

TACIR

**The Tennessee Advisory Commission
on Intergovernmental Relations**



Suite 508
226 Capitol Blvd. Building
Nashville, TN 37243-0760
Phone: (615) 741-3012
Fax: (615) 532-2443
www.tn.gov/tacir

**MINUTES OF THE
TENNESSEE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS
June 30, 2010**

MEETING CALLED TO ORDER

The Tennessee Advisory Commission on Intergovernmental Relations met in room 30 of the Legislative Plaza at 1:03 p.m., Chairman Senator Mark Norris presiding.

Present 19

- County Mayor Rogers Anderson
- Mayor Tommy Bragg
- Mr. Charles Cardwell
- Mr. Rozelle Criner
- Ms. Paula Davis
- Representative Craig Fitzhugh
- Mayor Brent Greer
- Senator Douglas Henry
- County Executive Jeff Huffman
- Alderman Bob Kirk
- Senator James Kyle
- County Mayor Kenny McBride
- Mayor Keith McDonald
- Senator Randy McNally
- Speaker Emeritus Jimmy Naifeh
- Ms. Leslie Newman¹
- Senator Mark Norris
- Representative Gary Odom
- Comptroller Justin Wilson²

Absent 6

- Representative Jason Mumpower
- Mayor Tom Rowland
- Mr. Tommy Schumpert
- Representative Curry Todd
- Senator Jim Tracy
- County Mayor Larry Waters

¹ Marie Murphy represented Leslie Newman.

² Phillip Doss represented Justin Wilson.

1. Call to Order and Approval of December 2009 Minutes

Chairman NORRIS called the meeting to order at 1:03 p.m. and asked for approval of the minutes. Alderman KIRK made a motion to adopt the minutes. The motion was seconded by Mayor MCBRIDE. The minutes were approved.

2. Commission Membership Update

Chairman NORRIS recognized and welcomed TACIR's newest member, Mr. Rozelle CRINER.

Chairman NORRIS informed the membership that Vice Chairman ROWLAND was recovering from an unfortunate car accident. A card was circulated for the membership to sign.

3. Presentation by Dr. Harry GREEN, Executive Director, TACIR, on TACIR's FY 2011 Work Program

Dr. GREEN presented TACIR's FY 2011 work program for Commission approval. He reviewed the General Assembly requests sent to TACIR for study during the legislative session, including the veterans service officers' compensation study, the underground utility damage prevention program study, and the non-affiliated public service answering points study. He reviewed TACIR's recurring projects, which include conducting four Commission meetings each year, producing the fiscal capacity model for the Basic Education Program (BEP), compiling and maintaining the public infrastructure needs inventory (PINI), and monitoring the implementation of PC 1101, Tennessee's Growth Policy Act.

In addition to the mandates, Dr. GREEN discussed the TACIR initiated projects, including inter-agency studies on water resource planning pilots with Tennessee Department of Environment and Conservation (TDEC), as well as American Recovery and Reinvestment Act (ARRA) qualified school construction bond (QSCB) application evaluation with the Comptroller's office. He then discussed the listed staff initiated research projects. Dr. GREEN stated that a few of the staff initiated projects related to fiscal capacity. Mayor HUFFMAN asked in which budget year the new census numbers would be used in the fiscal capacity model. Dr. GREEN responded that he was not sure when those numbers would be available. Mayor HUFFMAN said the earliest it could be available was 2010-11. Dr. GREEN agreed and stated his best guess would be FY 2012.

Mayor MCDONALD stated that he has received numerous staff initiated research reports and noticed that there are a number of staff initiated projects listed in this work program. He questioned how TACIR has the time to do all of these reports considering the number of staff as well as the number of pressing issues sent over from the legislature. Dr. GREEN responded that on many of these issues staff members are already well prepared and the necessary data are readily

available. He also stated that TACIR has several part-time employees and 120-day contract employees who work on these reports. Chairman NORRIS said that this question arises periodically in terms of helping TACIR manage its workload. He stated that the General Assembly has a tendency to refer things to TACIR when they cannot get them any further along on their own. However, he added that the General Assembly is trying to be mindful of the limitations on staff and resources. Chairman NORRIS said that a common question is the difference between a Commission and a staff report. He asked if the criteria are clearly defined. Dr. GREEN stated that all General Assembly requests must be approved by the Commission.

Dr. GREEN said the purpose of the work program was for the Commission to approve, disapprove, or modify. Dr. GREEN discussed the major achievements in FY 2010 including TACIR's measured performance standard, published reports, requests for information, administered contracts, and website improvements.

Chairman NORRIS asked if action was required on the work program. Dr. GREEN stated that it is not a statutory requirement to vote on the work program. Chairman NORRIS stated that he is concerned with the amount of work listed in the work program especially considering the agency is down two employees. Representative FITZHUGH stated that there was a movement in the legislature to eliminate some boards and commissions and with the work that TACIR has done for planning, policy, and research, it will not be on that list because it serves the legislature and citizens well. Chairman NORRIS stated that Representative FITZHUGH was referring to discussions during the budget process about some of the legislative oversight committees. TACIR was not on that list for discussion, but the Commission needs to be vigilant going forward and mindful of the work that it does. Chairman NORRIS continued by stating that as ambassadors, TACIR needs to be sure to communicate with colleagues in the General Assembly, local governments, and school boards about the reports that may be available. He said he was unsure as to whether the public is aware of the data, information, and reports that are available and it needs to be articulated during the 107th General Assembly.

Dr. GREEN mentioned that along with the two frozen staff positions, TACIR also has two staff members on maternity leave. He said TACIR meets quarterly and can return in September to determine where the priority needs to be placed in terms of (1) staff that we have available and their skills, and (2) the work program that should be pursued. Chairman NORRIS agreed and stated that he wants staff to be comfortable asking the Commission for guidance prioritizing in order to avoid staff being spread too thin.

Mayor BRAGG brought attention to the importance of the unbiased nature of the Commission's work. He stated that many states have ended their ACIR's and he is proud of Tennessee for keeping ours and thus giving state and local officials a voice and the ability to come together to discuss important issues.

Mayor HUFFMAN asked how much work is contracted out in a calendar year. He asked if the dollars are available to cover such a large workload. Dr. GREEN stated that projects are contracted out when TACIR does not have the available staff or when staff members are busy on other projects. He also mentioned that TACIR has part-time and 120-day employees available to work on major projects.

Chairman NORRIS asked about the second wave of QSCB applications. Ms. Lynnis ROEHRICH-PATRICK informed the Commission that she has been working with Ethel DETCH and Cliff LIPPARD from TACIR, Frank MCKEE from CTAS, Herb STONEBROOK from F&A, and Mary Margaret COLLIER, the lead on the project, from the Tennessee State School Bond Authority (TSSBA). They are currently in the process of reviewing the applications—submitted on June 16—from a qualitative perspective. The scores will be submitted back to the TSSBA where they will review the financial side of the process. Ms. ROEHRICH-PATRICK stated that since there is more money than applications, it looks like all properly submitted applications that qualify will get funded this year.

4. Presentation by Ms. Libby THURMAN, Senior Research Associate, TACIR, and Mr. Rod MILLER, President, CRS Inc., on TACIR's Regional Jail Feasibility Study

Ms. THURMAN began her presentation by noting that Public Chapter 554 of 2009 directed TACIR to complete a regional jail feasibility study and appropriated funds for the purpose. Ms. THURMAN noted that TACIR staff hired a contractor, CRS Inc., to complete the study. The study assesses the feasibility of participation in a regional jail for Clay, Fentress, Overton, and Pickett Counties. Ms. THURMAN stated that Mr. MILLER and his team completed comprehensive needs assessments for each of the four counties, and then assessed a multitude of jail options for each county. Additionally, Ms. THURMAN noted that the study discusses the experiences of regional jail participants across the country. Ms. THURMAN said that TACIR staff hopes the study will be of use to other counties, and that it will provide a framework for future regional jail discussions. Ms. THURMAN introduced Mr. MILLER from CRS Inc.

Mr. MILLER stated that he would be meeting with the four counties together the next day; throughout the study, he has worked with them separately. Mr. MILLER stated that the study considers regional jail partnerships, as well as other jail scenarios. He said that his team completed 30-year life cycle cost analyses for each county. Mr. MILLER noted that regional jail partnerships offer cost savings under the right circumstances. He stated that regional jails are very complex to put together, and they require perfect timing among participants. This study concludes that the counties involved are not coordinated, in terms of timing. He said that many issues affect whether or not a regional partnership is a good deal for participants; the study has outlined those issues for counties.

Mayor MCDONALD asked Mr. MILLER if he took inmate transport costs into account in the study. Mr. MILLER said yes, and that surprisingly, for most participants, transport costs are not the main obstacle. The issue of possibly having to maintain a separate lockup facility is typically a larger problem. Mr. MILLER stated that Pickett County's jail population is so small that they would be able to house all of their inmates in other counties, and would not have to maintain a lockup facility. Clay and Fentress would have to maintain lockup facilities. Mr. MILLER noted that in most regional jail situations a facility is added, not eliminated. The staffing costs for a 24 or 72 hour lockup facility are not that different than what the counties now pay to have a full jail facility.

Mr. MILLER noted that there are many forms of regional jail partnerships. Currently, Overton County is operating a de facto regional jail; over 50% of their inmates are not their own. He noted that this is one form of a regional jail. Mr. MILLER reviewed factors that counties must consider in assessing regional jail feasibility. Baseline costs are one factor in determining whether a regional jail partnership would be advantageous for counties. Some of the counties currently have artificially low costs because the jails are substandard and overcrowded. The operating costs may be low, but potential liability costs are high. Proximity is another issue to consider, in terms of who is being transported and how far. The need for a secure lock up facility in the home county also influences the potential benefits of a regional jail. Another factor is how costs are shared between partners, and as mentioned before, timing is a factor. CRS Inc. explored each of these factors for each county.

Mr. MILLER went on to discuss other factors to be considered by the counties. Inmate length of stay is an issue for jails, in terms of the percent of jail beds inmates occupy and for how long. Long-term inmates occupy the majority of beds. The type of inmates housed is also important, in terms of whether the inmates need frequent transportation to court. Many proceedings cannot happen over video; pretrial detainees will need to be transported to court in many cases. In the four counties, an increasing number of inmates are pretrial detainees. The distinction between discretionary and non-discretionary inmates is also important. Discretionary inmates are inmates the county has the choice to house, and the county is paid a per diem for these inmates. Housing discretionary inmates is a policy decision. In terms of 30-year life cycle costs analyses, staffing is the largest cost component, comprising 60-70% of costs. Construction costs comprise only about 10% of costs. Paying another jurisdiction to house inmates is also a large component. The current reimbursement rate of \$35 a day does not cover all costs to house inmates. Mr. MILLER noted that per diem rates are subject to market changes.

Mayor HUFFMAN asked about the capacities of the current jails. Mr. MILLER responded, saying that Pickett County has 10–12 beds, Fentress has 35–40, Clay has 25–30 beds, and Overton has 143 beds. Mayor HUFFMAN asked about debt service. Mr. MILLER said that Overton has 15 more years of debt service. Mayor HUFFMAN asked about parole and probation violators. Mr.

MILLER said that probation and parole violators comprised 15–20% of the daily population.

Alderman KIRK asked if the study looked at regional options for juveniles. Mr. MILLER said no, because the juvenile system is very separate from the adult system. Housing juveniles is an issue for many of the four counties. Mr. MILLER said that the female population also poses a problem, because of their small numbers. Alderman KIRK said that his county built a juvenile facility and could not get surrounding counties to use it.

Mr. MILLER showed slides of regional jail facility models for the four counties. Overton would not save money with a regional facility. Even without Overton County's participation, Pickett County could save money, but the other two counties would be better off building their own new jails. Clay and Fentress would have to maintain lockups, and the staffing costs would consume any cost savings. Overton County is the geographical hub of the four counties; without Overton, the geographic distances are not conducive to a regional partnership.

He stated that in addition to financial issues, there are several non-financial issues to consider. These include the structure of the partnership, the distance to the facility, the number of inmates to be housed out of county, and the types of inmates to be housed elsewhere. Mr. MILLER said that in regard to the state fostering more partnerships it would be wise for the state to fund feasibility studies so that they could have control over the quality of the studies. Another option is offering a one-time construction subsidy to jurisdictions, or developing a regional system like West Virginia has.

Mr. MILLER said that other counties should look at regional options, but that they need to be thoroughly studied. Mr. MILLER discussed issues that other states are currently experiencing with regional jails. Virginia has built too many regional jails, and is having trouble getting inmates. The partners are now experiencing large cost increases.

Mr. MILLER discussed issues related to jail standards, noting that some of the four jails have unconstitutional conditions. The counties would most likely be in trouble, if they were taken to court. He said that Fentress should not be certified, but is certified. Pickett is not certified. Mr. MILLER said that the Tennessee Corrections Institute (TCI) does not have enough enforcement authority. There are no consequences for a jail being uncertified. Mr. MILLER said that TCI is an agency with good inspection standards, but no way to enforce standards.

Chairman NORRIS said he thinks there are two issues here, as reported by Mr. MILLER in the study. One is that TCI's standards cover only 2/3 of the national core standards, and another is the lack of enforcement authority. Mr. MILLER agreed. He said that there is a new set of national minimum standards. Mr. MILLER said TCI's standards need to be revised; they should protect the public and the counties. He noted that TCI agrees that the standards should be

revised. Mr. MILLER said it is possible that TCI could be a codefendant in a jail lawsuit, as was the case in Florida.

Mr. MILLER said another issue is jail programming; inmates are idle. Additionally, there is a lack of alternate sentencing options. Currently, the Tennessee Department of Corrections (TDOC) is enhancing jail crowding by housing inmates in the counties. TDOC is also examining whether they should hold inmates in uncertified jails.

Mr. MILLER said that absent state funding it will be difficult for counties to form regional jails.

Chairman NORRIS said that he would like to have member input before the report is adopted by the Commission, or posted online. He noted that many significant issues were raised, and they need to be addressed before the report is adopted by the Commission.

Mayor MCDONALD asked if the four counties, TCI, or TDOC had any comments they wanted to make before the Commission takes any action. Chairman NORRIS said he feels that it would be appropriate to find out and that he would like feedback from these agencies and jurisdictions. Also, he said that the Commission should check with Mr. MCKEE at Corrections Oversight to see if he is familiar with the report's conclusions. Chairman NORRIS wants to know what, if any, Corrections Oversight action is needed regarding updating jail standards and implementing other recommendations made in the report.

Mayor HUFFMAN said there are many recommendations that he would like to discuss at the next Commission meeting. Chairman NORRIS said he thought that was appropriate. Mayor HUFFMAN stated that it seems that Mr. MILLER is not recommending a regional jail approach for these counties. Mr. MILLER confirmed this. Mayor HUFFMAN said that if a regional approach is not feasible for a county, he would like to know which of the following is more important: revising the jail management strategies or building a new facility. Mr. MILLER said that both issues are important. Mayor HUFFMAN said that the low tax bases of the counties will make it difficult to build new jails. Mr. MILLER said that there are physical plant issues that would be difficult to overcome without a new facility. Mayor HUFFMAN commented that one of the counties would have to raise their tax rate over 50 cents to get the debt service for a \$5 million jail. Mr. MILLER acknowledged that that is a difficult issue, but said that it is the statutory duty of the counties to deal with inmates and to pay for jail services. Mr. MILLER said he would be happy to come back to speak to the Commission in September.

Dr. GREEN stated that there is another complication with the funding of this study. The appropriations bill appropriated \$200,000 for the study, but there is \$75,000 remaining. He said that the TACIR staff is not sure whether there is follow up work to be done, however, there was a request for the remainder of the money by Morgan County. Chairman NORRIS said he recalled the issue, and

said the Commission needs to reserve those funds for now, pending review of the report, to see if anything else needs to be done by Mr. MILLER's group, or otherwise. Chairman NORRIS said he has spoken to Senator YAGER about this, and feels that Senator YAGER is satisfied for now, and that Morgan County is satisfied for now.

5. Presentation by Ms. Leah ELDRIDGE, Senior Legal Researcher, TACIR, on Water and Wastewater Authorities

Ms. ELDRIDGE stated that SB 1780/HB 1267 had been referred to the TACIR for study by the House Local Government Subcommittee. She said that this bill would put specific language in the law requiring that a purchase, lease, or lease-purchase by a water and wastewater treatment authority that was over \$10,000 be preceded by competitive bidding or competitive proposals following the procedure for competitive bidding in accordance with the county purchasing law of 1983, codified at TCA § 5-14-204.

She stated that currently the water and wastewater treatment authority statutes do not include specific language that require an authority to use competitive bidding. Ms. ELDRIDGE noted that TCA § 68-221-607 gives water and wastewater treatment authorities the power to adopt by majority vote of the board the purchasing procedures for utility districts.

Ms. ELDRIDGE said that a number of water and wastewater authorities already use a competitive bidding policy despite the fact that current law does not contain specific language requiring them to adopt such policies. The Cheatham County Water and Wastewater Authority and Hamilton County Water and Wastewater Authority use their county's purchasing procedures which require competitive bidding. She stated that the Wilson County Water and Wastewater Authority adopted the purchasing policies for utility districts defined in TCA § 7-82-801. She said the Williamson County Water and Wastewater Authority does not own or operate a wastewater system. It only issues regulations for alternative wastewater systems. Therefore, they do not have a competitive bidding policy.

Ms. ELDRIDGE said that water and wastewater treatment authorities are somewhat unique in that there is no specific language in the law directing them to use competitive bidding. Tennessee law requires other similar public utilities to use competitive bidding. She noted that county and city utilities are required to use competitive bidding. She stated that regional water and wastewater authorities are required to be subject to the applicable purchasing laws of the creating governmental entity, or if two or more creating governmental entities form a regional water and wastewater treatment authority, then an authority shall be subject to the County Purchasing Law of 1983. She said that utility districts are required to adopt a policy governing all purchases, leases, and lease-purchase agreements of the district which shall contain provisions requiring competitive bidding in appropriate circumstances.

Ms. ELDRIDGE noted that amending the law by putting specific language in the water and wastewater treatment authority statute to require the authorities to use competitive bidding would be consistent with good public policy. Competitive bidding helps to prevent fraud, corruption, and favoritism, provide a fair opportunity for bidding on public contracts, and avoid misuse of public funds. She said that one could argue that the General Assembly has an interest in ensuring that authority customers are protected from fraud and corruption. Competitive bidding might also help to ensure that authority funds are handled properly.

Ms. ELDRIDGE noted that statutes for other water and wastewater utilities include specific language requiring competitive bidding. For example, the Regional Water and Wastewater Treatment Authority Act, which is similar to the Water and Wastewater Treatment Authority Act, includes language that “the national policy in favor of competition shall ensure a policy of competitive bidding for all authorities.” She noted that TACIR staff suggested that if the General Assembly chooses to incorporate specific language into the statute requiring competitive bidding it might consider grandfathering in the existing water and wastewater authorities which already use competitive bidding.

Senator HENRY asked if the competitive bidding requirements for other water and wastewater utilities were added at the same time or at different times. Ms. ELDRIDGE stated that she thought they were added at different times. Senator HENRY said that one of the problems with the water districts was that over a period of time a person will organize a water district, not charge enough, end up not being able to pay for it, and then they go bust. He said that it seemed like it would be a good idea since they have this new substitute organization for the Board of Standards to have them look at the competitive bidding requirements that vary from statute to statute and see if they think we need to spruce them up so we do not have another water district buying more than what they need.

6. Presentation by Ms. Lynnis ROEHRICH-PATRICK, Associate Executive Director, TACIR, on Infrastructure Needs in Tennessee

Ms. ROEHRICH-PATRICK stated that the big news from the 2010 report is that the infrastructure needs are now \$37.3 billion in total—a \$3.1 billion increase since the last report. She said that this increase is not out of line with past increases. She made a reference to Table 2 on page 4 of the report, which shows increases each year since the start of the inventory in 1999. She mentioned that a couple of big jumps earlier on in the inventory were a result of early initiatives to gather more information and get more comprehensive information about public schools. She said \$2.5 to \$3 billion has been the average annual increase in the inventory. Ms. ROEHRICH-PATRICK also stated that this is the second time in the inventory that an increase in all the six major categories of needs has occurred.

Ms. ROEHRICH-PATRICK stated that compared to 2007, which was the last year funding was reported, roughly the same amount of funding is currently available for projects. About \$9.1 billion is known to be available in this report compared to \$9 billion in the 2007 report. However, the total need has grown so the percentage of what is funded has actually declined. She stated that one of the most notable types of need that increased is higher education with a \$1 billion dollar increase—the second increase of that size. Last year, higher education reported an increase of \$950 million.

Ms. ROEHRICH-PATRICK mentioned that the state has been struggling to fund its capital outlay needs; there were no new appropriations for capital improvements in higher education since fiscal year 2009. In fact, during fiscal year 2009, money was moved from capital improvement appropriations to bonds. Higher education has been struggling and the report shows that. The biggest total increase was in transportation, which is now about 50% of the total needs reported in the inventory. The biggest percentage increase was in the category of business district development because of a single project—the Nashville Convention Center, with an estimated cost of \$455 million dollars—which caused the category to more than double in size. Without it, there would have been a decrease in business district development needs.

Ms. ROEHRICH-PATRICK stated that public school needs have declined for the first time—a \$110 million dollar decline. She said this time there was a decline in new school construction need. This decline in new school construction need was seen before, alternating years with declines in improvements in existing schools. That may be because school systems from time to time want to add a new school, replace a new school, or add on to an existing school—and the need for one or the other of those things varies from place to place and it also depends largely on the strategy of the local government and how they want to handle it. Furthermore, she stated that overall, there is a decline in total school needs and this is partly because enrollment rates have been almost flat and the number of schools has also been almost flat for the past five years. Another reason may be the after effect of the Education Improvement Act. She stated that the use of portable classrooms seems to be flat as well. About a third of our school systems have no portable classrooms at all. Of the fastest growing school systems in the state, Rutherford County has the largest percentage of its classrooms in portables—that is about 7%—but the system with the most classrooms in portables are relatively rural systems. Clay County and Bradford Special School District in Gibson County both have more than 15% of their classrooms housed in portable buildings.

Ms. ROEHRICH-PATRICK stated that the best news in terms of schools is that the conditions of school buildings remains largely good to excellent; they hit about 90% in good or excellent condition, and this is based on the school systems' ratings given some various specific definitions that TACIR provided. They hit that level three to four years ago, and they have stayed there ever since.

In fact, 92 school systems report that all of their school buildings are either in good or excellent conditions.

Ms. ROEHRICH-PATRICK stated that there is the same pattern across counties that has been seen all along in the relationship between their infrastructure needs and factors that would affect them. She said that the fiscal factors top the list and that may be because the probability that a local government would be able to fund a project has something to do with the likelihood that they will put it in the inventory. In some cases, they tend to rely more on what is in their capital improvements programs (CIP) rather than looking more broadly at their needs and considering what the needs really are if they had the money. Furthermore, she stated that total population and population density are strongly related to the amount of infrastructure needs that are reported to TACIR. She said infrastructure is expensive in more densely populated areas because there is more demand for it. People who live in more densely populated areas may be more likely to expect more infrastructure support and that may be a reason why they move there in the first place. More highly populated areas often serve as regional hubs for various services such as health care services, and more infrastructure is needed for those services. She stated that to try to get more correct estimates for county to county estimates TACIR staff factor out regional projects.

Mayor MCDONALD asked if there is a standardized criterion for needs. Ms. ROEHRICH-PATRICK said that staff tries to standardize when possible, such as for public schools where there are standardized definitions. She said that there is not enough staff to follow that; however, staff tries to gather as much information as possible. Even if we have more definitions, it will still be dependent on development district staff and local officials to apply them. Chairman NORRIS asked if TACIR was using business district development interchangeably with economic development as far as infrastructure categories are concerned. Ms. ROEHRICH-PATRICK said that economic development is a broader category and business district development is one of two sub-categories that is included in economic development, the other being industrial sites and parks. She stated that economic development is a small category so if there is a change in one of the two sub-categories, then the economic development category will change significantly as well. Mayor HUFFMAN asked if flood damage will be reflected in this report. Ms. ROEHRICH-PATRICK said that none of the damages are in this report, but they would probably show up in the next inventory.

7. Presentation by Dr. Harry GREEN, Executive Director, TACIR, on Previously Reviewed Mandates

Dr. GREEN presented the following three studies for the Commission's approval:

- E-911 Emergency Communications Funding report,

- County Revenue Partnership Fund (CRPF) report, and
- Electric Generation and Transmission (G&T) Cooperative Act report.

Dr. GREEN noted that all three reports were legislative mandates due in 2010 and asked if they were therefore invalid. Chairman NORRIS responded that the reports were still valid and opened the floor for discussion.

Mayor MCDONALD began the discussion by stating that he recalled on the Commission's previous discussion of 911 that there were some open items on which the Commission was still looking for some consensus among the stakeholders. He continued that he has a concern about the report as it stood in December and whether it is valid after the stakeholders had their opportunity to provide input.

Chairman NORRIS said he did not know if Commissioners ever received responses to the questions that were raised, and that is an open issue. He stated that he was not sure whether the minutes reflected that. He asked the members if they recalled the questions and if there was any follow up on the 911 report. Chairman NORRIS decided to hold the 911 report out as an exception.

Dr. GREEN noted that the Electric Generation and Transmission (G&T) Cooperative Act did pass this last legislative session and questioned whether the report should therefore be a Commission or staff report. Dr. GREEN stated that the report would be posted on the website but did not know if it mattered whether it was a Commission or a staff report. Mayor MCDONALD stated there needs to be a clearer dissemination between those reports that are staff generated and those that have been vetted by this body.

Senator KYLE asked what the legislative history was for SB 0208/HB 0204 that generated the E-911 study. Mr. Cliff LIPPARD answered that the bill that called for an increase to the wireless E-911 fee did not go forward but went into general subcommittee at the end of the session.

Senator KYLE asked if staff would be looking at another opportunity next year to change the wireless fee and would this report be reviewed as part of that? Mr. LIPPARD said that was correct, then added that one of the main findings from the report is that staff does not have the pertinent information to make a recommendation on changes to the wireless fee. He said the staff's recommendation is for further study and that revenue data be available by line type, whether it is a residential line or business line, so that staff can evaluate the data and make a more specific recommendation. Staff does not have the data right now to make a reliable recommendation on a change to the rate structure.

Senator KYLE asked is that not because our 911 boards are like a balkanized network of independent providers that are in the same business? There is not necessarily sharing of information as to what is the cost, the benefit, or the

process. He continued that the 911 folks have carte blanche on what service they want to provide and what they are going to charge you to do it because it is on your phone bill and not on something else. They have a company that collects it for them, and we do not have any information about what they are doing. Senator KYLE said he looked at the report and it is all broad generalities. He added that he is not saying anyone is doing anything inappropriately and that the 911 system worked the last time he used it.

Mr. LIPPARD said that Tennessee is recognized as having one of the best 911 systems in the nation. Senator KYLE interjected that that is a recognition by other 911 boards. Mr. LIPPARD responded that is correct, but it is also a Congressional recognition.

Mr. LIPPARD went on to say that the specific shortfall that affects staff's ability to make a recommendation on funding has to do with reporting requirements—whether or not a provider is required to report to the Tennessee Emergency Communications Board (TECB) or any other central state agency the number of lines by customer type, business or residential. He said that since staff members are dealing with different rates for each of these different types of lines, staff cannot really estimate the impact of a recommended change in rates without having that information. If that reporting requirement was changed and there was a centralized collection of this byline information by each Emergency Communications District (ECD), which they get themselves from the service providers, then staff would be able to make a recommendation.

Senator KYLE commented that if TACIR does not have enough data to substantiate what SB 0208/HB 0204 wanted to do then we should create an infrastructure for the collection of that data so we can get those deficiencies out of the way. He said that if the purpose of this report was to say we do not know enough about it, then it seems we ought to consider asking staff to create a mechanism to get that information because this issue is not going to go away.

Mr. LIPPARD added that this was also a recommendation from our 2006 report.

Chairman NORRIS recalled that the report before the Commission in December 2009 had about six overall findings and associated recommendations and legislators were presently talking about particular legislation in which they were interested. He continued that while that is now moot the report and its recommendations and findings remain. The question is whether we allow that to be posted in some fashion or disseminated as a staff report or if this group wants to consider it further before it takes even that secondary status as a staff report. Chairman NORRIS asked Commissioners how they wanted to proceed.

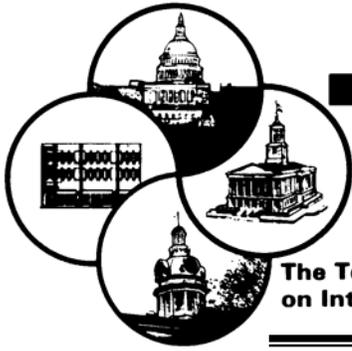
Mayor MCDONALD said Senator KYLE's comments are an example of why this item should continue to be vetted, and recommended it be scheduled for the next meeting to get a clearer understanding of the stakeholders' views, as well as

some of the other questions that have been raised. He concluded that he never felt like this subject has been finished.

Chairman NORRIS agreed and said he felt that we needed to bring some closure to it. He amended the motion to adopt the previously reviewed mandates, minus the E-911 report, so they may be posted in some form.

Mr. LIPPARD added that TACIR was also referred a second 911 study regarding non-affiliated ECD PSAPs, and that many questions regarding consolidation from the December 2009 meeting were in regards to that study.

Chairman NORRIS adjourned the meeting at 3:18 p.m.



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



Suite 508
226 Capitol Blvd. Building
Nashville, TN 37243-0760
Phone: (615) 741-3012
Fax: (615) 532-2443
www.tn.gov/tacir

MINUTES OF THE TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS July 1, 2010

MEETING CALLED TO ORDER

The Tennessee Advisory Commission on Intergovernmental Relations met in room 30 of the Legislative Plaza at 8:39 a.m., Chairman Senator Mark Norris presiding.

Present 18

County Mayor Rogers Anderson
Mr. Charles Cardwell
Mr. Rozelle Criner
Ms. Paula Davis
Mayor Brent Greer
County Executive Jeff Huffman
Alderman Bob Kirk
Senator James Kyle
County Mayor Kenny McBride
Mayor Keith McDonald
Senator Randy McNally
Speaker Emeritus Jimmy Naifeh
Ms. Leslie Newman³
Senator Mark Norris
Representative Gary Odom
Representative Curry Todd
Senator Jim Tracy
Comptroller Justin Wilson⁴

Absent 7

Mayor Tommy Bragg
Representative Craig Fitzhugh
Senator Douglas Henry
Representative Jason Mumpower
Mayor Tom Rowland
Mr. Tommy Schumpert
County Mayor Larry Waters

³ Marie Murphy represented Leslie Newman.

⁴ Phillip Doss represented Justin Wilson.

1. Call to Order

Chairman NORRIS called the meeting to order at 8:39 a.m.

2. Presentation by Ms. Ethel DETCH, Research Associate, TACIR, on Utility Damage Prevention Project

Ms. DETCH gave an update on the status of the Utility Damage Prevention Project. She briefly reviewed testimony from the September and December 2009 TACIR meetings. She reiterated that the changes have been proposed to state law because the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) is actively encouraging all states to strengthen their utility damage prevention statutes to reduce damage to gas and hazardous liquid pipelines. Congress has authorized PHMSA to take direct enforcement action against excavators if the Secretary of Transportation deems a state's enforcement program is inadequate. They have also implied that states could lose federal funding for their gas pipeline safety programs.

Ms. DETCH indicated that the federal government's next step will be a "notice of proposed rulemaking" which will likely be issued in Fall 2010, with the actual rule issued in Fall 2011. She noted that the advance rulemaking notice stated that "a threshold criterion for determining the adequacy of a state's damage prevention enforcement program will be whether the state has established and exercised its authority to assess civil penalties for violation of its one-call law." Tennessee law presently does not authorize civil penalties.

Chairman NORRIS responded that this is an issue that we will have to deal with once the federal government has promulgated its rules. He noted that developing a consensus on the issues is a legislative process, something for the sponsors of the legislation to do. It is not something for TACIR to do except to the extent that staff can document issues on which there is already consensus. Chairman NORRIS went on to say that he does not want any of the stakeholders to say that they were not given an opportunity to provide input to the process. He noted that TACIR had had testimony from stakeholders at its December meeting, and he encouraged all interested parties to meet with TACIR staff, provide written comments, or use any other method to be included. Chairman NORRIS encouraged staff to complete the report and welcomed other comments.

3. Presentation by Mr. Bill TERRY, Research Associate, TACIR, on PC 1101 Legislative Update

Mr. TERRY noted that all counties required to prepare and adopt a growth plan have done so and have an approved plan. He said that 23 counties have amended their growth plans, and some have filed more than one amendment. All have been approved by the Local Government Planning Advisory Committee. This could indicate that the amendment process in the law does in fact work.

Mr. TERRY then reviewed all the bills amending PC 1101 that have been approved by the legislature since 2008.

In 2008, a bill was passed that deleted sections of PC 1101 that were obsolete and no longer applied to any county.

In 2009, a bill was passed that revised the procedure for amending a growth plan. This act, Public Chapter 374, provided direction for re-convening a coordinating committee, for action of the coordinating committee to submit its recommendations to all legislative bodies within a county and for subsequent approval by the Local Government Planning Advisory Committee.

In 2010, two bills were passed that amended PC 1101. Public Chapter 1026 provided that a municipality could expand its urban growth boundary to include tracts of land less than ten acres in size that meet specified criteria without following the established procedures of PC 1101 for amendment of a growth plan.

The other bill, Public Chapter 917, addressed the issue of municipal annexation by ordinance of territory outside its approved urban growth boundary. This law provided that prior to annexation by ordinance of territory outside of the urban growth boundary, the growth plan first had to be amended, and all the procedures established in the amendment process specified in the act had to be completed. The need for this act arose from a lawsuit and an appeals court decision over the annexation of the same territory by two municipalities whereby the opinion of the court negated the growth plan amendment process. As an alternative to amending the growth plan, the act also provided that annexation by referendum outside of an urban growth boundary was a permissible process.

Chairman NORRIS asked how the economic development component of the act was working statewide. Mr. TERRY replied that counties covered by the act had the required "Joint Economic and Community Development Board." Some of them meet regularly to carry out their statutory charge but others exist in name only. The Department of Economic and Community Development certifies the existence of those boards through the Three-Star Program.

4. Presentation by Dr. Harry GREEN, Executive Director, on Fiscal Capacity for FY 2011

Dr. GREEN briefly discussed the fiscal capacity formula, noting that legislators had authorized a change to a formula produced by the Center for Business and Economic Research (CBER) at the University of Tennessee at Knoxville four years ago. A transition to the new model began but has never been completed, so the results of each model are now averaged to produce the final fiscal capacity percent for use in the Basic Education Program (BEP) funding formula.

Dr. GREEN pointed out that one of the biggest problems with the model is that it is based on 95 counties, while the state has 136 systems. This was originally done because of the lack of system-level data.

There was agreement among the Commissioners that the report did not require Commission approval.

Chairman NORRIS asked if staff had ever run the model using Median Family Income (MFI) and what sort of effects that would have. Dr. GREEN replied that staff has run the model with many different data components, including with MFI and that there were some changes in results but they were small.

5. Presentation by Mr. Alan LEISERSON, Legal Services Director, Tennessee Department of Environment and Conservation, on Regional Water Supply Pilot Studies

Mr. LEISERSON began his presentation by thanking the Commission for its support of TDEC's two regional water supply pilot studies. [Staff note: These studies are part of the TACIR's work programs for fiscal years 2009-10 and 2010-11. TACIR staff members are providing research, writing and editing support.] He noted that the studies were prompted partly by legislative action, including 2002 legislation that established a technical advisory committee on water resources to the commissioner of TDEC. These studies evolved out of that committee.

Mr. LEISERSON highlighted the number of partners involved in the pilot studies, which include several state and federal agencies, as well as the Tennessee Association of Utility Districts and a number of non-profits and higher education institutions. He noted the overall goal of matching the water resources in the pilot regions with the current and future needs of the people in the regions. He described the specific objectives of the studies, which include developing a model for the state based on the process used to produce recommendations for each of these regions. He stated that recommendations will consider efficiency, financing, and sustainability based on a 20-year time line. Cooperation among water utilities is being emphasized as a means to that end. Mr. LEISERSON noted that funding agencies consider that in administering grants and loans.

Mr. LEISERSON went on to describe the two regions, which cover most of Sumner County plus the White House Utility District in the north central part of the state and Grundy County plus the Sewanee Utility District in the south Cumberland Plateau area. Both areas straddle watershed divides, which contributed to their drought troubles in 2007. Alternatives for the two regions will be based on a broad look at information about the areas, including current water use and structural capacities of the systems, land use patterns, projected growth, environmental and ecological sensitivities, and the economic and financial situation of the utilities.

Mr. LEISERSON noted that another product of the studies will be the statewide availability of a computer-based model for determining needs, analyzing alternatives, and optimizing water systems. The particular model being used is called OASIS. Mr. LEISERSON concluded by stating the expectation that the preferred alternatives will be identified late this summer.

Representative ODOM expressed support for the project. He asked whether we are looking at how other states have dealt with this issue. Mr. LEISERSON responded that we are looking at Kentucky, as well as Georgia, Texas, and other states that have taken action in this regard. Representative ODOM asked whether the group's work is limited to these two regions or whether it is also looking at broader issues such as the adequacy of the permitting process to protect the waters of Tennessee. Mr. LEISERSON replied that the department has been looking at that issue in the context of implementing the Inter-basin Water Transfer law's permitting system and described the department's efforts in that respect.

Senator TRACY asked Mr. LEISERSON whether he is confident that the studies will be completed by the end of summer. Mr. LEISERSON replied that the schedule has slipped from the original target date but expressed confidence that it would be done. Senator TRACY reiterated the need for this work, urged him to do whatever is necessary to meet that reporting goal and offered the support of the Commission.

Senator KYLE commented that there is clearly an unmet expectation as to the timeliness of this report that is creating the perception that something or someone is slowing it down or trying to stop it. He noted that he had been asked by four other legislators to bring this issue up at this meeting. He suggested to the Chairman that, if the report will be complete by this fall, the Commission have a report this fall on how they got it done and that staff provide appropriate support.

Chairman NORRIS, noting that he had had similar inquiries, had looked into the situation, and that a contract that needed to be renewed had now been renewed and suggested that the Commission have that report in September. He pointed out that there are grants and other programs that cannot be fulfilled until they have this piece, which is why it is essential to get it done.

6. Future Meeting Dates

Chairman NORRIS called for an agreement on the dates for the next meeting. After some discussion, Chairman NORRIS announced that the meeting would be scheduled on Wednesday and Thursday, September 8–9, 2010.

Chairman NORRIS adjourned the meeting at 9:28 a.m.