

TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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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
19 June 2013**

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 30 at 1:09 p.m., Chairman Mark Norris presiding.

Present 18	Absent 7
Mayor Troy Beets	Mr. Rozelle Criner
Mayor Tommy Bragg	Representative Lois DeBerry
County Mayor Ernest Burgess	Representative Charles Sargent
Mr. Charles Cardwell	Mayor Pro Tem Kay Senter
Representative Mike Carter	Mr. Tommy Schumpert
Ms. Paula Davis	County Mayor Larry Waters
County Mayor Brent Greer	Comptroller Justin Wilson ¹
Representative Ryan Haynes	
Senator Douglas Henry	
County Executive Jeff Huffman	
Senator Jim Kyle	
County Mayor Kenny McBride	
Mr. Iliff McMahan	
Senator Randy McNally	
Senator Mark Norris	
Representative Gary Odom	
Mayor Tom Rowland	
Senator Jim Tracy	

¹ Phillip Doss represented Justin Wilson.

1. Call to Order and Approval of the Minutes

Chairman NORRIS called the meeting to order at 1:09 p.m. and informed the Commission that this meeting and future meetings would be video streamed. Representatives Mike CARTER and Ryan HAYNES were recognized as new members. Chairman NORRIS requested approval of the minutes, which was moved by Mr. MCMAHAN, seconded by Mayor BEETS, and passed unanimously.

2. Commission Updates

Chairman NORRIS yielded the floor to Vice-Chairman ROWLAND for election of officers. Vice Chairman ROWLAND opened the floor for Chairman nominations. Senator HENRY nominated Senator NORRIS as Chairman. This was seconded by Senator TRACY, and passed unanimously. Vice Chairman ROWLAND yielded to Chairman NORRIS for the remainder of the election. Chairman NORRIS opened the floor for Vice Chairman nominations. Mayor BEETS nominated Mayor ROWLAND as Vice Chairman. This was seconded by Mr. MCMAHAN, and passed unanimously.

Chairman NORRIS explained the need to form an executive committee, partly so that there is some structure in place when the Commission needs to make staff or funding decisions.

Executive Director ROEHRICH-PATRICK identified Nathan SHAVER and Bob MOREO as the newest members of the TACIR team and gave an overview of their work history and qualifications. She also introduced two interns working with the Commission over the summer, Chris ALDRIDGE and Scott WHITE.

3. Presentation by Dr. Cliff LIPPARD, Deputy Executive Director, on Legislative Updates

Dr. LIPPARD reviewed legislative action during the first session of the 108th General Assembly on issues related to past studies, discussed nine new bills submitted to the Commission for study, and presented an amendment to the Commission work program adding the new studies resulting from the bills. The General Assembly took action directly related to findings and recommendations in two Commission reports, *Safe Digging: Working Together to Prevent Damage to Underground Utilities* and *Eminent Domain in Tennessee*, as well as one staff report, *Appointment v. Election of Utility District Commissioners*. The General Assembly also referred nine bills to the Commission for study, seven of which pertain to annexation and Public Chapter 1101, Acts of 1998, the state's growth policy act. The legislature also referred bills pertaining to water rates and to insuring against breach of fiduciary duty by public officials and employees.

During discussion of the bills sent to the Commission for study, Chairman NORRIS emphasized that the study directed by Public Chapter 441 will help add focus to the Commission's comprehensive review of Public Chapter 1101. He asked that the study include consideration of the practical effects of annexation, both positive and negative. Mayor MCBRIDE asked that it also review the requirement for mandatory meetings of Joint Economic and Community Development Boards as part of the PC 441 study, while Senator HENRY asked that the chairs of the referring committees be consulted to ensure that their questions were answered.

Chairman NORRIS agreed with Senator HENRY, noting that the referring committees had representatives in the audience. Senator HENRY also asked that the report consider the effect of the state's realignment of its planning offices on local governments and their ability to plan growth. Vice-Chairman ROWLAND asked whether the various bills involving annexation referenda require a simple-majority vote. They do.

In discussion of the other bills sent for study, Senator KYLE raised his concern that it is improper to use insurance in lieu of surety bonds, suggesting that you cannot insure against a wanton, willful act. Senator MCNALLY asked whether the study on the effect of foreclosures on blighted areas would consider the costs to local governments of holding foreclosed properties. Dr. LIPPARD noted that the study would consider those costs. Chairman NORRIS reminded the members of the land bank pilot program in Oak Ridge that was discussed in an earlier Commission report on blight. Mayor BRAGG asked that when studying water and sewer rates, as directed by House Bill 600, staff be sure to consider situations like those in Rutherford County where Murfreesboro residents served by the utility district pay higher water rates than those served by the city.

Following the legislative update, Dr. LIPPARD asked for approval of the amended work program, which combines the seven annexation and growth planning bills into the smaller study added by the Commission last February to determine the status of plans at the end of 20 years and analyze potential improvements to the growth planning process. This broader study now includes all of Tennessee Code Annotated, Title 6, Chapters 51 and 58, as required by Public Chapter 441, Acts of 2013, and by request of the Senate State and Local Government Committee.

During discussion of the work program and research plans, Chairman NORRIS asked whether the staff would be able to complete the PC 441 study in addition to the other assignments in the work program. Ms. ROEHRICH-PATRICK noted that the study would put a strain on both the members and the staff and that to meet the January 14, 2014, deadline, the Commission would need to consider a draft report in October and approve a final report in December. Chairman NORRIS and Ms. ROEHRICH-PATRICK discussed the possibility of further deferring the study of Home Owners Associations directed by House Resolution 170 by Moore during the 107th General Assembly, with the chair recommending that the Commission wait until the next session to decide how to address that study. Referring to the panels indicated in the PC 441 research plan, Chairman NORRIS also asked whether the Commission members would have input into selecting the panelists. Ms. ROEHRICH-PATRICK said that the staff wants to ensure that no point of view is excluded. They started by speaking with the bill sponsors and have already contacted various representatives, including property rights advocates, chambers of commerce, and the Farm Bureau. She noted that the staff would welcome any additional suggestions. Senator HENRY suggested that staff run the research plans for legislative assignments by the committee chairs and their staff.

Chairman NORRIS moved approval, Representative ODOM seconded, and the Commission unanimously adopted the amended work program.

4. Presentation by Dr. Cliff LIPPARD, Deputy Executive Director, on 2012-13 Achievements

Dr. LIPPARD presented an overview of the Commission's achievements over the past fiscal year, noting that staff will incorporate the report into the biennial report due next year. Chairman NORRIS suggested that the members see the list of achievements as a resource for updating their constituents on their work with the Commission.

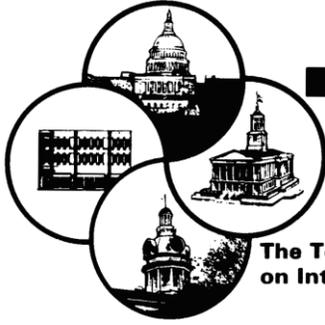
5. Presentation by Mr. Bill TERRY, Senior Research Consultant, on TACIR's preliminary report on the growth policy act study.

Mr. TERRY reported on the work TACIR staff is doing towards the study of municipal boundary changes and comprehensive growth plans, as directed by the Commission and the Legislature. Mr. TERRY gave an overview of the bills that have attempted to change these laws—bills passed or failed—and many that were referred to TACIR for study. Mr. TERRY also gave a brief history of the work TACIR has done in past years related to annexation issues and growth planning, including several published reports. He discussed the formation by the legislature of an ad hoc study committee to develop the bill that became Public Chapter 1101 in 1998. Mr. TERRY then gave an overview of annexation-related laws in other states. He noted that most states authorize a combination of methods so that categorizing states is not always simple. Mr. TERRY summarized the process by which PC 1101 came to be and stated that the law has been successful in many though not all locations. Executive Director ROEHRICH-PATRICK emphasized that the work presented is preliminary and described how the staff will be moving forward with its research.

Chairman NORRIS and Mr. TERRY discussed their experience of being on local coordinating committees for the creation of comprehensive growth plans and the difficulty of reconvening those committees to attempt changes.

Representative CARTER stated that he only wants to add referendum requirements for annexations under the state's comprehensive plan laws, adding that PC 1101 is one of the best pieces of legislation ever and should be otherwise left alone. In response, Chairman NORRIS reminded the Commission that it had begun a comprehensive review of growth planning before Public Chapter 441 became law. Mr. CARDWELL agreed with Representative CARTER on the usefulness of referendums, stating that annexation works when people get together to make it work for all.

Chairman NORRIS adjourned the meeting at 3:00 p.m.



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**MINUTES OF THE
TENNESSEE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS
20 June 2013**

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 30 at 8:38 a.m., Chairman Mark Norris presiding.

Present 21	Absent 4
Mayor Troy Beets	Mr. Rozelle Criner
Mayor Tommy Bragg	Representative Charles Sargent
County Mayor Ernest Burgess	County Mayor Larry Waters
Mr. Charles Cardwell	Comptroller Justin Wilson ²
Representative Mike Carter	
Ms. Paula Davis	
Representative Lois DeBerry	
Mayor Brent Greer	
Senator Douglas Henry	
Representative Ryan Haynes	
County Executive Jeff Huffman	
Senator Jim Kyle	
County Mayor Kenny McBride	
Mr. Iliff McMahan	
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Senator Mark Norris	
Representative Gary Odom	
Mayor Tom Rowland	
Mr. Tommy Schumpert	
Mayor Pro Tem Kay Senter	
Senator Jim Tracy	

² Phillip Doss represented Justin Wilson.

1. Call to Order

Chairman NORRIS called the meeting to order at 8:38 a.m.

2. Presentation by Mr. Bill TERRY, Senior Research Consultant, on Land Use Legislation— Final Report for Approval

Mr. TERRY presented the final report for Commission approval, noting that additional information had been added about concurrency and performance-based planning. The bills referred to the Commission for study focused on four basic topics: what constitutes a subdivision, who gets to regulate land use outside the city limits in areas set aside for them to annex, roads built by developers, and grandfathering in land uses that don't conform to new zoning requirements. Mr. TERRY briefly summarized the bills and the qualitative statements made in the report about them.

Commission members discussed a number of issues concerning extraterritorial planning, including who sets road bond amounts, how extraterritorial subdivision regulations and zoning are enforced through the courts, and the extension of extraterritorial planning authority into an extraterritorial planning region. During the discussion, County Executive HUFFMAN asked whether metropolitan planning organizations and regional planning organizations in extraterritorial planning regions are affected in any way when a municipality chooses to give up its region. Mr. TERRY replied that neither type of organization is affected when a municipality chooses to give up its extraterritorial planning region.

Following a discussion of annexation and extraterritorial planning, Chairman NORRIS asked for discussion of whether the joint economic and community development boards were being used effectively or whether they are underutilized. Mr. TERRY said that they are not used in some counties but are in other counties. Mayor BRAGG stated that the intent of the boards was to force cities and counties to sit down and talk. Mayor MCBRIDE stated that the communication aspect of it is there in his county, but as far as needing to come together to visit, there is no reason to because there is not a lot of economic development going on at this time. He suggested reducing the number of required meetings.

Senator HENRY suggested that the Commission's executive committee look into the possibility of reinstating the state planning commission to deal with the issues discussed in the report. Senator MCNALLY said that some local officials have been using nuisance laws to combat criminal activity and asked the staff to look into how easy it is to do this.

Mr. MCMAHAN made a motion to approve the report. Representative ODOM seconded the motion. The motion was unanimously approved.

3. Presentation by Ms. Catherine CORLEY, Research Manager, on Fire Service Study— Final Report

Ms. CORLEY presented the final report on the fire service study for approval. The study, directed by House Joint Resolution 204 of 2011, asked TACIR to answer three questions: 1)

How is fire service funded, especially in rural and suburban areas, whether provided by paid or volunteer fire departments? 2) What is the effect on local governments of not having a fully funded fire department? 3) What would it mean if firefighting was made an essential service?

Ms. CORLEY said the first question posed by the resolution was easy to answer. Current funding methods are clearly outlined in state law, with different types of fire departments having access to different types of funding based mainly on whether they are city, county, or private departments. The most notable difference between cities and counties is that counties can establish fire tax districts with differential property tax rates to fund fire service, but cities cannot. The report concludes that there is no obvious reason not to extend this option to cities.

Ms. CORLEY said that answering the second and third questions was not as easy because of ambiguity in the language in the resolution and a lack of relevant findings in the data. Ms. CORLEY noted that, because data for both funding of fire departments and fire incidents is self-reported, there are many inconsistencies and gaps in the data. Consequently, the limitations of the data and the absence of a statistical relationship between fire department characteristics and fire losses in the data made formulating recommendations impossible, but a 2011 University of Tennessee study of fire deaths by Census tract provides some important policy suggestions. That study found that 90% of the Census tracts in Tennessee at highest risk for fire deaths are rural tracts characterized by high poverty; low education levels, incomes, and housing values; and a large number of mobile homes. The State Fire Marshalls Office has already begun to target those high-risk areas in an attempt to reduce fire deaths.

Mayor BEETS made a motion to approve the report, and Senator MCNALLY seconded. The report was approved by a unanimous vote of the Commission.

4. Presentation by Dr. Cliff LIPPARD, Deputy Executive Director, on local education fiscal capacity

Dr. LIPPARD presented background information on local education fiscal capacity and education funding in Tennessee. Fiscal capacity is used to allocate the local share among the counties to determine what portion of the local share each system is responsible for. Then the state makes up the difference between whatever the local share is and the total cost of education for that system. Dr. LIPPARD explained each factor used in TACIR's county-level fiscal capacity model and discussed tax equivalent payments and tax exportability. Dr. LIPPARD continued explaining how school systems' fiscal capacities are determined and how they are applied to the state's education funding formula. Ms. ROEHRICH-PATRICK emphasized that the state's Basic Education Program formula and fiscal capacity are two very separate processes; the education funding formula determines how much the BEP costs, and fiscal capacity determines how to allocate the local share.

Chairman NORRIS raised a concern that Union County's fiscal capacity has been deflated as a result of the high enrollment in its virtual academy and that this has affected the fiscal capacity results for other systems. Dr. LIPPARD said that that the virtual academy in Union County has

been in operation since the 2011-12 school year. It was authorized by the virtual public schools act, Public Chapter 1096, Acts of 2008, and serves students in grades K-8 from across the state. Some of these students were not enrolled in public schools before enrolling in the virtual academy. For fiscal capacity and funding purposes, it is as if they are physically enrolled in Union County schools. With this increase in enrollment, Union County's fiscal capacity has decreased. Without the virtual school students, its fiscal capacity would have increased. The addition of the virtual school students to the state's overall enrollment increased the total cost of the BEP, and by extension, the total cost of the collective local share. That means the other local governments are paying a higher share of a higher total.

Ms. ROEHRICH-PATRICK added that state dollars do and should follow the child. Union County now has more than double the student population it had two years ago. If Union County pays less of the local share, then the other counties pay more. Even if a county has no children going to a virtual school their local share will still increase.

Senator KYLE suggested that the BEP formula might better be viewed as a local government funding formula rather than as an education funding formula, and took notice of concerns about accounting for balkanization within counties and pulling funding from public schools to charter and virtual schools.

Chairman NORRIS said we could have the Department of Education report back to us on the effect of the virtual academy. He asked staff to give some thought to possible recommendations to address the situation and to consider coordinating with the Department of Education about the possibility of the department reporting to the Commission on the effect of virtual schools on funding.

5. Next meeting

The Commission set meetings for the remainder of the year. The meetings are scheduled as follows:

- 25 July 2013
- 21-22 August 2013
- 23-24 October 2013
- 4-5 December 2013

Chairman NORRIS adjourned the meeting at 10:30 a.m.