

TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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**MINUTES OF THE
TENNESSEE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS
December 9, 2009**

MEETING CALLED TO ORDER

The Tennessee Advisory Commission on Intergovernmental Relations met in Room 29 of the Legislative Plaza at 1:05 p.m., Chairman Senator Mark Norris presiding.

Present 22

County Mayor Rogers Anderson
Mayor Tommy Bragg
Mr. Charles Cardwell
Ms. Paula Davis
Representative Craig Fitzhugh
Mayor Brent Greer
Senator Douglas Henry
Mr. John Johnson
Alderman Bob Kirk
Mayor Kenny McBride
Mayor Keith McDonald
Senator Randy McNally
Speaker Emeritus Jimmy Naifeh
Ms. Leslie Newman
Senator Mark Norris
Representative Gary Odom
Mayor Tom Rowland
Mr. Tommy Schumpert
Representative Curry Todd
Senator Jim Tracy
Mayor Larry Waters
Comptroller Justin Wilson¹

Absent 3

County Executive Jeff Huffman
Senator James Kyle
Representative Jason Mumpower

¹ Phillip Doss represented Comptroller Wilson.

1. Call to Order and Approval of September 2009 Minutes

Chairman NORRIS called the meeting to order at 1:05 p.m. and asked for approval of the minutes. Alderman KIRK made a motion to adopt the minutes. The motion was seconded by Vice Chairman ROWLAND. The minutes were approved.

2. Award Presentation by the Tennessee Development District Association

TACIR's statewide Public Infrastructure Needs Inventory program was recognized by the National Association of Development Organizations (NADO) as a 2009 Innovation Award winner. The Tennessee Development District Association, represented by Mr. Terry BOBROWSKI, executive director of East Tennessee Development District, and Mr. John BUCY, executive director of Northwest Tennessee Human Resource Agency and Development District, presented the Commission with a plaque.

Dr. GREEN accepted the award on behalf of the Commission and staff. He recognized and thanked the staff members—Ms. Catherine CORLEY and Ms. Janet STEEN—responsible for the daily operations of the project. He expressed gratitude to the local development districts and the Commission members for all the support given to the project.

3. Presentation by Dr. Harry GREEN, Executive Director, TACIR, on Biennial Report for Fiscal Years 2007 and 2008

Dr. GREEN stated that TACIR is required by statute to prepare a biennial report, and the report, currently in draft form, accurately reflects TACIR's work over the last two fiscal years. The report contains detailed information about major issues—K-12 education finance, infrastructure inventory, jails, elections, and fiscal federalism—addressed by TACIR during fiscal years 2007 and 2008. Vice Chairman ROWLAND made a motion to approve this report; Alderman KIRK seconded the motion. The report was approved for publication.

4. Presentation by Mr. Cliff LIPPARD, Associate Executive Director, TACIR, on Emergency Communication District Funding

Mr. LIPPARD began his presentation on the preliminary findings and recommendations for the Commission's report on Emergency Communication Districts (ECDs) funding and more specifically SB 0208/HB 0204 (S: Stewart; H: Matheny). He stated that TACIR was asked to study this bill and to also review E-911 funding in general.

Mr. LIPPARD said that TACIR asked ECDs, county mayors, city mayors, county legislators and other government officials for their written input on ECD funding in general and on this bill specifically. Mr. LIPPARD noted that staff has been

posting these comments on TACIR's website and will continue to accept and post comments through January 31, 2010.

Mr. LIPPARD emphasized that he would not be seeking approval from the Commission on these preliminary findings and recommendations but would be seeking feedback to incorporate into TACIR's final findings and recommendations. He stated that those final recommendations will be provided to the Commission at the next Commission meeting because TACIR is to report back to the House State and Local Government Committee this next session.

Mr. LIPPARD provided some historical background on past TACIR studies on emergency communications and then presented a brief overview of the current funding system, which he described as a two-tier system. He noted that HB 0204 was introduced in 2009 in response to fiscal concerns voiced by some ECDs. As technology has evolved, more people are switching from traditional landline phones to wireless phones and this shift in use threatens to undercut the two-tier funding system as it exists.

The proposed legislation calls for an increase in the existing wireless fee from \$1 per month to \$1.50 per month. It additionally requires that 65% of the wireless revenue collected by the Tennessee Emergency Communications Board (TECB) be distributed back to local ECDs and that an additional 5% be distributed back to certain low population ECDs.

Mr. LIPPARD explained that 25% of the wireless revenues collected are already distributed directly to the ECDs. The TECB estimates that 77% of the total collections actually go back to the ECDs in some form or another as part of the \$14 million recurring operational fund or through various grants such as dispatcher training grants. Mr. LIPPARD said that the TECB actually estimates that this will increase another 10% in 2010 because of a recent change in carrier cost recovery. The TECB just voted to send 95% of the money that was going to carrier cost recovery directly to the ECDs using the same distribution formula that they use for the recurring operational fund.

The net impact of the bill would be to increase state-wide total E-911 fee collections from approximately \$95 million to \$120 million, with the direct local share of the total rising from approximately 60% to 81%.

Mr. LIPPARD presented staff finding #1: Currently there is no consistent state-wide reporting of landline counts by type, residential versus business. Wireline carriers report counts to the ECDs, but there is no requirement for the ECDs to report that information to the TECB or any other state agency. As noted in the 2006 TACIR report, TACIR staff is unable to prepare quality estimates of the impact of various funding scenarios, to include HB 0204, without this data. Other states provide data transparency by making line count information public. At a minimum, a single state agency could collect line counts, both residential and business, by ECD to better track the "fee or tax" base for the existing or any

modified local funding mechanism. Most, if not all, carriers already provide this information when they remit their fee payments to the ECDs; however, ECDs are not required to forward these returns or report statistical information based on them with the TECB.

Mr. LIPPARD listed staff recommendations based on this finding. First, require providers to file a standard line count return with each ECD and require the ECDs to file monthly or quarterly statistics with the TECB based on the returns filed with them.

Second, postpone any changes in the state's ECD funding system until such data is available. Mr. LIPPARD explained that part of staff's rationale for this recommendation is that TACIR staff are not comfortable making recommendations based on estimates without accurate data. He stated the staff assumes the General Assembly is not comfortable enacting changes without reliable data upon which to base those. The data can be collected in a short manner, and staff would be able to produce estimates and make a good recommendation. He stated that staff also feels that any consideration of changes to the funding system should include the consideration of a single rate option. This is tricky because of the breakdown between residential landlines and commercial landlines. He said it is impossible to estimate the impact of a unitary rate without knowing what that breakout is at the county level. TACIR could do an estimate of the whole state but would not know what the impact would be at the local ECD level.

Mr. LIPPARD stated the third recommendation is to appoint a subcommittee of TACIR to evaluate potential funding structures. The recommendations of the subcommittee would not be included in the current study but would be reported at a later date, assuming adequate data is available.

Mr. LIPPARD presented staff finding #2: Landline surcharges in Tennessee are some of the highest in the United States, while the state's wireless charges are also relatively high. Mr. LIPPARD explained that staff tried to come up with comparable information which is hard to do because every state is structured differently. Staff was able to come up with a per capita total comparison on what the average person in each state would pay for total emergency communications services in Tennessee versus other states, and Tennessee's per capita rate is \$16.73 compared with a per capita rate of \$10.23 in other states. On a per capita basis Tennessee is significantly higher than other states, and when the rates are compared on a state by state basis, Tennessee does have higher than average wireless rates already. The average estimated for other states is \$0.80 whereas Tennessee's is \$1. Rates range from a low of \$0.20 cents in Arizona to a high of \$3 in West Virginia, although West Virginia is an outlier. The second highest rate after West Virginia is Alaska at \$1.38 per line. The landline rates also vary significantly from a low of \$0.20 in Arizona to a high around \$2.40 in West Virginia.

Mr. LIPPARD continued with the staff's second finding. Existing E-911 funding mechanisms in Tennessee are similar to those in place in many states and as in most states they continue to produce a growing level of revenue. Revenue problems resulting from the introduction of new communications technologies and products may create some short term challenges, but do not as yet appear to threaten the long run viability of funding 911 resources from surcharges on users.

Mr. LIPPARD noted that there are challenges at the local ECD level, similar to what the 2006 report found. He said that on the whole the staff concluded that there is enough money out there. Forty of the 100 ECDs have landline rates at the statutory maximum of \$1.50 for residential lines and \$3.00 for business lines. The TECB's recurring operational fund has successfully reduced the number of financially distressed ECDs in Tennessee.

Mr. LIPPARD stated that the staff's recommendation related to this finding was not to raise Tennessee's wireless rates from \$1 to \$1.50 because 1) there is already enough money in the pipeline, 2) this is something the funding committee should consider, and 3) it is politically infeasible. In the current economic climate, staff does not see the viability of raising a rate that is already one of the highest in the nation from \$1 to \$1.50.

Mr. LIPPARD presented staff finding #3: there are instances of wide variations in wireline collections among counties with similar demographics. For example, in fiscal year 2008, Bradley County (pop. 87,965) raised \$907,433, while Madison County (pop. 91,837) raised \$444,123, Sullivan County (pop. 85,085) raised \$725,325, and Wilson County (pop. 88,808) raised \$441,067.

Mr. LIPPARD said that counties that appear to be similar demographically based on population have raised widely different amounts of money, which could be for any number of reasons, such as saturation of cell phones. Therefore, the staff recommendation related to this finding is for the TECB to analyze significant differences in the amount of per capita landline revenue raised by ECDs with similar populations to determine the reasons for such wide differences. Until the reasons for such variation in revenue are determined, it is difficult to determine to what extent there is a funding problem and what changes may be needed.

Senator HENRY asked why Tennessee charges different rates for landline and mobile telephones. Mr. LIPPARD responded that he was unsure and staff would check on that for him. Mr. LIPPARD said that it may have something to do with the amount of money considered necessary to implement phase II wireless.

Senator HENRY remarked that either type of telephone can call 911 and get 911 service. Mr. LIPPARD responded that is the reason staff wants to look at the potential of a single rate option. Some states have already moved in this direction. Unfortunately, staff cannot make a recommendation on that until better data is available.

Mr. LIPPARD presented staff finding #4: evaluated case studies suggest that consolidation can increase efficiency and effectiveness in emergency communications in some cases. They also validate Tennessee's voluntary compliance approach. Mr. LIPPARD added that much of the literature staff looked at showed that where there is voluntary consolidation of the ECDs, it tends to be more effective than coerced consolidation. Tennessee encourages consolidation among ECDs (TCA §7-86-105(b)(6) and TCA §7-86-305). The TECB allows full benefits of its grants programs and reimbursement programs to continue after consolidation and reimburses the costs of consolidation at a rate of \$150,000 per ECD for up to three consolidating districts. The TECB does not consider Public Safety Answering Points (PSAP) consolidation incentives to be part of their jurisdiction, and thus does not provide any incentives.

Mr. LIPPARD listed three staff recommendations related to this fourth finding. First, Tennessee should continue to encourage ECD consolidation through the reimbursement of associated costs. Second, continual advances in E-911 technology require review and evaluation of potential productivity improvements from consolidation of existing PSAPs and the use of virtual PSAPs. Mr. LIPPARD added staff found in the technical literature from the National Emergency Number Association (NENA) and other groups that there is potential in the future for consolidating PSAPs where they may be physically located in different places but virtually operate as one. The final recommendation is that the TECB should require the completion of a thorough cost-benefit analysis demonstrating the potential benefits of a specific consolidation by any ECDs seeking reimbursement of consolidation costs. Mr. LIPPARD added that staff reasoning behind this recommendation is that consolidation makes sense in some cases but not all cases; there should be a quality check before money is applied to any consolidation effort.

Mayor MCDONALD asked if Tennessee is getting any closer to technology that prevents wireless calls going to the wrong tower resulting in the wrong emergency units summoned. Mr. LIPPARD replied yes and added that he would discuss that further in finding #6.

Mr. LIPPARD presented staff finding #5: currently, ECDs are permitted, but not required, to use collection fees to pay for law enforcement dispatching services. None of the professional public safety organizations specify a particular standard for whether dispatching should be a required ECD function. The Association of Public-Safety Communications Officials (APCO) reports that 44% of call takers nationwide also dispatch. Mr. LIPPARD went on to say this is an issue that is the subject of a lot of debate out in the field as to who should pay for dispatching services. Currently, the ECDs can use their state money but are not required to do so.

Mr. LIPPARD said that staff makes no recommendation regarding changes to dispatching funding or requirements at this time. He added that if TACIR does

create a subcommittee on funding, this is an issue that probably will be part of that discussion.

Mr. LIPPARD presented staff finding #6: the next phase in the 911 emergency services is the "Next Generation 911" (NG-911) system. This Internet Protocol-based format provides a standard system by which PSAPs and other emergency services would be able to communicate. NG-911 is seen as the future standard for emergency communications. The National Emergency Number Association (NENA) identified the need for such a program in 2000 in its Future Path Plan and has been working to test the capabilities of the system. The federal government has also endorsed NG-911, and the TECB believes that elements of the NG-911 system might eventually be likewise federally required.

Mr. LIPPARD briefly discussed the benefits of NG-911, such as interoperability, text and picture messaging capability, and greater adaptability for future technologies. He also noted that the TECB and other experts actually expect the transition to NG-911 to save money at the individual ECD level in shifting trunking and routing costs from the local level to the state level.

Mr. LIPPARD read the remainder of finding #6: Tennessee has made significant progress toward the goal of NG-911. The TECB staff met with the Office of Information Resources (OIR) in order to plan for NG-911. OIR issued a request for proposals in 2007 and selected a bid in May 2008. The TECB's technical advisers are reviewing the bid with OIR and making recommendations to OIR for amendments. The TECB opted to integrate with the already existing Net TN platform that the Tennessee Bureau of Investigation (TBI), E-Health, and National Crime Information Center (NCIC) currently use. OIR administers this platform.

According to TCA § 7-86-306(a)(8), the transition to NG-911 is within the realm of TECB authority, as one of its duties is to administer the deployment of 911 service for emerging communications technologies, including, but not limited to, IP-enabled service, that are capable of connecting users dialing or entering the digits 911 to PSAPs and other non-wireline services. Although the installation cost of NG-911, around \$90 million, is daunting, the TECB indicates that it has been accumulating reserves to pay for the installation of the system, as well as for trunking for the ECDs, and the recurring operational costs through 2014. With anticipated normal growth in revenue, the TECB reports that it will be able to pay the recurring costs, estimated at \$16.5 million, without any changes to the wireless E-911 surcharge. The TECB contends that NG-911 will result in substantial savings for the ECD, as the TECB will ultimately absorb all trunking and selective routing costs. Currently, the ECDs pay for most of those costs. The TECB estimates that the ECDs will collectively save around \$5 million annually on trunking and selective routing costs as a result of NG-911 implementation.

Mr. LIPPARD concluded that staff makes no recommendation regarding changes to the current implementation plan for NG-911.

Alderman KIRK stated that in his county they have three PSAPs but only need one. He stated that they have not been able to get it down to one on a voluntary basis and asked if they can expect that to be mandated somewhere down the road. Mr. LIPPARD responded that currently the TECB does not see the PSAP consolidation as part of their mission, though it may be something they need to consider. The TECB has done a good job supporting voluntary consolidation of ECDs. If the proper incentives were put in place and the costs of operations keeps growing, we will probably see more PSAP consolidation in the future.

Mayor MCDONALD said that they would not want PSAP consolidation to be a requirement. He feels strongly that it should be voluntary and in his location it is imperative because several of them run PSAPs out of their jails, and they have dual functions. He said he would not want there to be a mandate that they all be located in one place.

Representative FITZHUGH asked if there is sufficient funding to install and maintain NG-911 for four years from now. Mr. LIPPARD responded that there is. The TECB has enough funding to pay for the implementation and recurring costs through 2014, and with normal growth in revenue they will be able to pay for the recurring costs without any effect on the money they send to ECDs or without any adjustments to the wireless rate.

Commissioner NEWMAN added that the Department of Commerce and Insurance's budget this year will include the bulk of that infrastructure implementation as part of the reserves and then the \$16.5 million recurring costs for this next year.

Chairman NORRIS recognized Representative MATHENY, sponsor of HB 0204. Representative MATHENY thanked members of the committee and said this is a very strategic problem and that this legislation is to make sure that in 15-20 years Tennessee does not have a serious funding gap. He stated that we needed this study to help nail down the costs of NG-911. He asserted that this legislation would have absolutely no negative net impact on the TECB's current funding structure and that they would still be able to fully fund the implementation of NG-911 and its recurring costs. It would be the new monies going straight to the ECDs with a little more to the lowest populated districts.

Representative MATHENY said that one of the reasons Tennessee should want to do this is because there is no continuum for 911 service. The TECB has the responsibility with the PSAPs of making sure the call is received, and then the locals have to pick up that call and move with it. He said that there are some problems in the transition of receiving that call and getting it out in the field properly. Representative MATHENY said that the transition needs to be studied

so that when a 911 call is received it is properly dispatched to the sheriff, fire department, etc.

Representative MATHENY said that will help many of the lower tier ECDs that do not have the staff to properly dispatch all these calls. They cannot take bathroom breaks and even work 18-24 hour shifts while some of the larger ECDs have four or five people on a shift. He noted that this would help put more money into those less populated districts, and it would also seek to create a guaranteed source of revenue instead of an annual grant of revenue. Representative MATHENY explained that most of the revenue coming from the state board is in the form of annual grants. He said that it was converted to a guaranteed source of recurring revenue, then local ECDs could engage in some local building projects and long term projects. Representative MATHENY added that if this was done, it would not harm the TECB's funding and overall plan for NG-911.

Chairman NORRIS asked Representative MATHENY if these were the objectives of his legislation, and if he wanted to structure it so there would not be a detrimental effect on existing revenues. Representative MATHENY responded that this bill as it is written would do nothing to harm the TECB's current NG-911 plan and funding structure. All it would do is bring more money into the system but less control would be applied to that money by the TECB. It would be more of an immediate flow to our ECDs. Chairman NORRIS said he raised that just for the record because there is some concern that the legislation would have a detrimental effect.

Representative MATHENY said he applauds the efforts of the TECB because they are doing exactly the right thing and making it safer for everybody. He added there are a lot of unanswered calls for help especially in our less populated ECDs. He said that, at some point, there will be a serious problem with our funding if we do not get a consistent streamlined way of funding 911 services in the future. This is a strategic plan that needs to be in five, ten, and fifteen year increments. Representative MATHENY also emphasized that NG-911 will never be fully implemented either because it is always going to be evolving.

Chairman NORRIS stated it was his intention to receive the report as Mr. LIPPARD presented it but that the Commission will not take any action on it until its first meeting next year. He continued that there are related and overlapping issues, such as interoperability and rate structures from the various phone entities, the three different groups, and access fees. He said that all of these things are overlapping and interrelated and we cannot look at them in a vacuum.

5. Presentation by Dr. Reuben KYLE, Research Associate, TACIR, on Electric Generation and Transmission Cooperatives

Dr. KYLE presented the Electric Generation and Transmission (G&T) Cooperative Act. This Act authorized the creation of nonprofit cooperatives to

generate and transmit electricity in the state of Tennessee. TACIR was asked to study whether the current wholesale power supply arrangements between the Tennessee Valley Authority (TVA) and its purchasers are likely to change in the future in a way that could affect payments in lieu of taxes from the TVA to the state and local governments.

Dr. KYLE stated that the motivation for the bill comes from a long standing desire on the part of TVA distributors to have some ownership and generation capacity of their own. Another consideration from TVA's point of view is TVA's debt limit. The U.S. Congress has imposed a statutory limit on TVA's debt of \$30 billion. This means that TVA has to increase rates to finance additional new investments. TVA can also supplement their power generation capacity through purchase agreements with private producers.

Dr. KYLE noted that the TVA Act of 1933 specifically directed that 5% of the agency's "gross proceeds" be paid to state and local governments, in which the agency owns and operates property, as payments in lieu of taxes. He pointed out that in fiscal year 2009 the total TVA payments in lieu of taxes were \$505 million of which \$295 million was paid to the State of Tennessee and its local governments. The estimated payments for fiscal year 2010 are \$538 million with \$320 million going to Tennessee.

Dr. KYLE discussed two elements that determine TVA revenues: power usage and overall power rates. Power sales are subject to a number of factors, including basic economic conditions and policy initiatives. In the current economic climate, TVA power demands have contracted along with the economy. Power sales in 2009 are below those of 2008, and they are not expecting power utilization in 2010 to match 2009. This will push TVA revenues down.

Dr. KYLE said that the other major factor affecting TVA revenue is power rates. Those are affected by a number of different factors. One of these is any pending federal legislation on energy and environmental policies. Those are likely to affect power generation. To that extent, these new policies require things like nuclear or renewable sources, such as solar and wind power. At present time and in the near future, those kind of new technologies are more expensive. If the TVA finances them by themselves, it will push rates up. Another factor affecting overall TVA rates is the cost of fuel.

Dr. KYLE pointed out that the critical issue is whether the future relationship between any of these new cooperatives and TVA would affect TVA revenues. He said that new cooperatives created under the Act operate so their revenues are not recorded as TVA revenues. TVA revenues will go down and so will payments in lieu of taxes.

Dr. GREEN asked whether there would be no payments in lieu of taxes if TVA decides to stop generating new electricity and moved it all to cooperatives. Dr. KYLE responded yes.

Dr. KYLE concluded that the big issue is whether future wholesale power supply arrangements between TVA and its distributors resulted from this Electric G&T Cooperative Act could impact payments in lieu of taxes to state and local governments. The answer is yes. He noted that we cannot say exactly what they will be at this point because the contractual arrangements between TVA and any cooperatives such as Seven States Power Corporation are not determined yet. There are many factors that will impact TVA's revenues in the future, and there are no guarantees regarding those revenues and the payments in lieu of taxes. Dr. KYLE stated that TVA revenue forecasters anticipated that TVA revenues would grow at a modest rate between 1% and 2% annually. Last year, they grew 10% and then 6.5% this year.

Dr. KYLE said that the bill calls for TACIR to make recommendations about possible changes in Tennessee's tax system. He presented some possibilities that TACIR staff had discussed. One would be a tax on gross receipts of sales in Tennessee by any new cooperatives created under the Act. There is already a 3% gross receipts tax on intrastate business by electric power producers and distributors in Tennessee. However, Seven States Power Corporation is excluded from provisions of the law because it is owned by the government. A second possibility might be to require any new cooperatives to pass their revenues through TVA accounts.

Speaker Emeritus NAIFEH asked whether every city in the state received some distribution of the fund. Dr. KYLE responded that there were quite a few but he was not sure about all cities. Dr. GREEN noted that they do receive funds.

Speaker Emeritus NAIFEH asked about the 3% distribution to local governments impacted by TVA construction. Dr. KYLE responded that it was 3% of total payments to the state of Tennessee in a particular year.

Speaker Emeritus NAIFEH asked about Haywood County. He noted that there was a 3% increase in the impact funds and presumed this was because there is a TVA plant in Haywood County that changes gas into electricity. Dr. KYLE responded that he presumed this was the case.

Mayor MCDONALD asked if the proposed solar power site in Haywood County would have an effect on payment in lieu of taxes payments. Mr. Mark SMITH, legal representative from Seven States Power, responded that the solar project is not a Seven States project and he was not quite sure how the ownership would be structured. He stated that he would assume power would be sold to TVA and redistributed. Therefore, these revenues would flow through in lieu of taxes formulas.

Chairman NORRIS asked whether that would be a loss of revenue through TVA in terms of energy generated and what that may take off the grid. Dr. KYLE responded that it may depend upon the federal legislation.

Chairman NORRIS thanked Dr. KYLE for his presentation.

6. Presentation by Dr. Stan CHERVIN, Senior Research Associate, TACIR, on County Revenue Partnership Fund

Dr. CHERVIN presented a summary of a draft report on the “County Revenue Partnership Fund (CRPF)” and Public Chapter No. 1057 of 2008 that created the fund. Public Chapter No. 1057 created a new account within the state general fund and authorized the Legislature, with several restrictions, to appropriate funds from the currently unearmarked portion of state sales taxes to the fund for the benefit of counties and metropolitan governments. Key restrictions include: no appropriations until fiscal year 2009-2010; appropriations to the fund cannot exceed amounts earmarked in the preceding fiscal year to municipalities; and any funds distributed from the CRPF are to be made monthly and based on population. Dr. CHERVIN noted that a minor amount (less than \$1 million) had been appropriated to the fund for fiscal year 2009-2010. Public Chapter No. 1057 also required the Tennessee Advisory Commission on Intergovernmental Relations to study and evaluate the new law and report its findings and recommendations by June 30, 2010.

Dr. CHERVIN presented a graphic that showed the current distribution of state sales tax collections and noted that only 36% of total state sales tax collections remain unearmarked. Any future appropriations to the CRPF would have to come from this portion of collections. He also summarized the existing level of state intergovernmental aid to counties and municipalities. Dr. CHERVIN noted that TACIR has studied the issue of state tax sharing (with local governments) several times during recent years.

Dr. CHERVIN then summarized the history of the state sales tax focusing on the original tax-sharing arrangements included in the law when first passed in 1947. At that time, municipalities were given an earmarked portion of the tax equal to 12.5% of total collections (at the original tax rate of 2%). Municipalities continue to enjoy an equivalent percent of collections to this day. He noted that the large dollar amount distributed to municipalities is primarily the result of growth in the state sales tax base, not any increase in the effective portion of the tax that is shared with them.

Dr. CHERVIN noted that it appears that the intent of the new legislation was to facilitate future appropriations to counties with a source of revenue similar to funds now shared with municipalities, namely unrestricted funds. Unfortunately, Dr. CHERVIN noted, the timing of the legislation during an economic recession will likely prevent any significant appropriations to the CRPF until some unknown period in the future. Dr. CHERVIN next noted some of the possible options that

would produce the funds that county and metropolitan governments are seeking. The options include (1) possible unexpected rapid growth in sales tax collections that might enable the Legislature to make new appropriations to the CRPF, though any such appropriation under these circumstances would not represent a stable and dependable revenue source, (2) a future increase in the state sales tax rate may provide the Legislature with sufficient new revenue to enable an appropriation to the CRPF, (3) an expansion of the state (and local) sales tax base (to currently untaxed activities) would generate new revenues for both state and local governments, and (4) the Legislature could review the current tax-sharing arrangements with local governments and consider changes to them that better reflect actual local government service levels and local fiscal capacity (similar to factors considered in funding the Basic Education Program). He noted that many existing tax-sharing arrangements were established sixty or more years ago.

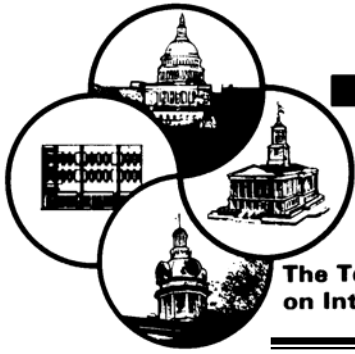
7. Presentation by Ms. Libby THURMAN, Senior Research Associate, TACIR, on the Status of the Regional Jail Feasibility Study

Ms. THURMAN stated that she would be providing the Commission with a brief status update on the regional jail feasibility study. Public Act 554 of 2009 directed TACIR to complete a regional jail feasibility study. Ms. THURMAN stated that staff spoke with state legislators to determine the counties to be included in the study. The study will include Clay, Fentress, Overton, and Pickett counties.

Ms. THURMAN stated that in preparation for this project, TACIR staff met with CTAS staff, as CTAS has many staff members with corrections and criminal justice expertise. She thanked CTAS for their assistance with this project. Ms. THURMAN stated that TACIR staff also met with the four county executives/mayors and sheriffs. She said that though this study stems from a legislative directive, the end product will be a document that the counties can use to determine a course of action regarding their jail facilities. Ms. THURMAN stated that feasibility studies require specific expertise and for this reason, TACIR is hiring a contractor to complete the project. Staff wrote a request for proposals and received proposals from eight vendors.

Ms. THURMAN reported that the state is currently pursuing a contract with CRS, Incorporated. This firm has been completing regional jail feasibility studies for over thirty years. The project due date is April 2010 and CRS, Incorporated will present their findings to the Commission at the June 2010 TACIR Commission meeting.

Chairman NORRIS adjourned the meeting at 2:49 p.m.



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on Intergovernmental Relations



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MINUTES OF THE TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS December 10, 2009

MEETING CALLED TO ORDER

The Tennessee Advisory Commission on Intergovernmental Relations met in Room 29 of the Legislative Plaza at 8:35 a.m., Chairman Senator Mark Norris presiding.

Present 20

County Mayor Rogers Anderson
Mayor Tommy Bragg
Mr. Charles Cardwell
Ms. Paula Davis
Representative Craig Fitzhugh
Mayor Brent Greer
Senator Douglas Henry
Alderman Bob Kirk
Mayor Kenny McBride
Mayor Keith McDonald
Senator Randy McNally
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Mayor Tom Rowland
Mr. Tommy Schumpert
Representative Curry Todd
Senator Jim Tracy
Mayor Larry Waters
Comptroller Justin Wilson²

Absent 5

County Executive Jeff Huffman
Mr. John Johnson
Senator James Kyle
Representative Jason Mumpower
Ms. Leslie Newman

² Phillip Doss represented Comptroller Wilson.

1. Call to Order

Chairman NORRIS called the meeting to order at 8:35 a.m.

2. Resolution to Honor the Memory of Representative Larry TURNER

Dr. GREEN read a resolution to honor the memory of former TACIR Commission member Representative Larry TURNER. Vice Chairman ROWLAND made a motion to adopt the resolution. The motion was seconded by Alderman KIRK. The resolution was approved unanimously by the Commission.

3. Underground Utility Damage Prevention Program Effectiveness: Testimony on One Call Study

Commission members heard testimony from representatives of eight stakeholder groups on the One Call Study. Vice Chairman ROWLAND stated that at the previous meeting he thought that the Tennessee Regulatory Authority's (TRA) Chairman Eddie ROBERSON had stated that local law enforcement could assess fines. He asked that it be noted that that was incorrect.

a) Testimony by Mr. Rodney CARMICAL, Executive Director, Tennessee County Highway Officials Association

Mr. CARMICAL testified that counties control 54% of the state's roads and rights-of-way. Utilities can be installed in county roads with the permission of the Chief Administrative Officer. County road workers come in contact with utilities frequently through mowing and routine maintenance and can destroy utilities if they are not marked properly. The majority of local governments participate in One-Call, but it is too often after the fact.

Mr. CARMICAL indicated that there is a need for more front-end management on how utilities are installed, perhaps even a permitting system.

Chairman NORRIS noted that the federal government is driving the proposed state legislation. He asked what the county officials' position is on the nine elements listed in the federal 2006 PIPES Act.

Mr. CARMICAL indicated that while they favor safety of gas lines, they would like to see an exemption from the definition of "excavation" for reconstruction and maintenance by county road departments not exceeding 30 inches. They also favor local enforcement and do not want to pay a mandatory membership fee. He noted a need for separation of fees and the budget. He indicated that their members are looking at the legislation to come up with a plan for their counties.

Senator HENRY asked if the entire state highway system participates in the One-call system, and he asked if the counties use it. Mr. CARMICAL answered that

counties do not have to be members but can utilize the services of One-Call. They are required to call if they are doing any excavation.

b) Testimony by Mr. Chad JENKINS, Deputy Director, Tennessee Municipal League

Mr. JENKINS noted that not all cities operate water or wastewater systems. Most pay dues and participate in the One-Call system. The cities that do not participate tend to have populations of 5,000 or less and few excavations. They believe the decision not to participate is in their best interest. He indicated that the cities are concerned about one governmental entity imposing civil penalties on another, and that the amounts of the penalties would be excessive. They prefer local enforcement. He noted that the fees may be too high for very small cities.

c) Testimony by Mr. Walter HAYNES, Lobbyist/Legislative Affairs, Tennessee Municipal Electric Power Association

Mr. HAYNES noted that there are 61 government-owned municipal electric systems and 23 co-ops. They are both utility providers and excavators. He asked that the electric utilities not be included in the legislation. He believes the penalties are too severe.

Mayor BRAGG commented that the City of Murfreesboro has been a member of One-Call and has withdrawn because the city's permitting system takes care of identifying utilities.

d) Testimony by Mr. Bob FREUDENTHAL, Executive Director, Tennessee Association of Utility Districts

Mr. FREUDENTHAL stated that the Tennessee Association of Utility Districts (TAUD) was initially opposed to mandatory membership, but may find it acceptable if it is phased in. He expressed concern about the civil penalties and whether they should be imposed on local government public utilities. In addition, he asked whether funding the One-Call enforcement function with penalties is good public policy.

Senator HENRY asked why local public utilities should be treated differently if they provide the same services as private operators. Mr. FREUDENTHAL answered that if they are both utilities they should be treated the same, but that a public utility should not be treated the same as a private excavator.

Chairman NORRIS asked if TAUD plans to submit written comments to the federal government by the December 14th deadline. He asked for a copy of the notice and requested that TAUD send a copy of their comments to TACIR.

e) Testimony by Mr. Bob PITTS, Senior Policy Advisor, Associated Builders and Contractors, Inc., Middle Tennessee Chapter

Mr. PITTS indicated that he hoped TACIR would ask for more time to complete its study. He stated that his organization has no problem with mandatory membership. He indicated that builders and contractors need better access to utility location information during the design phase. They do not have access to One-Call.

Chairman NORRIS clarified that even without the bill the information that is available during the planning phases needs to be improved.

Mr. PITTS expressed concern that they were not asked for input earlier in the process. The main issue seems to be whether the state is going to exercise primacy in the oversight of utilities. He also thought penalties should be assessed in proportion to danger and that the advisory council membership should be more representative of builders and contractors.

Mayor BRAGG asked whether they would prefer to have the advisory council use mediation, or the current process. Mr. PITTS said it would be nice to have an informal process, but it should have fairness in the composition. There should be an equal number of contractors on it. He noted that no one has complained about the present system.

f) Testimony by Ms. Rhedona ROSE, Director of Public Affairs, Tennessee Farm Bureau Federation

Ms. ROSE stated that the present underground utility damage prevention program has worked well, but could be improved in three areas by recognizing the uniqueness of agricultural property; providing educational opportunities for landowners; and increasing inclusion of stakeholders. She also noted that the risk is much less in rural areas where there are fewer utilities. She said it would not be feasible for farmers to have to use the One-Call system since they dig so frequently. She suggested DIG certificates be enhanced so that there are options for one-time approval.

g) Testimony by Mr. Bill JEANS, Tennessee Railroads, Inc. and Mr. Dave ELDER, CSX Railroad

Mr. JEANS indicated that his organization represents four railroads in the state. They have some concerns about the bill. Mr. JEANS recognized Mr. ELDER of CSX Railroad.

Mr. ELDER indicated that CSX has 1,000 miles of track in rural areas which are identified by railroad mile posts. These are not identified in the One-Call grid.

Mr. JEANS and Mr. ELDER believe railroads should be exempt from mandatory membership. They are already required to call One-Call as part of regular procedures. They enforce their rights-of-way.

Chairman NORRIS asked if CSX intends to respond to the federal rulemaking procedure. Mr. ELDER responded that they would be commenting now that they were aware of it.

Vice Chairman ROWLAND asked if the people who were dismissed violated a rule or did major damage. Mr. ELDER responded that there has been damage by workers, and they have worked to eliminate it. If people come on the railroad property, the federal government requires flagging for them, and they have to pass security requirements.

Vice Chairman ROWLAND asked how we can enforce average homeowners digging mailboxes. Mr. ELDER responded that education is the answer. He said the national 811 program will help.

Vice Chairman ROWLAND asked if One-Call is exclusive to Tennessee and what is to prevent another One-Call authority from forming. He also questioned if One-Call was exclusive under statute. Mr. ELDER responded that he did not know, but thought that it was exclusive.

Senator HENRY asked if they can rely on the city superintendent to tell them what is there when the railroads cross a city street. He asked if the city furnishes the information. Mr. ELDER answered that generally they meet with the city officials first and get location information.

Mayor MCDONALD asked if the railroads could provide the number of incidences in which railroads, as excavators, have caused damage in the state. Mr. JEANS responded that they would.

h) Testimony by Mr. David HARRELL, Vaughn & Melton, representing the American Council of Engineering Companies of Tennessee

Mr. HARRELL stated that the engineers believe the program should be expanded to include the design phase of projects which could impact existing utility infrastructure. He said the current program is predominately concerned with the impacts that occur at the time of actual construction. He stated that a set of construction plans that do not show existing utilities will likely result in expensive changes and possible disruption of utility services.

Chairman NORRIS indicated that because of the federal rulemaking that is underway, he would like to extend the report deadline. Representative ODOM, the House sponsor, agreed.

Mayor MCDONALD stated that he would like to know why the bill was expanded into so many areas besides gas lines.

Senator HENRY asked whether there was going to be a subcommittee appointed on this issue to work with the various stakeholder groups. Chairman NORRIS responded not at this time.

4. Future Meeting Dates

Chairman NORRIS stated that the Commission was having scheduling conflicts for the month of January. The June 2010 meeting dates would be determined at a later date.

Chairman NORRIS announced that Mr. John JOHNSON had submitted his letter of resignation to Governor Bredesen's office. Chairman NORRIS informed the members that Mr. JOHNSON was moving to North Carolina permanently and therefore would no longer be able to represent the private citizens of Tennessee. Dr. GREEN stated that Mr. JOHNSON had served the Commission for fourteen years. Chairman NORRIS stated that he would be missed.

Chairman NORRIS adjourned the meeting at 10:40 a.m.