

TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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

**MINUTES OF THE
TENNESSEE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS
23 October 2013**

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 30 at 1:10 p.m., Chairman Mark NORRIS presiding.

Present 22	Absent 3
Mayor Troy Beets	Ms. Paula Davis
Mayor Tommy Bragg	County Executive Jeff Huffman
County Mayor Ernest Burgess	Senator Jim Tracy
Mr. Charles Cardwell	
Representative Mike Carter	
Mr. Rozelle Criner	
County Mayor Brent Greer	
Representative Ryan Haynes	
Senator Douglas Henry	
Senator James Kyle	
County Mayor Kenny McBride	
Mr. Iloff McMahan	
Senator Randy McNally	
Senator Mark Norris	
Representative Gary Odom	
Representative Antonio Parkinson	
Mayor Tom Rowland	
Representative Charles Sargent	
Mr. Tommy Schumpert	
Councilmember Kay Senter	
County Mayor Larry Waters	
Comptroller Justin Wilson ¹	

¹ Phillip Doss represented Justin Wilson

1. Call to Order and Approval of the Minutes

Chairman NORRIS called the meeting to order at 1:02 p.m. and requested approval of the minutes. A motion to adopt the minutes was made by Mr. MCMAHAN, seconded by Mayor ROWLAND, and passed unanimously.

2. Commission Update

Chairman NORRIS informed the members that Paula DAVIS would not attend the meeting, saying Ms. DAVIS has had a death and illness in her immediate family. He asked that everyone remember her in their thoughts and prayers. Chairman NORRIS wished Kerri COURTNEY JONES well as he shared that she would be leaving the TACIR staff to work at the Department of General Services. He welcomed David LEWIS back to the TACIR staff, mentioning that David brought a wealth of knowledge with him when he worked at TACIR before and stated, "We are happy to have him back." Chairman NORRIS recognized Representative Antonio PARKINSON as a newly appointed member to the Commission. He commented that Representative PARKINSON made a distinctive mark within months of his arrival to the General Assembly by passing meaningful legislation and welcomed him to the Commission.

3. Presentations on Legislation Concerning Water and Sewer Rates for Non-Residents of Cities (House Bill 600 by Hill, T.)

Mr. Ben SMITH introduced Representative Timothy HILL, Mr. M. Denis PETERSON, City of Johnson City, Ms. Joyce WELBORN, Tennessee Office of the Comptroller, Mr. Bob FREUDENTHAL, Tennessee Association of Utility Districts, and Mr. Allen MAJOR, Municipal Technical Advisory Service, to speak to the issues raised by the bill.

Representative Timothy HILL

Representative HILL said that he brought House Bill 600 for his constituents in Piney Flats in Sullivan County, but there is statewide application. These constituents are outside the city limits, but their water and sewer services are provided by Johnson City. He brought the bill because his constituents in Piney Flats have been unable to get their water and sewer rates justified. He says they have no representation on the council and no one at city hall will respond to them. He noted that although state law says cities must justify their rate differentials, he believes this requirement is not being enforced. If the cost warrants a 100% rate difference then so be it, but he doubts that it does. The city either does not have separate books or is unwilling to share information, and the residents deserve rate relief.

Mayor BRAGG observed that sometimes city residents pay more, noting that the rural Consolidated Utility District (CUD) charges residents of Murfreesboro rates nearly double those the city charges their neighbors. He asked whether Representative HILL would consider including them in the bill. Representative HILL said he would not have a problem with doing so. He said his intention is to hold utilities to the law, which allows them to pass on only the actual cost of providing services.

Discussing the alternatives to capping water rates, Senator HENRY asked whether the residents of Piney Flats have a legal remedy to their rate discrepancy, to which Representative HILL responded that litigation is an option. Vice Chairman ROWLAND asked whether Piney Flats residents have any source of water and sewer other than Johnson City and whether Johnson City is obligated to provide service to the residents. Representative HILL replied that Blountville Utility District is across the street from part of Piney Flats, and that he is not aware of Johnson City having an obligation to serve the residents.

Representative ODOM asked when the service began. Representative HILL said that it is not a new service and has been in place for decades. Representative ODOM asked whether bonds were used to pay for the water and sewer lines in Piney Flats. Representative HILL said it is possible, but in the absence of information about costs, it seems as if rates were set and just stayed the same. He believes there is no way the costs are the same today. Representative ODOM asked whether any information requested by Representative Hill has been provided by the city. Representative HILL replied that no information has been provided.

When asked by Chairman NORRIS whether it is his position that there is a remedy in the law, but that it is not working and the bill sets a cap as an alternative, Representative HILL replied yes. Chairman NORRIS asked Representative HILL whether he understood that Piney Flats customers might come out ahead if they pursue a legal remedy instead of establishing a cap, and he confirmed that he did. Chairman NORRIS cautioned that caps suggest a price and everyone would raise their price to the cap. Representative HILL noted that the initial bill applied only to water but was amended to include both water and sewer. He welcomes an alternative that provides relief if it is found that a 50% cap on rates is not appropriate.

Representative CARTER brought up the possibility that high water loss contributes to Johnson City's costs, asking for confirmation that Johnson City's water loss is about 35%. Representative HILL said yes, noting that this is on the high side. Representative CARTER asked whether a viable solution would be to prohibit rate differences dependent on whether customers live inside or outside of a city. Representative HILL responded equality is a good thing.

Discussing density and development issues, Representative SARGENT said that wastewater is more difficult to provide than water and that it costs less to provide water and sewer services to five houses per acre than it does to serve one house per acre. Representative SARGENT asked whether houses in Piney Flats would be viable with septic tanks instead of connections to the sewer system. Representative HILL responded that he did not know. Representative ODOM asked whether developers are funding system expansion, and, if so, how the utility then justifies the fees. Representative CARTER replied that in Hamilton County the developer extends the system, not the city or county. The homeowner has the option to hook onto a water line but if they do not hook onto sewer, then they pay for it as though they are using it. He believes this is a problem.

M. Denis PETERSON, City Manager of Johnson City

Mr. PETERSON said that Johnson City serves customers in four counties and noted that customers outside the city in Sullivan County comprise only 22% of total outside customers served by the city utility. Mr. PETERSON said that other cities have similar rate structures, and that Johnson City prefers that any legislative change apply statewide rather than only to Sullivan County. The outside rate charged to Piney Flats customers is very close to the median rate for Sullivan County. Mr. PETERSON gave a brief history and overview of the city's water and sewer system and described the challenges of providing service across the entire system. There are many costs in addition to the lines in front of houses, and the terrain in east Tennessee makes water and wastewater infrastructure installation and operation especially difficult.

Mr. PETERSON explained that Johnson City is not transferring revenues to the general fund and further elaborated that the \$7 million in reserves is small compared to the expense to maintain the system. Mr. PETERSON explained recent and ongoing improvements and related expenses. Johnson City has extended water and sewer lines into unincorporated areas of Sullivan County for economic and community development, acquired utility districts at the utilities' requests, and continues to improve the system. Mr. PETERSON also said that Johnson City does respond to customer complaints and that the city has spent \$650,000 recently on water lines in Piney Flats.

Mr. PETERSON's presentation included remarks by Mr. Bart KREPS of Raftelis Financial Consultants, who said that rates are increasing because of aging infrastructure, the need for capacity, and regulation. He also noted that federal funding has decreased. Nationally, his firm often sees rates one and a half to two times higher for customers outside municipal boundaries than for those within boundaries. Factors in this higher rate are that customers outside the city limit are not owners in the system and have not previously contributed to the creation of already existing infrastructure, additional costs in providing services, lower population density, and different usage characteristics.

Councilmember SENTER asked Mr. PETERSON whether he agrees that water and sewer rates are significant components of annexation. Mr. PETERSON replied that they can be, but that Johnson City is not actively annexing into Sullivan County. At least half of the outside customers in Sullivan County are beyond the urban growth boundary and cannot be annexed. Councilmember SENTER asked whether the ability to serve outside city limits could be affected if a bill were passed that limited the water rate structure and then the general assembly removed the right to annex by ordinance. Mr. PETERSON said cities would think long and hard about whether they could afford to extend utility services beyond corporate limits. The utility department can get a better rate using the city's AA credit rating. If the outside customer had to stand on their own, they may have to pay far more than double the inside rate.

Discussing rates, Mr. SCHUMPERT asked whether they cannot or have not calculated the cost of the outside areas. Mr. PETERSON said they did not have that information, noting that it

would be difficult to calculate. Mr. SCHUMPERT also asked whether the lower rate for those within the city limits would apply if the area was annexed, and Mr. PETERSON replied that customers in the annexed area would be charged the lower rate. Vice Chairman ROWLAND asked whether residents of Piney Flats knew the rates when they were taken over. Mr. PETERSON replied that many utilities were taken over in the 1970s. When the Chiquapin Utility District was recently absorbed into the Johnson City system, the utility district board and the Sullivan County Commission each approved the acquisition while aware of the rate difference. Vice Chairman ROWLAND asked whether a rate increase would apply to everyone receiving service or just those outside city limits. Mr. PETERSON answered that the rates would increase equally across all customers.

Representative CARTER asked, when regional facilities are built, do you guarantee the federal government that you will serve everyone in the region and that everyone will be charged the same amount? Mr. PETERSON said Johnson City utilities have not received a federal grant in years other than a Rural Development grant for the Greggtown extension.

Noting that tap fees are used to pay for infrastructure, Mayor WATERS asked whether outside tap fees are also double that of tap fees inside the city. Mr. PETERSON said they are double and that if a developer wants water and sewer within the city, the city will reimburse the cost of materials. He did not know of any lines installed by private developers outside the city; there are only the utility districts Johnson City took over.

Joyce WELBORN, Utility Boards Manager, Office of the Comptroller

Ms. WELBORN discussed the roles of the Water and Wastewater Financing Board (WWFB) in ensuring the financial integrity of the systems. She noted that utility funds are designed to be self-sufficient and that city utilities should not rely on the government's general fund for revenue. The WWFB's review is a revenue-versus-expenses review, not a rate review. Rates are left to the city to determine. Unless outside rates are extremely high, they are not questioned. She asserted that any rate differential should be justifiable. Ms. WELBORN also noted that audits usually show no separate depreciation for the outside system. In her opinion, the city limit should not make any difference for cost of service.

Senator HENRY asked what happens if the utility disagrees about a rate change requested by the WWFB. Ms. WELBORN said both the WWFB and the Utility Management Review Board (UMRB) have the authority to enforce a rate change in chancery court. Mayor BEETS asked whether the 27 cases reviewed by the WWFB in 2008 involved water, sewer, or both, and about the nature of the one case where the WWFB made a recommendation. Ms. WELBORN replied that the 27 could have involved water, sewer, tap fees, or any combination of the three. The one recommendation was to lower the outside fixed rate charged by Savannah. It was later found that this rate was justifiable. Mayor BEETS asked whether the eight awaiting review had subsequently been reviewed. Ms. WELBORN replied that they probably had not been, and that she does not believe Savannah was reviewed again because the city was no longer under WWFB jurisdiction. Following up, Mayor BEETS asked what rates would be considered extreme. Ms. WELBORN said that every case is different, adding that a rate is extreme if it

cannot be justified. Vice Chairman ROWLAND noted some rates in Hamilton County are greater than the outside rate of Cleveland. Ms. WELBORN responded that the Comptroller tries not to compare systems. Returning to the topic of water loss, Representative CARTER asked whether 34% water loss is extreme. Ms. WELBORN said the old criterion was 35% water loss. The new criteria are the validity score and non-revenue water as a percent of operating costs. Thirty-five percent is high, but that is not the criterion any more.

Senator HENRY referred to material in the the docket book indicating that the Memphis water and sewer rate is \$13.60 whereas the Germantown rate is \$6.75. Ms. WELBORN replied that each community sets their own rates. Senator KYLE asked about the source of the water for the systems in Shelby County. Chairman NORRIS said that Collierville has a separate water supply. Senator KYLE asked whether it is possible that charges for things other than water are being slipped into the water rate. Ms. WELBORN said they are not supposed to do that. Mayor WATERS asked how current the report is, and Ms. WELBORN said the WWFB completed the reviews in 2007 or 2008.

Bob FREUDENTHAL, Executive Director, Tennessee Association of Utility Districts

Mr. FREUDENTHAL, noting that TAUD represents both utility districts and city utilities, said that rates should be justifiable and reasonable. He argued that a cap is not the best approach because each case is different and big differences may be justifiable. Mr. FREUDENTHAL further explained that many factors go into setting rates, noting that depreciation is a substantial factor. He said that TAUD would support an avenue of recourse for all customers. He further explained that, under the Utility Management Review Board (UMRB), the ratepayer has a right to challenge or question rates. Outside-city customers of city utilities should have the same ability to question rates and request their justification.

Chairman NORRIS asked whether existing rate review mechanisms are adequate for outside-city customers and whether anything in the current system could be improved. Mr. FREUDENTHAL replied that it would be best to improve communication within the existing avenues. He said that there should be some method of proving reasonableness. He suggested that city utilities be required, just as utility districts are, to report their rate and the method of calculation in their annual audits. He also suggested that perhaps the WWFB could be empowered to hear customer complaints, as the UMRB does for utility district customers.

Representative ODOM asked who the rate policeman is, and where do citizens go for redress? He noted that several systems have a rate for those outside the city limits double the rate for those in the respective city limits, and that this is either a coincidence or a trend. The Comptroller's audits look at fiscal integrity, not to see whether ratepayers are being gouged. Representative Odom said that an accounting of ongoing costs would be helpful. The rates should be justified, but there is nowhere in the process where this must be done. Surely some states have tackled this. Mr. FREUDENTHAL again suggested that the state empower the WWFB to hear customer complaints and require city utilities to include rate calculation information in their annual reports.

Representative ODOM said the outside customer water rate issue is like annexation. These customers outside city limits have no elected officials representing them. He added that he believes rates should be justified.

Discussing rate differences, Mr. SCHUMPERT said that in many areas, water rates should not be more expensive outside than inside. Mr. FREUDENTHAL noted that outside extensions may affect the inside system. At least, actual costs should be determined. Mr. SCHUMPERT said many times it is a system benefit to go ahead and add customers just outside the city limit. Having a city limit dictate rates cannot be justified. Senator KYLE said water and sewer are municipal and not county functions almost universally. There are costs of any operation that do not show up in the budget. The justification for higher outside rates is those customers are not paying city taxes. The city built the infrastructure for the expansion (Mr. CARDWELL later corrected this statement by noting that funding for infrastructure must be based on rates collected). Senator KYLE asked why doesn't everyone pay the same?

Mayor BRAGG explained the situation in Rutherford County, noting that the Consolidated Utility District (CUD) has 50% of the customers inside the city limits. He further noted that the city limit as a boundary for setting rates makes no difference in Murfreesboro's situation because one neighbor is paying \$22 right next to another paying \$41. Most ratepayers in a well-kept system do not want to take over an ill-kept system even though the ill-kept system may have a much lower rate. He said that the city taxpayer is responsible for the full faith and credit and the outside-city customer is only responsible for the rate. This is why there is a difference. Mr. SCHUMPERT said you cannot compare any two situations. Annexation would lower a customer's rate but the cost to the utility stays the same. This does not seem right.

Mr. CARDWELL noted that about every three years Davidson County uses rate consultants to look at the system and determine whether rates are sufficient. He asked whether other utilities also use rate consultants. Mr. FREUDENTHAL said that every three to five years a rate analysis should be done to see what the cost of service is. Most do it, but some do not. A small system may not have much need. Chairman NORRIS said the idea that residents of the city fund the system may not be precise. Mr. FREUDENTHAL said a utility must stand on its own and be funded through revenues; a system cannot use general tax revenue. A utility district may have higher rates than its neighbor because of density.

Representative CARTER said the utility is a stand-alone enterprise based on rates. You are required to count your depreciation as a full loss. If you install new lines, then that costs you on your balance sheet, and the Comptroller's Office will make you raise your rates. Chairman NORRIS said this was an issue in Shelby County for suburban cities several years ago. Some accounting of enterprise funds for wastewater had not been done correctly. The Comptroller's Office straightened them out.

Mayor BRAGG said Murfreesboro residents are subsidizing the rural rates. There are eight customers per mile in the county and 800 per mile in the city. The CUD ratepayers in Murfreesboro are not represented because CUD is not covered by the city council. (While the ratepayers are not represented by the city council on the CUD, they are represented by the

county mayor, whom they do elect). Representation may not make a difference because everybody is different.

Allen MAJOR, Finance and Accounting Consultant, Municipal Technical Advisory Service

Mr. MAJOR said if HB 600 passes there will be \$450,000 the inside-city customers will have to make up. MTAS believes cities are different from utility districts because districts serve only those within their territory, while cities may serve outside customers. MTAS believes cities are legally different from utility districts because a utility district is limited to serving customers only within their service boundaries, but cities can serve customers outside their corporate boundaries. MTAS also believes that cities have a mandate to charge outside-city customers more when costs are greater. City customers should not subsidize non-city customers. Mr. MAJOR also said that any city should be able to document the reasons for a rate differential. He noted that he has done cost of service studies to determine the cost to outside customers, but not often. If outside rates are capped, cities may have to increase their outside-city tap fees.

Mr. MAJOR said that city customers are owners and are entitled to a fair rate of return on their infrastructure investment and their assumption of risk. There are costs and liabilities that face owners that never face non-owners. Water fund debt can affect the rate on future general fund debt. Some infrastructure may be built for outside customers only, but there may be a higher cost of infrastructure inside the city to accommodate increased flows needed for outside customers. Population density is usually less outside the city whereas other costs are greater outside the city. He noted that the city and its engineer generally determine initial rates. Subsequent rate increases do not change the rate structure. Water system expansion usually leads to rate increases. If the expansion is solely for outside customers, then the cost should be borne by outside customers.

Senator HENRY asked what happens if a city water system shows a profit. Mr. MAJOR replied that either a fund is built up for future expenses or they cut rates. Senator HENRY asked Mr. CARDWELL whether the old Nashville city water system produced a profit for the general fund. Mr. CARDWELL said that in those days the bonds issued were general obligation (GO) bonds. Any profit from the water system went back to the general fund to retire the GO bonds. Mayor BEETS noted that everyone wants rates to be justified, but House Bill 600 may not be the answer. His opinion is that one size or one law does not fit all. He asked about using the utility board for customer complaints.

Representative HILL noted that on page 207 in the 2012 annual financial statement of Johnson City, it is reported that the water and sewer department made a payment of \$473,000 to the city. He also pointed out a federal American Recovery and Reinvestment Act grant and a grant from Sullivan County. Mr. PETERSON clarified that the general fund of the city does all of the payroll, human resource functions, and finance for the water and sewer department. The utility is required to pay for services provided by the general government of the city. He also noted that part of that payment is in lieu of property tax.

Vice Chairman ROWLAND asked whether the utility board handles complaints so that customers do have a way to voice concerns. Mr. PETERSON said the city board of commissioners acts as the board of the water and sewer utility. Any customer that wants to is able to file a complaint.

Chairman NORRIS thanked all the presenters, and said that no action is required at this point and that staff will come back with a report at the December meeting.

4. Presentations on Legislation Concerning Insurance in Lieu of Surety Bonds (Senate Bill 624 by Norris)

Mr. Nathan SHAVER, TACIR Research Associate, introduced John EVANS, Next Generation Underwriters; Brian HOFFMEISTER, Department of Commerce and Insurance; Joyce WELBORN, Comptroller of the Treasury; Sarah HIESTAND, Attorney General's Office; Jack SPANN, Spann Insurance; Becky BROCK, Local Government Insurance Pool; and Jon CALVIN, Tennessee Municipal League Risk Management Pool, to speak regarding the use of insurance in lieu of a public official's individual surety bond.

Mr. John EVANS, Senate Bill 624 Proponent and President of Next Generation Underwriters

Mr. EVANS, an advocate of Senate Bill 624, presented a brief history of the use of surety bonds. He believes the surety bond process is too complex and that there is a better and cheaper way to do it. Mr. EVANS said that surety bonds and insurance are the same. Mr. EVANS noted that if there have been few claims paid on surety bonds in the past seven years. He argued that local governments should have discretion on the coverage needed for individual public officials. He stated the purpose of this bill is to make things easier on local governments.

Mr. Brian HOFFMEISTER, Director of Policy Analysis, Department of Commerce and Insurance

Mr. HOFFMEISTER explained that there is currently no insurance policy he knows of that would provide the equivalent coverage of a surety bond. He clarified that there is a difference between insurance and surety bonds. He said it may be possible for insurance to cover everything that a surety bond covers, but the policy would need various endorsements and the premium charged for such a policy is unknown.

Senator KYLE asked Mr. HOFFMEISTER whether one could insure for an intentional act. He gave an example of a person intentionally running over another with a car as compared to doing it negligently. Mr. HOFFMEISTER answered that you could not insure for such intentional conduct.

Senator MCNALLY asked whether an insurance policy could be written with a zero deductible. Mr. HOFFMEISTER said that there could be no deductible, but the premium would be set accordingly.

Representative CARTER asked whether current law allows local governments to insure with personal guarantees to avoid all premiums. Mr. HOFFMEISTER said that he was not sure and that it was out of his knowledge area. Chairman NORRIS said that he was not aware of current law allowing this. Representative CARTER wondered why the law does not allow the county to self-insure the risk but with the personal written guarantee of that official. Further review by staff indicates that counties can self-insure for the risk of employees, but that this is not an option for those officers requiring surety bonds.

Ms. Joyce WELBORN, Legislative Auditor, Comptroller of the Treasury

Ms. WELBORN said that the job of the Comptroller's office is to make sure the taxpayers' money is secure and that surety bonds have been one way to do this. She said that if insurance were to be allowed, it should have the same coverage as the surety bond at the same or reduced price. She said that the Department of Commerce and Insurance and the Attorney General's Office should be satisfied that the insurance coverage is adequate before being allowed.

Mayor BEETS asked whether Ms. WELBORN had said that if insurance was allowed, it must provide the same coverage as the surety bond at the same or reduced cost. Ms. WELBORN said yes.

Senator HENRY gave a hypothetical about a convicted embezzler that needed a public official surety bond. Ms. WELBORN replied that if the official could not get a bond, then he or she could not take office. She went on to say that a claim made on a surety bond after a person leaves office would still be paid for by the surety; however, with insurance, payment on a claim would not occur after the term of office. Ms. WELBORN said that auditors often do not know of instances of missing money until after the official is out of office. Chairman NORRIS remarked that there would need to be some type of tail coverage to extend the time allowed to file claims.

Ms. Sarah HIESTAND, Senior Counsel, Attorney General's Office

Ms. HIESTAND explained that the Attorney General's Office reviewing the bond forms for legality after the Comptroller's Office has written them is a simple task. She said the long history of public official surety bonds in the state is established. She described how a surety bond works to provide assurance that the official will perform the duties of office and that the official is still liable to the surety if that surety must pay a claim on the official's behalf. With insurance, there may or may not be the ability to recover from the official what was paid out for that official. She noted that state law provides that the surety bond for the public official is for the use and benefit of every person who is injured. She mentioned that, if this bill were to

pass, the statutory scheme on bonds may need to be replaced completely to eliminate any confusion.

Mr. Jack SPANN, Spann Insurance

Mr. SPANN explained why insurance and surety bonds are different. He said that a key difference is that insurance is cancelable, while official surety bonds are not in Tennessee. He said that the official surety bonds are not complicated. He gave an example of the two-page form and contrasted that with a 34-page insurance policy that covers state level employees. He explained that the insurance policy had multiple exclusions and exemptions in favor of the insurance company, while the bond had none and was written in favor of the state. He argued that it was impractical to attempt to compare Tennessee's public official surety bond with insurance in general without having an actual policy to examine. Mr. SPANN noted that the bill would allow pools to provide coverage. He advised against allowing this because pools are not regulated or backed-up by the State Guarantee Fund.

Senator HENRY asked Mr. SPANN whether it was his company would pay any claims on a surety bond it sold. Mr. SPANN answered that his company was merely the business that places the surety bond with an insurance company. Senator HENRY asked whether Mr. SPANN used only A-rated insurance companies. Mr. SPANN said that he does and that Davidson County requires that only A-rated companies be used. Mr. SPANN also recommended that surety companies be required to be covered by the state guarantee fund, the same as insurance companies.

Senator KYLE asked Mr. SPANN about the cost of surety bonds. Mr. SPANN said that the costs vary depending on the bond amount and the background of the individual being bonded. He said that the annual premium on Mr. Cardwell's bond is \$10,050 and noted that he didn't know of any insurance policies that had \$16 million of liability coverage, like Mr. Cardwell's bond, for only a \$10,050 annual premium.

Ms. Becky BROCK, Director of Member Services, Local Government Insurance Pool

Ms. BROCK said that LGIP has an issue with the unknowns of the bill. She explained that there are significant differences between the employee dishonesty policy they currently provide their pool members and the coverage of the official surety bond. She said that they were unsure how much it would cost to provide the coverage allowed in Senate Bill 624 to their pool members. She stressed the importance of leaving pools unregulated.

Mayor WATERS asked Ms. BROCK whether there was any urgency to passing this bill. She said no. Mayor WATERS then asked whether there should be further investigation on this issue or a different bill that addresses some of the issues that were brought up at the meeting. Ms. BROCK said that there should be additional research on this issue or a bill that addressed some of the issues brought up would be a good idea.

Mr. Jon CALVIN, Director of Underwriting, Tennessee Municipal League Risk Management Pool

Mr. CALVIN said that surety bonds exist in a legal environment that has a long history with many precedents. He thought that it should first be established exactly what needs to be covered. He said it was possible for an insurance policy to cover everything that a bond covers, but that policy would be very complex because the bond language is so broad. Mr. CALVIN said that based on the unpredictability of this coverage, the TML pool would not write this coverage.

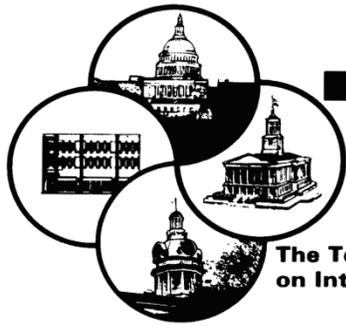
Representative CARTER said that the TML pool has limits of liability established by the Governmental Tort Liability Act. Representative CARTER asked whether the premiums for pool members were established using actuarial studies just as an insurance company would use. Mr. CALVIN said they were and explained how there are exceptions to the GTLA limits, such as incidents that happen out of state. He said that they write limits for actions that would occur under tort law and one for everything else. He also said they have audits of their finances.

Mayor BRAGG asked whether the small amount of claims made on official surety bonds would entice the pool into providing this type of coverage. Mr. CALVIN said that he thinks the incentive of the official having to pay back any claims paid out by the surety company prevents more claims from being filed, as well as the public scrutiny the official would face for having to use the bond because of failing to perform. He said that the TML pool's existence is based on the GTLA, and that this bill would take them out beyond that.

Chairman NORRIS wondered whether there is anything like this bill elsewhere and whether such a policy would be worth considering if there could be equivalent coverage for less money. Mr. CALVIN said that under the right circumstances, it could be worth pursuing.

Chairman NORRIS asked Mr. EVANS whether he would like to close and answer a few questions. Mr. EVANS said there are many more questions that need to be asked. He said that Senate Bill 624 is a compromise bill, that his suggestion is to do away with individual surety bonds altogether and use only blanket surety bonds, not to use insurance in place of bonds. He reiterated that his suggestion is not to replace surety bonds with insurance. He also said that more research is needed and suggested the Comptroller's office study the loss history for bonds to determine what really needs to be covered. Mr. EVANS noted that Nashville self-insures but does buy surety bonds. Councilmember SENTER asked Mr. EVANS whether everyone uses the two-page Attorney General surety bond application. Mr. EVANS replied that the two-page application is not the Attorney General's, but is consistent with insurance company requirements. Councilmember SENTER said she wanted to understand the difference in complexity between surety bonds and insurance. While acknowledging the much greater length of insurance applications, Mr. EVANS said that surety bonds are more complex to execute than insurance that includes a fidelity bond.

Chairman NORRIS adjourned the meeting at 4:11 p.m.



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**MINUTES OF THE
TENNESSEE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS
24 October 2013**

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 30 at 8:37 a.m., Chairman Mark NORRIS presiding.

Present 21	Absent 4
Mayor Troy Beets	Ms. Paula Davis
Mayor Tommy Bragg	Senator Douglas Henry
County Mayor Ernest Burgess	County Executive Jeff Huffman
Mr. Charles Cardwell	Mr. Tommy Schumpert
Representative Mike Carter	
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Mayor Tom Rowland	
Representative Charles Sargent	
Councilmember Kay Senter	
Senator Jim Tracy	
County Mayor Larry Waters	
Comptroller Justin Wilson ¹	

¹ Phillip Doss represented Justin Wilson

Call to Order

Chairman NORRIS called the meeting to order at 8:37 a.m.

1. State and Local Government Transparency Legislation—Final Report for Approval

Ms. Ethel DETCH presented the final report on government transparency for approval. She noted that since the August meeting the tables had been updated and checked; usage data for the state's Open Government website had been added; information about local government costs had been expanded; and information about the Comptroller's Transparency and Accountability in Government website had been added as a third example of a transparency website hosted by Tennessee's state government.

Representative SARGENT, Senator TRACY, and Mayor BRAGG each expressed concern about the fiscal impact on local governments. Ms. DETCH noted that the report contains a wide range of options to help local governments improve transparency, regardless of their size or current website status. Governments can also mitigate costs by incorporating greater transparency as they make other upgrades. Ms. DETCH noted that cost estimates need to reflect that placing greater information on the web can actually help reduce costs in some situations. Mayor WATERS thanked Representative SARGENT for the tenor of his remarks and agreed that local governments need flexibility. Mayor BRAGG commented that he will take the report back to his communications department so that they can study the report's recommendations and make improvements to his city's site.

Mayor BRAGG moved approval of the report, Director MCMAHAN seconded, and it passed unanimously.

2. Municipal Boundary Changes and Comprehensive Growth Plans, (Public Chapter 441, Acts of 2013)—Draft Report for Review and Comment

Ms. Leah ELDRIDGE presented the draft version of the report on changes in municipal boundaries and growth plans, noting that staff does not present any recommendations in the draft and looks to the Commission for recommendations. Ms. ELDRIDGE's presentation highlighted the various topics included in the report: annexation, deannexation, annexation of agricultural land, city mergers and mutual adjustment of boundaries, and growth plans and planning. She also summarized the staff's analysis of the economic performance of the states by type of annexation. Ms. ELDRIDGE added that staff would also be adding information on the vesting of developers' rights and the effect annexation has on building projects, and how some states' annexation and planning requirements differ for cities with different populations in response to Senator KYLE's suggestion to develop an alternative that varied requirements depending on population.

Discussing the costs of providing services, Representative SARGENT voiced the concern that residents outside cities want services—especially water and sewer—but do not want to be taken into the city to get them. Representative PARKINSON asked how cities recoup the cost of utility investments made outside their boundaries, and Ms. ELDRIDGE replied that those

projects are supposed to be paid for through rates to outside customers. Mayor BRAGG asked whether the staff, in making their financial analysis, considered the financial burden cities assume when they take over road maintenance and other services from a county after an annexation. Dr. LIPPARD came to the podium and answered that the staff's fiscal analysis did not go to that level of detail; it only compared state-level economic performance. Mayor ROWLAND said that benefits from city fire protection and reduced insurance rates should be considered as well.

Regarding tax issues related to annexation, Senator KYLE asked whether annexation affects a property's greenbelt status, and Ms. ELDRIDGE replied that she did not think it would. Mayor BEETS raised the issue of the 15-year "hold harmless" provision expiring, with counties soon beginning to lose sales tax revenue for land annexed in 1998-1999. Some officials have suggested that loss be phased in, but Mayor BEETS pointed out that those counties have already had 15 years to plan for the decrease.

Chairman NORRIS asked Dr. LIPPARD to go into detail on the staff's analysis of economic indicators and the fiscal effect from states having different methods of annexation. The results vary greatly, and that there is no clear indication that the way a state conducts annexation has any effect on its economic performance. Chairman NORRIS said that it doesn't appear that states where cities need consent to annex are hampered. Mayor ROWLAND talked about problems mostly coming from Memphis and Chattanooga, and asked about considering requiring referendum for cities of a certain population, specifically in the large cities in Tennessee. Dr. LIPPARD reiterated that some states do that, and that it would be up to the Commission to recommend it.

On the topic of growth planning, Senator KYLE said that some counties' growth plans have been more accurate and predictive than others, and that he did not want any changes to put a burden on those counties who have done a good job. He also said that holding people to growth plans that haven't been accurate leads to conflict. Senator NORRIS agreed, saying the Commission was looking at how everybody was doing as we are 13-15 years into the 20-year planning period. He went on to address the tasks required of the Commission by Public Chapter 441. The review, evaluation, and report are all well underway, but it is time for making necessary recommendations. He expressed concern with the amount of time left before the Commission presents its findings to the General Assembly on January 14th.

Mayor BEETS expressed concern about unintended consequences and problems with other parts of the growth policy act from moving to annexation by referendum only. Would smaller cities lose protection from bigger cities annexing territory? He said that it is good for local government to have flexibility, and referendum-only annexation may not fit all places.

Chairman NORRIS said that there has been mostly support for Public Chapter 1101 and that the commissioners seem to agree that most of it works well. Some changes to the annexation component should be incidental to the rest of the law. He then summed up a few of the issues that have been raised, including that if you require a referendum for residential and agricultural land, cities will be concerned how to get to commercial or industrial development if they can't

get the subdivision in between. Would allowing noncontiguous annexation in some circumstances help?

Mayor BURGESS said that states are different and that each of Tennessee's 95 counties are different. He believes recommendations shouldn't get too specific, and would suggest a time period of two to five years to revisit and redo growth plans. Could annexation methods be a local decision? He suggests asking counties and cities to provide list of three to four problems they have.

Representative CARTER said that the way to account for local differences is through referendum and that changing the annexation statute to require referendum is all he wants. Chairman NORRIS clarified that Representative CARTER was talking about land within a UGB, and only residential and agricultural. Representative CARTER said he understands the complications of those limitations and that it will need to be worked out.

Senator KYLE voiced concern that voters aren't always consistent about the reasons they vote. Requiring votes for annexations will bring inconsistent results. The real issues are economic development and sharing risk. Cities want to be the economic engine for their community, and they take risks to build infrastructure; cities want a return on their investment. Cities are different—in suburban cities, people are commuting for jobs. The people in bigger cities take exception to those who benefit from the risk that the city has taken but don't want to contribute. We trust people to vote, but there have to be parameters. We don't want socioeconomic issues in certain counties to drive the passing of a law that hurts the other counties. Senator KYLE emphasized that the Commission needs to be ready to put forth recommendations that the Legislature will pass.

Chairman NORRIS summed up some of the main points that had been discussed for possible recommendations: population brackets or classifications; the need to update plans; whether the hold harmless should be phased out; allowing noncontiguous annexation; requiring more specific schedules for service provision; better notice and more meetings; agricultural issues; simplifying the process to amend plans; coordinating committee and JECDB composition; and all of those around the issue of allowing people to vote. Mayor WATERS said that areas of consensus are in reviewing and maintaining growth plans. People agree with accommodating economic development and providing services for it. Mayor McBRIDE talked about difference between residential and industrial or commercial development. Lots of residential development intentionally happens outside city limits.

Mayor BRAGG said he was reminded that Public Chapter 1101 was passed to put people on notice; a broad base of parties came together. Would voting individually harm the "greater good" for the rest of people? There is an understanding of notice within the UGB, where people are near a growing city and are subject to annexation. City services are a just compensation for bringing someone into a city. Mayor BRAGG said he is concerned about islands created by annexing around and avoiding residential areas. Even then those people may not vote to come into the city; they would feel that they already have all the benefits. Mayor ROWLAND added that cities and counties have built plans for the future based on

Public Chapter 1101. He would like to have a meeting where people present their problems with the law.

Chairman NORRIS reminded people that nobody is talking about doing away with 1101. It would take action from the General Assembly to extend time for the study. Representative CARTER said he would have no problem with continuing the status quo under Public Chapter 441 to allow time for a more full study. Redoing Public Chapter 1101 was not what he had in mind.

Chairman NORRIS concluded by noting the dates of the next meeting and that the January 14th deadline for the General Assembly is the law even if there is sentiment to seek additional time. He and Vice-Chair ROWLAND agreed that staff would ask the members for comments and recommendations before the December meeting.

Next meeting

The next meetings are scheduled as follows:

- December 10 and 11, 2013
- January 30 and 31, 2014

Chairman NORRIS adjourned the meeting at 10:26 a.m.