately. One sponsored by Sen. Mark Norris of Collierville, the chair of the Senate's transportation committee, requires the TDOT commissioner to report annually to the General Assembly the amount of funds needed to implement TDOT's long-range plan. The other, sponsored by Sen. Rusty Crowe of Johnson City, requires that 80 percent of the funds spent on highways over a four-year period be allocated equally among the state's congressional districts.

The latter bill is especially troubling, Keelor says, because it would eliminate a key criterion of current TDOT planning—the actual need for a road. The 25-year long-range plan TDOT has been developing “establishes specific criteria that must be met for a proposed road to become an actual project—need, safety, economic development—taking the politics out of road building.” The bill would instead “institute what would essentially be a giveaway program.”

The new 25-year long-range vision plan that the TDOT staff is tweaking for a March presentation is still a very road-heavy document. But for the first time, the department is taking a serious look at growing other modes—pedestrian and bicycles as well as transit—and integrating them into the transportation system.

That approach rankles some rural legislators for whom mass transit is just an abstract concept. “You have to understand that the only things the rural politicians care about are schools and roads,” explains one lawmaker. “That's what they have to bring back to their districts.” And of course if these legislators take more control over how TDOT money is spent, they'll also be able to bring back campaign contributions from the big beneficiaries, the road builders themselves.

The “Get Nicely” bill is essentially an entitlement program for roadies. But the vice president of the Tennessee Road Builders Association, Kent Starwalt, claims that his clients aren't the force behind it.

"We understand that there are several legislative ideas being floated on Capitol Hill, including one to create a joint House Senate transportation committee," Starwalt says in a prepared statement. "But such a measure has not been drafted or endorsed by our association, and we know of no sponsors for such legislation." One transportation lobbyist says, however, that Starwalt has been shopping the bill's provisions around for months, trying to find supporters—or at least justify his salary by stirring up trouble for Nicely.

It's no secret that, as commissioner, Nicely hasn't made the road interests especially happy. But no one trying to implement Gov. Bredesen's pledge to change the TDOT culture would make them happy. For years, stories circulated on the bureaucratic grapevine about road builders' jets carrying TDOT officials to lavish dinners in Washington, D.C., and other political watering holes. Skeptics have made snide comments about the repaving of roads with no apparent defects by contractors with friends in high TDOT places.

Nicely's reputation as a government administrator with integrity is a departure from that culture. Pre-Nicely, TDOT commissioners tended to have road-building on their résumés. Jimmy Evans paved his way to that position in Ned Ray McWherter's administration. And Don Sundquist's TDOT commissioner, Bruce Saltsman, was a contractor specializing in bridges. A 1996 profile in *Construction News* approvingly described Saltsman as "a contractor at heart," and noted that having him in charge of the state's transportation budget "is a great situation for those of us in the construction industry."

Under Saltsman, however, TDOT came under increasing criticism from everybody but the construction industry for its road-happy philosophy, for the lack of citizen input on its projects and for the cavalier way it treated the environment. During his administration, TDOT received enough notices of noncompliance with state and federal anti-pollution rules to wallpaper the commissioner's office.

In his campaign for governor, Bredesen made what he called TDOT's "arrogance and abuse of power" an issue. He vowed to fix TDOT, and when he won, he installed Nicely as his fixer. Nicely inherited a situation in which TDOT engineers decided which projects the department would spend its money on. The public was involved only after the preliminary design was done, when they were allowed to beg for noise walls or better landscaping around the exit ramps. But citizens had little luck questioning the wisdom of the engineers about the necessity for the project.

Nicely created and staffed positions within TDOT solely devoted to citizen participation. For long-range planning, he had Ed Cole, his chief of environment and planning, develop an elaborate set of committees and public workshops to ensure that TDOT heard from all the special and public interests. The roadies were still at the table, but they didn't own it anymore and TDOT was no longer serving up fab feasts.

At Bredesen's request, Nicely ordered a review by the University of Tennessee's Center for Transportation Research of 15 of the most controversial road projects in the state. And when the report came in, he responded by putting some of the projects—including 840 North—on "indefinite hold" and sending the others back to the drawing board for rethinking and redesign. Nicely also put on hold a TDOT proposal to widen Hillsboro Road in Williamson County to four lanes after hundreds of county residents protested.

In a major departure from TDOT practice, Nicely recognized that compliance with federal and state environmental rules isn't optional. The response from former TDOT critics has been positive. Attorney Julian Bibb represented Williamson County's Heritage Foundation in the lawsuit over the environmental impacts of the southwest segment of 840. After Nicely decided to pull the critics into the process, Bibb subsequently served as a member of the citizens' design review committee for this section of the beltway.

Bibb says there's been a "dramatic change" in the way TDOT does business under Nicely. "In my perception, they're much more inclusive, listening to all aspects of the community in plotting a roadway and giving significantly more attention to environmental impacts—impacts on cultural and historic sites as well as natural features—in the route's design."

A statement on the "Get Nicely" bill from the guy at the eye of the storm cements Nicely's reputation for plain speaking. "The proposed legislation, in addition to blatantly violating federal transportation planning requirements, would negate a 24-month long-range planning effort that involved the participation of thousands of Tennessee citizens, local officials and transportation stakeholders," Nicely says. "It's unfortunate that a few individuals associated with the road building industry simply cannot accept the fact that the old way of doing

business at the Tennessee Department of Transportation is simply no longer acceptable to the vast majority of Tennesseans.”

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