



TACIR

**The Tennessee Advisory Commission
on Intergovernmental Relations**



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**MINUTES OF THE
TENNESSEE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS
February 7, 2011**

MEETING CALLED TO ORDER

The Tennessee Advisory Commission on Intergovernmental Relations met in Room 30 of the Legislative Plaza at 9:05 a.m., Chairman Senator Mark Norris presiding.

Present 18

Mayor Tommy Bragg
County Mayor Ernest Burgess
Mr. Charles Cardwell
Mr. Rozelle Criner
Ms. Paula Davis
Representative Vince Dean
Mayor Brent Greer
Senator Douglas Henry
County Executive Jeff Huffman
Speaker Emeritus Jimmy Naifeh
Senator Mark Norris
Mayor Tom Rowland
Representative Charles Sargent
Mr. Tommy Schumpert
Representative Curry Todd
Senator Jim Tracy
County Mayor Larry Waters
Comptroller Justin Wilson¹

Absent 6

Alderman Bob Kirk
Senator James Kyle
County Mayor Kenny McBride
Mayor Keith McDonald
Senator Randy McNally
Representative Gary Odom

¹ Phillip Doss represented Comptroller Wilson.

1. Call to Order and Commission Updates

Vice Chairman ROWLAND called the meeting to order at 9:05 a.m.

Dr. GREEN recognized and welcomed TACIR's new Commission members: Representative Charles SARGENT, Representative Vince DEAN, and County Mayor Ernest BURGESS.

Mr. Sam EDWARDS, Executive Director of the Greater Nashville Regional Council (GNRC), presented TACIR staff member Bill TERRY with the Maynard Pate award. Mr. EDWARDS also congratulated Mayor BURGESS on receiving the Hank Thompson award from GNRC earlier in the year.

2. Commission Approvals

Vice Chairman ROWLAND asked for approval of the minutes from the September 2010 Commission meeting. Representative TODD made a motion to adopt the minutes. The motion was seconded by Senator TRACY. The minutes were approved.

Dr. GREEN stated that TACIR is required by statute to prepare a biennial report, and the report accurately reflects TACIR's work over fiscal year 2009 and fiscal year 2010. Mayor BRAGG made a motion to approve the report; Mr. CARDWELL seconded the motion. The report was approved for publication.

3. Presentations on Regional Water Supply Planning: Final Update

a.) Mr. Robert MARTINEAU, Commissioner, Tennessee Department of Environment and Conservation (TDEC)

Mr. MARTINEAU informed the Commission that he worked in the environmental law field for over 25 years, including service at the Environmental Protection Agency and 15 years in private practice. Although he has served as TDEC's Commissioner for only three weeks, he is familiar with the issues surrounding environmental protection and the challenges involved in providing clean water to all while also ensuring economic stability. He is working diligently to fully understand the budgetary and public policy issues. He identified regional water supply as a central issue for business development and residential growth.

The partners associated with the project believe that through a collaborative effort, good public policy can be developed and a long-term approach can be established throughout the state. Mr. MARTINEAU commended the various agencies and stakeholders who contributed to the project.

b.) Mr. Paul SLOAN, Deputy Commissioner, TDEC

Mr. SLOAN commended Mr. MARTINEAU, noting that the new TDEC Commissioner has learned a tremendous amount of information quickly. For the benefit of new Commission members, Mr. SLOAN provided background information on the pilot project. The response to the 2007 flood was multi-faceted. The first step was revising the state's existing drought management plan. The second step was determining how to support the 450 community public water systems through the development of their own specific emergency drought response plans. The third step was identifying the areas that were particularly vulnerable to drought so that the group could assess current water supplies, anticipate future needs, and determine the best way to meet demand.

In conjunction with members of local communities, several governmental agencies collaborated and developed two pilot reports—one for the South Cumberland study area and one for the North Central study area. The agencies involved include the U.S. Army Corps of Engineers (the Corps), the Tennessee Wildlife Resources Agency, the Tennessee Valley Authority, the Department of Economic and Community Development, the Nature Conservancy, the Tennessee Association of Utility Districts, and others. The Legislature appropriated \$500,000 for the project. The Corps fully matched that amount so that a regional model could be produced for the entire state. Mr. SLOAN anticipates that the final version of the reports will follow shortly.

c.) Mr. Ben ROHRBACH, Chief, Hydrology and Hydraulics, U.S. Army Corps of Engineers, Nashville District

Mr. ROHRBACH provided an overview of the pilot areas and an update on what the study team has accomplished to date. [The presentation was accompanied by a slide show that is available online through TACIR's website.] Since September 2010, the team has identified the study areas, developed possible alternatives, completed Tier 1 and Tier 2 evaluations of those alternatives, and selected the recommended alternatives for the North Central and South Cumberland study areas. The studies were focused on source water development.

At least five meetings were held in conjunction with stakeholders, local leaders, utility district managers, and members of the public. In addition to the governmental agencies and partners that Mr. SLOAN mentioned, TDEC assembled a robust planning team that also included two academic institutions: Tennessee Technological University and the University of Tennessee (Memphis).

Each study area is primarily defined by the distribution boundaries of the individual utilities. The environmental considerations that went into the selection of alternatives were watershed-based. When the study team determined

demand and developed specific alternatives, it considered the extent to which the utilities currently serve their customers.

The North Central study area consists of most of Sumner County and the part of Robertson County that is served by the White House Utility District. The South Cumberland study area includes several counties, but the study team focused on Sewanee, Monteagle, Tracy City, Big Creek Utility District, and the wholesale providers that they serve. The goal was to create a sustainable regional model that could be used to meet current and future demands. Demand projections and existing yields were determined, and need statements were developed for both pilot areas.

In the North Central study area, Old Hickory Lake is the principal water source. The lake provides 90% of the area's water supply needs—which meets existing demand. Portland is the only public utility in the area that does not use Old Hickory Lake as a regular water source. Instead, it uses small water sources that are insufficient to meet projected demand. Portland purchases finished water as needed from adjacent utilities, but no formal contracts are in place. The working group and the technical advisory committee determined that the current arrangement does not provide adequate security for the area. By 2030, raw water demand in the area is expected to increase significantly from approximately 21 to over 30 million gallons per day. Sufficient raw water is available in the Cumberland River system. The Corps can help determine the best way to distribute that water in the future.

In the South Cumberland study area, the 2007 drought was particularly critical for several smaller utilities. Raw water supply was severely strained during that time. Monteagle managed its drought by establishing emergency sources and by utilizing existing interconnections with adjacent utilities. Interconnections are well-established and formal water-sharing agreements are in place to purchase water on a regular basis. Similar measures will be necessary to survive future droughts.

Unlike the North Central study area, demand in the South Cumberland study area is not expected to increase significantly by 2030. Projections indicate a nominal increase of about 100,000 gallons per day; however, even without a significant increase in demand, additional supply development is needed to ensure reliable capacity.

Mr. ROHRBACH presented the alternative screening protocol and discussed the principal factors for the Tier 1 and Tier 2 evaluations that were mentioned at the last meeting. In North Central, the following alternatives were considered: an interconnection between Portland and White House Utility District, construction of a new reservoir on Caney Fork Creek, groundwater development, and a pipeline from Portland directly to the Cumberland River. In South Cumberland, the following alternatives were considered: interconnections on a regional basis,

construction of a new dam on Big Creek, purchase of Ramsey Lake, raising Big Fiery Gizzard Dam, and a pipeline to the Tennessee River.

Under Tier 1, the primary factor that the group considered was the reliable capacity of the alternatives. That process identified the alternatives that could meet the regional needs with minimal risk. Other factors were: project costs, feasibility, design, construction, operation, maintenance, permitting issues, public acceptance and property acquisitions, constructability, flexibility (whether the alternatives could be implemented in phases), and increased drought resistance. If an alternative met the Tier 1 criteria, it was subjected to a Tier 2 evaluation. Under Tier 2, the primary factor was cost.

In South Cumberland, three alternatives were subjected to Tier 2 scrutiny: raising Big Fiery Gizzard Dam and Reservoir, purchase of Ramsey Lake, and a pipeline to the Tennessee River to South Pittsburg (Phase I). These alternatives were evaluated in terms of storage remaining, water quality, environmental benefits, and other factors. Raising the Dam with a modified release is the least costly option, but the existing release does not allow the alternative to meet the entire region's water supply needs. This is a sufficient alternative for Tracy City, but minimum release criteria will require further evaluation to meet or exceed the needs for the region throughout 2030. The Corps and TDEC have already initiated that study. They will balance water supply requirements and environmental needs to the extent practical.

In the South Cumberland study area, the recommended alternative is to raise Big Fiery Gizzard Dam and Reservoir with a modification of existing downstream releases. The study team will work with Tracy City, local constituents, and the Corps to conduct the necessary studies (i.e. downstream flow requirements). This alternative will provide adequate supply for the region through 2030. It is the least expensive alternative by a significant margin, and it can be accomplished relatively quickly. It is also more sustainable than other alternatives.

In North Central, three alternatives were subjected to Tier 2 scrutiny: an interconnection to White House Utility District from Portland to White House, the construction of a reservoir on Caney Fork Creek, and a pipeline directly to the Cumberland. In North Central, the recommended alternative is to develop a formal interconnection from White House Utility District to Portland. This option is the most economically feasible and it can be completed in incremental upgrades. It can be expanded to meet needs beyond 2030 with a permanent connection to the Cumberland River.

The team also identified the next steps for implementation. Regional conservation and demand management efforts should be undertaken in both study areas. Utilities should work together to understand their vulnerabilities and how they can respond to droughts and reduce daily demand. They should

establish formal coordination plans if they have not already. To facilitate that process, the department is working to obtain a statewide license for Operational Analysis and Simulation of Integrated Systems (OASIS) software. Training and data will be provided to help communities develop regional demand management and drought management strategies.

Users will bear the cost of additional water supply development. Engineering and rate studies need to be conducted. Cost estimates will be refined based on the additional studies and implementation plans. Current estimates do not include potential charges for water purchases between utilities. The Committee will leave that issue to contractual negotiations. Such determinations were outside the scope of the study. Mr. ROHRBACH noted that utilities may look to the contract between White House Utility District and Simpson County, Kentucky for an example of a regional model. Options for financing include the U.S. Department of Agriculture, the Corps, the Division of Water Revolving Fund, and pay-as-you-go plans.

Senator TRACY asked about the time frame for project completion in the North Central study area, how realistic it is to implement a program with White House, the steps that could be taken to accomplish the recommended alternative, how quickly it could be done, and whether there is a greater need in North Central than in South Cumberland. Mr. ROHRBACH responded that growth in the North Central study area exceeds that of South Cumberland. Portland may double its existing demand in the next 20 years. The time frame would depend on how quickly the involved parties could reach an agreement concerning cost and implementation. Senator TRACY asked how long it would take if the parties were ready today. Mr. ROHRBACH estimated that it could take about two years from that point to work out the details and complete construction. Mr. SLOAN added that White House and Portland are currently connected—but not in such a way to deliver the needed capacity. The two are communicating and have employed the same engineering firms to complete the necessary groundwork. These are critical first steps.

In South Cumberland, meeting the region's needs will require the cooperation of more than two utilities. A regional approach is needed there. Mr. ROHRBACH noted that legal precedent exists in Tennessee for interlocal cooperation. Additional next steps for South Cumberland include engineering studies to determine the modified release schedule for Big Fiery Gizzard Dam and Reservoir, evaluation of interconnections, hydraulic assessments, further cost estimate development, permitting actions, and rate studies. In addition to the financing options previously mentioned, another option for South Cumberland is the Economic and Community Development Block Grant. Tracy City is in the process of developing grant applications.

Vice Chairman ROWLAND asked whether Monteagle had to truck water in to meet its demand during the last drought. Mr. ROHRBACH stated that Monteagle

utilized existing connections with adjacent utilities and established an emergency connection to Lake Louisa to meet its water supply needs during the drought.

Dr. GREEN asked how we should move forward and at what rate of speed considering many outstanding issues, including revenue. He added that water supply issues could become serious in a few years. Mr. ROHRBACH responded that all evaluations assumed a reoccurrence of an historical critical drought similar to the one that occurred in 2007. Absent that drought, the utilities should be in good shape. The concern is whether the drought will occur. At this point, it is up to the utilities to recognize the value of the recommended alternatives. Financial options are available to facilitate progress and partners are willing to help when possible.

d.) Mr. W. Scott GAIN, Director, Water Science Center, U.S. Geological Survey (USGS)

Mr. GAIN prefaced his presentation with a statement that the USGS is an objective scientific entity that has no regulatory authority. He stated that he was present in an advisory capacity and has served as moderator throughout the project. The Water Science Center is responsible for the stream gauging in Tennessee. Mr. GAIN has been the director of the department for 13 years. Mr. GAIN went on to provide some general observations, conclusions, and insight concerning the steps taken throughout the project. [The presentation was accompanied by a slide show that is available online through TACIR's website.]

The study team's fundamental goal is to help Tennessee communities, utilities, and stakeholders arrive at informed and effective decisions regarding their long-term economic and environmental health and sustainability. The team recognized that numerous information sources are available. Existing data was problematic because it was incoherent and scattered across the state. To help solve this problem, several important planning tasks were identified: facilitation, policy and oversight, system data and descriptions of systems, economic projections and analyses, alternatives and structural analyses, environmental limitations, and demand support systems. All are necessary to reach an effective decision.

This study has produced two basic items: (1) specific recommendations as discussed in the above presentations and further established in the pilot reports for the two areas and (2) the general process which will be highlighted in a second, general report. Mr. GAIN stressed that he is making no formal recommendations at this point. However, there are roughly 11 or 12 basic observations that could become recommendations. The larger working group will be consulted before any results are published. General observations are grouped into five basic areas: (1) reasons for regional planning, (2) the nature of a good plan, (3) necessary support for state needs, (4) good regulatory practices,

and (5) how to implement the plans state-wide. Mr. GAIN discussed each observation in detail. Primary considerations are provided here.

The two main reasons for regional planning are (1) clean and reliable drinking water is vital to the State's economic well-being and the health of its citizens and (2) growing interrelations among users demand that water supply and drought management plans address the needs of multiple interests within regions and watersheds and foster greater collaboration among federal, state, and local authorities. Working together begins at the planning level. Land use planning should consider the suitability of the area based on its water supply. Unrestricted growth in areas that do not have adequate water supplies is problematic. Plans for reliable water supplies should provide flexibility, use efficiency, and risk management with margins of safety.

Tennessee does not have an overall and coherent program for planning the data that it collects. This makes it difficult to provide high-quality data. Mr. GAIN noted that there is no mission in Tennessee to monitor water in streams for the purpose of water supply. No single entity is charged with the task; however, Mr. GAIN stated that Tennessee does a good job of collecting basic water use information. Timely monitoring and reporting of regional water resource use and system characteristics are essential.

Good financial management dictates that users pay the full price of services. Regional planning is more effective when systems are accountable for the full cost of their decisions. Communities are sometimes encouraged to take actions that counter regional interests. Planning considerations should include whether communities can support the actual costs and how state and federal entities will respond if decisions are made without regional consideration.

Mr. GAIN stated that a common language and water system model is needed to ease communication across the entire system. OASIS modeling is common in the engineering community and can be used for evaluating alternatives. The study team promotes this alternative and is in the process of establishing a free statewide license for all communities in Tennessee. This model will facilitate the permitting process. The next step is to formalize recommendations without overreaching. Mr. GAIN anticipates a general report that will summarize these conclusions, pending approval of the Water Resources Technical Advisory Committee.

Mr. SLOAN added that if we make the investment (of agencies and expertise to solve problems) up front, then the entire process will go forward more quickly with the understanding that this is the right solution. However, regions and communities remain free to make their own decisions.

Mayor BURGESS expressed concerns about the issues raised by Mr. GAIN regarding the absence of a mission in Tennessee to monitor water supply and

water use. He urged everyone to think about implementing a mission. Chairman NORRIS said he had a similar concern regarding the statement that no single entity is tasked with monitoring the streams for the purpose of water supply.

Senator HENRY raised a concern about Mr. GAIN's statement that good financial management dictates that users pay the full cost of services. Senator HENRY noted that a statute will be required to accomplish that. He asked if the study team is suggesting that TACIR propose this to the General Assembly. Chairman NORRIS noted that this is important work. The Commission will follow up with the study team for its recommendations.

4. Presentation by Dr. Stan CHERVIN, Research Consultant, TACIR, on the Streamlined Sales Tax Project

Chairman NORRIS welcomed the presentation on the Streamlined Sales Tax Project (SSTP) and noted that it was timely given the recent interest by remote seller Amazon in operating warehouses in Tennessee and its concerns over the taxability of its operations in Tennessee.

Dr. CHERVIN presented an update of the SSTP, including a review of the constitutional issues that gave rise to the problem of states being unable to force collection of sales taxes by remote sellers, the impracticalities of successfully collecting the tax from buyers when remote sellers do not collect the tax, and the reasons for Tennessee's early and continued active involvement in the SSTP and the development of the Streamlined Sales and Use Tax Agreement (SSUTA). The problem continues to grow as more and more households and businesses use the Internet to purchase otherwise taxable goods and services, and the internet's share of economic activity rises. The estimated sales tax losses from untaxed activity continue to grow and increase as a share of taxable activity. [The presentation was accompanied by a slide show that is available online through TACIR's website.]

Dr. CHERVIN described the requirements for full membership in the SSUTA and Tennessee's progress in reaching full membership status (Tennessee is currently an Associate member). He noted that the initial SSUTA requirement in the case of delivered sales, the sale and the local sales tax associated with that sale be situated to the destination of the buyer rather the location of the store where the item/service is sold. This was a sensitive issue that resulted in some local governments, fearing the loss of some local sales tax, to oppose this requirement in the SSUTA, and resulted in Tennessee postponing full compliance with the SSUTA. Since then, the SSUTA has been amended to allow, under certain guidelines, states to retain existing situsing rules such as those in effect in Tennessee.

Chairman NORRIS asked members whether local officials are aware of this change and if they are conformable with this change. Mayor GREER noted that

there was some initial concern with the destination requirement, and noted that some problems exist with zip codes that do not properly identify the correct local government. Dr. CHERVIN noted that five-digit zip codes can misidentify the appropriate local government, but that the nine-digit zip codes that will be used will reduce such errors since they reflect very small geographical areas.

Vice Chairman ROWLAND asked whether items shipped in the future from two new Amazon distribution centers in Hamilton and Bradley County to Tennessee residents would have state and local sales taxes imposed and collected by the seller. Dr. CHERVIN responded that the likely outcome would be no sales tax being collected. Dr. CHERVIN described the use of "entity isolation" by corporations that results in minimizing or totally avoiding certain tax liabilities or tax collection responsibilities by operating in a state through a subsidiary that is treated as a separate legal entity. This strategy is used in other states and insulates the remote seller from collection obligations. Whether or not Amazon has received some formal determination on this matter from the Department of Revenue is not known.

Vice Chairman ROWLAND asked Dr. CHERVIN for his gut feeling on this issue, to which Dr. CHERVIN replied that he believed no state or local taxes would be collected on shipments into Tennessee.

Mayor BURGESS expressed some support for destination siting for counties which he is involved. Given the size of the losses described, he felt that the changes required to obtain the uncollected revenue would be worth it for local and state governments.

Mayor BRAGG noted that initially the Tennessee Municipal League was opposed to the SSUTA, primarily because of the destination sourcing requirement. However, with recent changes in the SSUTA allowing siting to remain as is, and with the decrease in economic activity, especially retail activity with construction (that involved delivered goods), the siting issue is less important than in the past. He felt that this would be a good time to go ahead with remaining changes required for Tennessee to move ahead toward conformity with the SSUTA.

Dr. CHERVIN noted that 20 states have fully conformed to the SSUTA and are Full Members; four states are Associate members, including Tennessee. Tennessee has delayed full conformity twice in the past, and in recent budget hearings, the new Commissioner of Revenue recommended postponing for another two years. He also noted that a major outstanding complication in Tennessee is the local single article limitation, as well as the state sales tax surtax on items costing more than \$1,600 and less than \$3,200. SSUTA requirements would limit such caps to a small group of large purchases (motor vehicle, watercraft, aircraft, and mobile home).

Dr. CHERVIN stated that ultimately the goal is to persuade Congress that sales tax states can work together to simplify the sales tax collection and reporting obligations on remote sellers, and thereby persuade Congress to pass federal legislation requiring remote sellers to collect sales taxes. Congress has made clear that some exemption for small sellers is appropriate and some vendor compensation should be paid to remote sellers. The SSUTA has been amended and now provides both.

Speaker Emeritus NAIFEH asked about the issue of vendor's compensation. Dr. CHERVIN said that vendor compensation is now addressed in the SSUTA, and since it would require vendor compensation for remote sellers, in-state vendors would also have to be compensated. This would reduce somewhat the net amount that states would recover from any future federal legislation requiring remote sellers to collect sales taxes. Dr. CHERVIN also noted that small businesses, those with less than \$500,000 in remote sales, would be fully exempted from collection responsibilities. Speaker Emeritus NAIFEH asked whether the \$500,000 applied in each state. Dr. CHERVIN responded that the recent SSUTA exemption is \$500,000 and applies to total remote sales into all states. So both the cost of vendor compensation and sales taxes that would remain uncollected from small remote sellers would reduce somewhat the net amount to be gained from any future Congressional action.

Senator HENRY asked why Tennessee needs to defer once again. Dr. CHERVIN responded that it is understandable that the new administration has chosen to initially delay dealing with the issue, given the many fiscal challenges it faces; however delaying for another two years may be too long given the large amount of tax money involved.

Mayor BRAGG noted that he was sympathetic with the Department of Revenue in dealing with something that would involve new administrative complications, but noted that even if local governments did not directly participate in the additional funds, they would benefit from state assistance to programs like education, law enforcement, and public safety.

Senator HENRY asked what would happen if the state says that Amazon does not have to collect sales taxes on sales into Tennessee. Dr. CHERVIN noted that Amazon does collect taxes for some retailers who use Amazon to attract sales on the Internet. And while sales tax losses on Tennessee sales by Amazon itself might reach \$10-\$20 million, the total losses are much more significant. If the state tried to force collection of sales taxes by Amazon, it is likely they would simply move their distribution facilities elsewhere. Senator HENRY then asked what would happen to our standing in the SSTP if we excused Amazon from any collection responsibilities on their sales into Tennessee. Dr. CHERVIN said that by itself would have no impact, since the SSTP is primarily trying to persuade Congress to pass legislation requiring all remote sellers to collect sales taxes, not any one specific remote seller. So if the

state formally determines that Amazon itself, despite the presence of distribution centers owned by an Amazon subsidiary, does not have to collect sales taxes, it will not impact Tennessee's SSTP status. Such a position by the state would reflect the importance to the state of the new jobs that will be created in the two impacted counties, and the additional economic impact on those communities of the additional income created.

Vice Chairman ROWLAND asked if it fair to say that a fulfillment center is not the actual selling entity but just the shipping entity; and when you purchase something from Amazon, you are actually buying from a remote seller. Dr. CHERVIN said that was correct. The distribution center pulls the sold item (not actually owned by the center), packages the item, addresses the item, and then uses common carriers (FedEx, USPS, UPS, etc.) to actually ship the item to the buyer.

County Executive HUFFMAN noted that Tennessee has always had a sales tax leakage problem, given its proximity to nearby states. He asked whether the estimated sales tax losses discussed are in addition to such losses, or whether they include those losses. Dr. CHERVIN noted that some of the estimated losses are from such casual purchases by Tennesseans in border states, but the portion of the estimated loss resulted from untaxed E-commerce sales are considered more likely to be recovered if remote sellers are required to collect tax.

Mayor BRAGG asked if the primary effect of moving ahead fully with the SSUTA would require vendor compensation to be paid to everyone. Dr. CHERVIN noted that while fully conforming would involve some initial compensation, not all remote sellers would sign on since Congressional legislation would be required to force them all to participate and collect taxes. So initially there might be a negative impact on revenue as vendor compensation was paid to both instate and remote sellers who cooperate, but the full net gain might have to wait on Congressional legislation.

Mayor BRAGG also asked what impact required SSUTA changes would initially have as a result of Tennessee conforming to the SSUTA restrictions on sales tax caps. Dr. CHERVIN noted that state sales tax revenue would decline slightly, but local sales tax revenue would increase by substantially more.

Mayor WATERS asked if it fair to say that if Tennessee conformed to the amended SSUTA, local government sales tax revenue would remain largely unchanged. Dr. CHERVIN said that was correct. Mayor WATERS noted that Congress could look at the requested legislation as a tax increase. Dr. CHERVIN agreed. Mayor BRAGG thanked Dr. CHERVIN for the presentation.

5. Presentation by Ms. Katy BLASINGAME, Research Consultant, TACIR, on the Research Plan for Non-affiliated Public Safety Answering Points (PSAPs) Study

Ms. BLASINGAME stated that a 2009 Office of the Comptroller performance audit of the Department of Commerce and Insurance found that “there are weaknesses in emergency communication services in Tennessee, which could put residents in some areas at risk.” In particular, 17 Public Safety Answering Points (PSAPs) are not affiliated with Emergency Communication Districts (ECDs) and therefore not under the Tennessee Emergency Board of Communication’s (TECB’s) statutory authority and jurisdictional oversight. As a result, the TECB cannot ensure Phase II technology exists for all PSAPs throughout the state. Phase II of enhanced 911 service requires the necessary technology to receive a call-back number and the location of a person dialing 911 from a cell phone. In addition, the TECB is unable to enforce technical and operational standards for these 17 non-affiliated PSAPs.

The 2009 performance audit resulted in passage of Public Chapter 473, which directs TACIR to: perform a study of the impact on public safety of non-ECD affiliated PSAPs; review the emergency communications equipment capabilities of non-affiliated PSAPs; and report its findings and recommendations, including any proposed legislation or interim reports, upon conclusion of its study.

Ms. BLASINGAME then briefly reviewed the draft research plan. The study will consist of interviews with pertinent parties and experts, a literature review, a review of the Comptroller’s 2009 performance audit, data collection and analysis, and other information as necessary. The final report will contain two main sections: the non-affiliated PSAPs’ impact on public safety and the additional factors such as Next Generation 911 and structural issues. A draft report will be presented to the Commission in June 2011, followed by a complete report in September 2011. The final report will be delivered to each member of the House and Senate Government Operations Committee by December 1, 2011

6. Presentation by Ms. Leah ELDRIDGE, Senior Legal Researcher, TACIR, on the Veterans Service Officer Compensation Study

Ms. ELDRIDGE stated that the Tennessee House of Representatives’ State and Local Government Committee referred SB 1336/HB 895 to TACIR for study. SB 1336/HB 895 amends the law which relates to the compensation of county veterans service officers. Specifically, this bill would amend the law to require that the initial compensation of a county veterans service officer be no less than the average pay received by department heads of the general government of the jurisdiction.

She noted that the federal and state government provides a number of different benefits for veterans. The county veterans service officers work in conjunction

with veterans benefit representatives and post service officers to help veterans file claims and obtain benefits.

Ms. ELDRIDGE said that in fiscal year 2009, Tennessee veterans received \$2.2 billion in federal aid from the United States Department of Veterans Affairs (USDVA). In fiscal year 1999, they received \$1.2 billion in federal aid from the USDVA. This represents an 83% increase in federal aid from the USDVA to Tennessee's veterans during that ten-year time period.

She also stated as a part of its study of the bill TACIR staff surveyed the state's county veterans service officers in October and November 2010 in order to get information on the officers' workload and their work environment. TACIR staff received 62 responses from county veterans service officers in 55 counties. She noted that some counties employ more than one county veterans service officer.

- Twenty-six counties have full-time county veterans service officers.
- Twenty-nine counties have part-time county veterans service officers.
- Six respondents reported working less than 20 hours per week. All of these were part-time officers.
- Twenty-three reported working between 20-30 hours per week. Of these 4 were full-time employees and 19 were part-time.
- Twenty survey respondents reported working 31-40 hours per week. Of these 17 indicated they were full-time employees while three indicated they were part-time officers.
- Twelve respondents reported working more than 40 hours per week. They all indicated that they were full-time officers.
- One part-time county veterans service officer indicated that his work hours varied.
- The survey asked the officers to estimate their average case load. The responses ranged from a low of two to three cases per month to a high of 5,200 claims handled per year.
- Survey respondents from 52 counties reported helping veterans file claims outside the office. Only three officers indicated in their survey responses that they did not help veterans file claims outside the office. Survey respondents indicated they spent anywhere from 1-50 hours per week outside the office on average assisting veterans.
- Survey respondents from 53 counties indicated that they engaged in community outreach activities such as attending meetings of veterans organizations and other community groups or networking with other human service providers in the community. Officers reported that they spent anywhere from 1-20 hours per week on average engaging in community outreach activities.

- At least 50 counties in the state provide office space for their county veterans service officers. Five respondents stated that office space was not provided by the county.
- Survey respondents from 26 counties reported having administrative assistance.
- Survey respondents from 29 counties reported not having any administrative assistance. Of these 17 indicated that they did not need administrative assistance. Eight reported a need for assistance.

Ms. ELDRIDGE stated that it is evident from the responses to the staff survey that the county veterans service officers are dedicated, hard-working individuals committed to helping the veterans of this state secure the benefits to which they are entitled. They work long hours. In some cases, they may work full-time hours for part-time pay. She noted that officers are individuals that deserve to be adequately compensated for their services to veterans and the community.

She noted that SB 1336/HB 895 would require counties to raise the pay for a county veterans service officer to the average pay received by department heads of the county which employs that county veterans service officer. This could be a substantial increase in costs for a county. According to the bill's fiscal note, this legislation would increase local expenditures in excess of \$980,000. Counties are not required to employ a county veterans service officer. If this legislation passed, it is possible some counties would do away with county veterans service officer altogether which would not be in the best interests of the veterans.

She said an alternative would be for the state to provide additional financial assistance to the counties to help increase the pay for county veterans service officers. However, with the state facing an estimated \$1.5 billion budget deficit this year and possibly budget deficits for the next few years it may be a challenge for the state to set aside funds to help increase the pay for the officers in the near future.

There is also the issue of whether factors other than average pay of county department heads should be taken into account when determining pay for county veterans service officers. Should factors such as the number of veterans in a county or the average number of claims filed in the county veterans service officers' office be considered when calculating the pay for the officer? Ms. ELDRIDGE stated that these are difficult issues which staff will continue to grapple with as the study continues. Vice Chairman ROWLAND recognized Mr. Joe DAVIS, veterans service officer from Bradley County. Mr. DAVIS made some remarks on the situation facing veterans service officers.

7. Presentation by Ms. Libby THURMAN, Senior Research Associate, TACIR, on the Regional Jail Feasibility Study: Remaining Funds

Ms. THURMAN addressed the Commission regarding funds remaining from TACIR's 2010 regional jail feasibility study. Ms. THURMAN said that staff believes that TACIR has satisfied the legislative directive to complete a regional jail feasibility study. There is approximately \$75,000 remaining from the regional jail study appropriation, and three counties have expressed interest in the funds. Ms. THURMAN summarized the requests from the counties.

Two requests were from counties who were involved in TACIR's regional jail feasibility study. Clay County sent a letter to TACIR stating that the county intends to pursue a regional jail facility. The county would like to utilize the remaining funds to further analyze this option and to put a plan into action. Fentress County also contacted TACIR about remaining jail study needs. Ms. THURMAN recognized that a representative from Fentress County was in the audience. Fentress County is reportedly still evaluating various jail options. The county told TACIR that they would like assistance with the design and planning aspects of the process. Ms. THURMAN noted that this is a time sensitive issue for these two counties as they are struggling to make decisions regarding their jail facilities. Morgan County is the third county that contacted TACIR. Ms. THURMAN noted that TACIR has not heard from the county in a while, but in the past, they expressed interest in exploring the use of the abandoned Brushy Mountain facility as a regional jail facility.

Ms. THURMAN noted that staff identified three ways that the remaining appropriation funds could be handled. One option would be to retain the money for future regional jail analyses by TACIR. Another would be to return the money to the state general fund. The third option would be to distribute the funds to these or other Tennessee counties to study regional jails. Since the money was attached to a legislative directive it is the staff's opinion that the money must be used to study regional jails. It is the staff's opinion that the money cannot be distributed to any county to study an individual jail option.

Ms. THURMAN stated that staff is requesting Commission guidance on this matter. Mayor BRAGG made a motion that the unexpended funds be returned to the Tennessee general fund; Senator HENRY seconded the motion. Speaker Emeritus NAIFEH asked if all necessary analysis has been completed even though \$75,000 remain. Dr. GREEN stated that the study TACIR completed in 2010 cost \$125,000. With this in mind, he stated that staff felt that the remaining funds will not provide a sufficient basis for a study by any one county. Speaker Emeritus NAIFEH withdrew any objection to returning the funds to the general fund. Dr. GREEN said that staff understands the plight of these counties, but that the requests seem to be operational projects that do not fall under TACIR auspices. He stated that the Department of Corrections or someone in the

executive branch may have more knowledge of how to deal with the overall policy issue of corrections and regional jails.

Chairman NORRIS noted that Senator YAGER has expressed interest in obtaining the remaining funds for Morgan County. Chairman NORRIS said that if the funds revert to the general fund they may be available through another channel. Vice Chairman ROWLAND noted that in the past, Governor HASLAM expressed interest in the issue of regional jails in relation to Rhea County. The Governor was aware that TACIR was studying the issue. Vice Chairman ROWLAND noted that there are other counties interested in the issue of regional jails.

Chairman NORRIS requested a voice vote on the motion to return the funds to the general fund. He called for the vote and the motion passed. TACIR's recommendation is that the excess funds be returned to the general fund. Chairman NORRIS said that the Commission would take the matter up with the appropriate persons.

8. Presentations on Tennessee's Economy: Fiscal Implications for 2011

a.) Dr. David PENN, Director, Business and Economic Research Center, Middle Tennessee State University

Dr. PENN noted that TACIR provides financial support for the MTSU website, Tracking Tennessee's Economic Recovery, and that the data he presents can be found on that site. He stated that Tennessee's economy is recovering though not as fast as we would like. The bright spot is that consumers are spending and that is reflected in sales tax collections. Tennessee is experiencing some job growth, and there is good news in certain industries. The weakest point in the economy is the housing market, and there is no quick fix for the problem.

The number of single family building permits is down 34% from a year ago. Multifamily permits are only slightly better. There was a 0.9% growth in nonfarm employment over the past year which represents an increase of about 24,000 jobs for the year. Initial claims for unemployment insurance, a forecaster for the unemployment rate, are down for the year. Tennessee also experienced 2.5% growth in the labor force. The figure is not back to the pre-recession level of 2008 but it is rising, and the unemployment rate is down.

In order for the state to see more robust growth, we have to have more robust growth in the national economy. If we compare Tennessee's employment growth with the U.S. since the end of the recession we have done somewhat better than the national economy. Since June 2009, the official end date of the recession, 20 states have experienced job growth and Tennessee is among those, ranking 15th with employment growth of about 0.33%. While that is not very robust, we are doing about 0.5% better than the U.S. economy over the 18-month period since June 2009.

Senator HENRY asked why Tennessee's employment growth was below the U.S. graph during 2009-2010. Dr. PENN responded that Tennessee fell into a much deeper hole, relatively speaking, in the worst of the recession because of the loss of manufacturing jobs which are relatively more important in the Tennessee economy than for the nation.

There is a big difference in the job growth experienced in the largest metropolitan areas versus other areas. Growth in the smaller metropolitan areas has been positive, while the two biggest metropolitan areas of Memphis and Nashville still show some decline. Dr. PENN stated that perhaps in the next few months we will see positive job growth return in Nashville and Memphis.

There was a huge increase in unemployment insurance claims in early 2009 with the large numbers of newly unemployed filing claims. It came down substantially following a peak in late 2009 and has remained fairly steady since then. At present, we are averaging about 7,800 new claims per week. If that figure gets down to 7,000 claims per week, it will be consistent with job growth. Before the recession in 2006-2007 the initial claims averaged about 6,000-7,000 per week. A comparison of the level of initial claims with the unemployment rate shows that the unemployment rate has typically fallen when initial claims fall. In 2009 both increased dramatically, but when the initial claims fell later in that year, the unemployment rate did not come down. That occurred because, while employers had stopped laying off employees, they were still not hiring. The unemployment rate has been stuck at about 9.4% for the last four months. The problem is not laying off but a lack of hiring. Employers have been slow to hire.

Dr. PENN explained a heat table that showed job growth rates by industry sector. For sectors colored in red, job growth is negative; yellow indicates zero growth; and green means a positive growth rate. The green sectors on the chart were largely in manufacturing, especially in durable goods. Construction also showed an increase over the prior year for the month of December. The largest declines were in the information sector which included newspaper publishing and the music industry. Also the financial sector including banking and real estate showed declines. A year earlier, this chart would show almost all sectors in red, with job losses. The only sectors showing in green, or with positive job growth, were in education and health services.

Returning to the housing market, Dr. PENN stated that for improvement to occur we must see stabilization of housing prices. We are still seeing a decline of about one percent for the state in average housing prices over the past year. A few areas such as Johnson City, Clarksville, and Chattanooga are experiencing increases in housing prices.

Moving to sales tax collections, we have seen an increase in those collections for the year. One troubling point is that the increase occurred in the spring of 2010.

Since May, there has been some variability but collections have been pretty flat. If that trend continues, year-over-year comparisons will be less encouraging. An increase in sales tax revenues in the latest and future months will require consumers to gain more confidence and businesses to do more hiring. It was pointed out that the housing market and housing construction generates a lot of “big ticket” items for sales taxes; given the decline in housing, the modest sales tax growth is even more impressive.

Tennessee’s economy is recovering slowly but further improvement depends on the improvement in the U.S. economy. Dr. PENN stated that he sees this recovery as a long, slow process. He then invited suggestions on new data that might be added to the Tracking Tennessee’s Economic Recovery website.

Dr. GREEN asked about the availability of sales tax collection data by county to which Dr. PENN stated that data would be on the site sometime in the future. Following up, Dr. GREEN asked about any differences between tax collections in urban and rural areas. Dr. PENN pointed out that, while that specific data was not yet available, employment data might give some indication of the trends. He noted that for all metropolitan statistical areas (MSAs) in the state employment growth was very small over the past year while for the state as a whole, 24,000 jobs were added. The implication is that most of that employment growth occurred outside the urban areas.

b.) Dr. Reuben KYLE, Senior Research Consultant, TACIR

Dr. KYLE provided a table of the spending summary as of December 31, 2010 for the ARRA (stimulus) from the TNRecovery.gov website. When first announced, Tennessee’s allocation of the total funds from the Act amounted to approximately \$5 billion over the two-year life of the program. With the award of the Race to the Top from Tennessee’s bid for the competitive grant, the final total award stands at over \$6.2 billion. The program continues to be monitored in the new Governor’s administration by the same team as in the previous administration. That group is in the Department of Finance and Administration.

By the end of the federal fiscal year, September 30, 2011, most of the total funds will have been expended. In the case of the State Fiscal Stabilization Funds, which are administered through the Governor’s office and most of which have gone to education, all the funds must be obligated by September 30 and expended by December 31, 2011. The monies from the Race to the Top program will be available for five years from their award in late 2010.

Mayor BRAGG asked about the funds allocated to the Tennessee Regulatory Authority. The funds are designated for State Electricity Regulators Assistance and are intended to develop model agreements for the installation of electric meters compatible with a Smart Grid. Among other things a Smart Grid will allow electricity customers to monitor their consumption of electricity and to plan their

own use patterns. The amount allocated is slightly more than \$900,000 of which by Dec. 31, 2010, only about \$120,000 had been expended.

c.) Dr. Stan CHERVIN, Senior Research Consultant, TACIR

Dr. CHERVIN ended the portion of the program dealing with the economic situation with a summary view on the state and local government revenue outlook for the balance of this fiscal year and fiscal year 2012. He reviewed the impact of the recession on all state governments, noting the delayed impact of the recession on state finances in most states. [The presentation was accompanied by a slide show that is available online through TACIR's website.] While revenue declines for total state taxes bottomed out in mid 2009, significant positive growth in total state taxes did not appear until the second quarter of 2010. He noted that federal stimulus money (ARRA funds) played a significant role in helping states maintain spending levels during fiscal years 2009, 2010, and 2011 but will not provide much assistance beginning with fiscal year 2012. This decline in federal aid will leave most states dependent on their own slowly recovering tax sources in the future.

The Tennessee State Funding Board met in December 2010 to hear revenue estimates from staff of four state agencies and universities. Estimates were provided for the existing fiscal year and for fiscal year 2012. Most of the estimates provided are best described as reflecting only modest growth the balance of this year as well as during the next fiscal year. Estimates for fiscal year 2012 for the state sales tax are less than what was collected in fiscal year 2008. Estimates for combined franchise and excise tax collections for 2012 are less than was collected in fiscal year 2007. Combined sales tax and franchise and excise taxes for fiscal year 2012 estimates are over \$576 million less than collected in the previous peak years for these taxes.

Dr. CHERVIN moved onto local government finance, noting that local governments in Tennessee depend primarily on two taxes: property and local option sales tax. The local option sales tax, while somewhat more stable than state sales tax, is expected to recover slowly over the next two years, mirroring the expectations for the state sales tax.

The local property tax outlook is more problematic. Local property taxes ultimately depend on property values—residential, commercial, and industrial. Residential assessments account for almost 55% of total assessed values in Tennessee, with commercial and industrial assessments representing approximately 35%. Since residential, commercial, and industrial valuations declined since 2007-2008, the impact on assessments is only beginning to be felt by local government officials. This is a result of the inherent delays built into the property tax system that results from the reappraisal cycles that range from four to six years in Tennessee. The actual impact of declines may first become apparent in counties that reappraise in 2012, and that are on four-year

reappraisal cycles. Such counties will use 2011 sales values as a basis for the 2012 reappraisals; such counties last reappraised in 2008, using 2007 valuations as the basis for reappraisals. The difference in values between 2007 and 2011 may reflect a decline, leaving local officials in the unenviable position of being required to raise both nominal and effective property tax rates to maintain local government service levels.

Vice Chairman ROWLAND asked if a person who lives in one county but works in another county lost his job, and then applies for unemployment benefits, in which county is the lost job reflected. Dr. PENN noted that the lost job would be reflected in the county of residence.

9. 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, June 29–30, 2011.

Chairman NORRIS adjourned the meeting at 1:34 p.m.