

TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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**MINUTES OF THE
TENNESSEE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS
5 February 2013**

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in the conference room at 226 Capitol Boulevard at 1:02 p.m., Chairman Mark Norris presiding.

Present 14	Absent 10
Mayor Troy Beets	Mr. Rozelle Criner
Mayor Tommy Bragg	Senator Douglas Henry
County Mayor Ernest Burgess	Senator Jim Kyle
Mr. Charles Cardwell	County Mayor Kenny McBride
Ms. Paula Davis	Senator Randy McNally
Representative Vince Dean	Representative Gary Odom
County Mayor Brent Greer	Representative Charles Sargent
Representative Curtis Halford	Mayor Pro Tem Kay Senter
County Mayor Jeff Huffman	Senator Jim Tracy
Mr. Iliff McMahan	Comptroller Justin Wilson ¹
Senator Mark Norris	
Mayor Tom Rowland	
Mr. Tommy Schumpert	
County Mayor Larry Waters	

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 BEETS, and passed unanimously.

2. Commission Update

Executive Director ROEHRICH-PATRICK identified Melissa BROWN as the newest member of the TACIR team and gave an overview of her work history and qualifications. Chairman NORRIS welcomed Melissa to TACIR.

3. Presentation by Dr. Cliff Lippard, Deputy Executive Director, TACIR, on Work Program

Dr. LIPPARD requested that the Commission adopt the calendar year 2013 work program as proposed in the docket book, noting that an amendment will be presented for approval at the June 2013 meeting for any legislation referred by this General Assembly.

Chairman NORRIS asked the members whether they had any other studies for consideration at this time. He explained the origin of the study on growth plans in the proposed work program. County Executive HUFFMAN called attention to a provision in Public Chapter 1101 where a county is "held harmless" for 15 years from the loss of local option sales tax revenue after any new annexation or incorporation. After 15-years, the revenue will shift from the counties to the cities. County Executive HUFFMAN said that the counties need to be aware of this because the deadline could be approaching and could cause problems.

Representative DEAN moved to approve the work program as presented, Mayor ROWLAND seconded the motion, and it was approved unanimously.

4. Presentation by Dr. Reuben Kyle, Senior Research Consultant, TACIR, on Tennessee Valley Authority (TVA) Payments in Lieu of Taxes (PILOT)

Dr. KYLE presented the Commission's annual report on TVA PILOTs for approval. He explained the origin of the annual study and reviewed information presented in past reports. The general concern is that strategies adopted by TVA to increase power production without approaching its statutory debt limit would reduce PILOTs to Tennessee. That has not happened yet, although payments to Tennessee this year are estimated to decline \$43 million because TVA lost its largest customer and because of the continuing slowdown in economic activity. For counties, the decline will amount to slightly more than \$1 million, total payments to cities will be \$462,062 less, and the state and its agencies will lose approximately \$2. The report includes tables showing estimated allocations to each of Tennessee's cities and counties.

Dr. KYLE briefly recapped information in the report about how TVA is changing its supply network to meet the demand for power, to comply with environmental regulations, and to stay under its \$30 billion debt limit. To stay under the debt ceiling, TVA has resorted to new financing methods that could negatively affect PILOT funding. For example, its sale/lease-back arrangements with two facilities in Mississippi have reduced that state's PILOT by more

than \$5 million per year because of deductions for other taxes paid by those facilities. So far, there have been no sale/lease-back deals in Tennessee, but there have been lease/lease-back deals. Lease/lease-back agreements do not incur taxes because TVA is treated as the owner of the property so there have been no deductions in Tennessee like those in Mississippi. If TVA were to adopt a sale/lease-back agreement, Tennessee could adjust its allocation system to deal with any loss. Dr. KYLE further noted that TVA is increasing natural gas generation and phasing out some coal plants for economic and environmental reasons. The report explains that if generation capacity moves outside of Tennessee, Tennessee will get a smaller share of the PILOT.

The Commission discussed the need to make local governments more aware of the implications of TVA's new expansion strategies. Mayor GREER said that TVA personnel met with representatives of the Association of Tennessee Valley Governments (ATVG) at its quarterly meeting in January to engage in exactly that kind of discussion. TVA reported that, other than their sales going down, there should not be a significant decrease in PILOTs next year. TVA said a decrease of 4% is possible. Members of the ATVG are monitoring all of these changes.

Dr. KYLE said that a TVA news release announced that 1st quarter sales were up 0.2% from last year. Last year's winter was mild, and consequently, electricity sales were down, but sales are expected to be flat over the year. So far in the federal fiscal year, there has been very little change. In the 13 years since federal fiscal year 2000-01, there has been only one other year in which payments were less than the previous year.

The report, which will be transmitted to the House and Senate finance, ways, and means committees and to the two commerce committees, was approved by a unanimous vote of the Commission.

5. Presentation by Ms. Catherine Corley, Research Manager, TACIR, on Fire Service Study Resolution

Ms. CORLEY presented a draft report on the fire service study for review and comment. The study, directed by House Joint Resolution 204, asked TACIR to answer three questions: 1) how fire service is 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 stated that 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 corporations. The most notable difference between cities and counties is that counties can establish fire tax districts with differential property tax rates through fire tax districts to fund fire service, but cities cannot; there is no obvious reason not to extend this option to cities.

Ms. CORLEY noted that staff analyzed data on funding and fire-service delivery methods but found no statistically significant relationships, even when looking at the relationship between the property loss and a fire department's per capita budget, the percent of a department's

firefighters that are full-time career employees, or the number that are certified firefighters. Staff also found no statistically significant relationship between fire deaths and these three measures. Ms. CORLEY cautioned that the lack of a statistically significant relationship does not mean that no relationship exists.

Mayor BEETS asked whether mutual aid agreements were studied in the preparation of this report. Dr. LIPPARD responded that TACIR staff looked at the Tennessee Fire Marshal's studies on incidents in which mutual aid was given or received and found no significant relationship. Director ROEHRICH-PATRICK added that the data was analyzed to determine whether it could be used to support establishing some minimum level of service or funding. Mr. MCMAHAN pointed out that they have mutual aid agreements in Cocke County for fire service for their industrial parks and developments and that businesses are reluctant to locate there without those agreements. Chairman NORRIS asked TACIR staff to add more information about mutual aid agreements to the report.

Several members noted errors concerning the type of department in an appendix. These errors were partly the result of incorrect information provided to TACIR by the State Fire Marshall's office and partly the result of a formatting error by TACIR staff. A corrected table was provided to members at the start of the meeting on Wednesday.

Mr. SCHUMPERT pointed out on page 16 that there wasn't a relationship between funding and service outcomes and he had a hard time believing that. Dr. LIPPARD explained the work staff did, noting that while they found no significant correlation between funding and outcomes, they did not conclude that there is no relationship, only that the data available to them doesn't demonstrate one. Chairman NORRIS noted that the commission values public safety. He also asked for further information about the deductibility of fire taxes versus fire fees.

6. Presentation by Mr. Ben Smith, Senior Research Consultant, TACIR, on Rural Interstate Highway Congestion

Mr. SMITH gave an overview of an upcoming staff report on rural interstate highway congestion, explaining that the objectives of the study were to examine existing interstate corridor studies and related information, evolving predictions of the timing of the problem, more detailed data about interstate traffic, and alternatives to address the problem. Studies of the problem reach the same conclusion with only minor differences in the timing: the congestion on Tennessee's rural and small urban interstate highways is forecast to greatly increase intercity travel times. Studies also show that Tennessee's highways carry more pass through truck freight than any other state. This traffic is costly to accommodate. The question is how much of the state's own resources must it spend to ensure that traffic that *does* contribute to the state's economy can move freely.

In 2005, TDOT's Long-Range Transportation Plan forecasted 550 miles (out of 687 miles) of congested rural interstates by 2030. Two cross-state corridor studies performed in years subsequent to the 2005 plan estimated the cost of a partial list of priority projects to meet some of the needs described in the plan at \$6.3 billion. The plan characterized the problem as the most serious threat to highway mobility outside the larger urban areas. For purposes of this report "rural" means any area outside the boundaries of the state's eleven metropolitan

planning organizations (MPOs) where almost all interstate routes have only four lanes. The number of lane miles classified as rural has been reduced since 2003 by the encroachment of urban areas and shifting MPO borders even as system-wide demand has grown. Rural interstate lane miles now comprise 1.4% of the state's total for all highways but carry 12.3% of traffic in the state; consequently, they are crucial to the state's economy.

Mr. SMITH said that existing studies have treated all travel demands as equal, but breaking traffic into component parts produces more useful information for managing it, conserving remaining interstate capacity, and prioritizing corridor transportation improvements. For this study, the state's traffic flows were broken into three component parts: (1) through traffic with neither origin nor destination in Tennessee, (2) traffic with only one end point in Tennessee, and (3) trips entirely within Tennessee. Each of these components was further disaggregated into either car and light truck or heavy truck traffic to create six separate travel demand "markets" for analysis. Analysis of projections for these six travel demand markets across all interstate highways in Tennessee revealed that some corridors have a much stronger connection to the state's internal economy, while other corridors serve more as national transportation conduits. For example, for I-40 between Memphis and Knoxville, approximately 80% of year 2030 heavy truck trips will be directly connected to the Tennessee economy with at least one end point and sometimes two within the state. The remaining 20% is projected to be through trips. The I-75 corridor is expected to carry exactly the opposite with over 80% through trips that are relatively disconnected from the Tennessee economy. These functional distinctions suggest that state-level priorities and policy options could be tailored for each corridor.

This travel-market-driven approach would be helpful in establishing priorities for corridor improvements, recognizing that the urgency for financing new capacity is greatest in those corridors most important for internal mobility and for the import and export functions of in-state businesses. Investments in corridors heavily oriented to external travel demands might be deferred longer, and operational improvements might be made to squeeze the last remaining ounces of usable capacity out of existing pavement. Flexible federal funding programs, restructured by MAP-21, encourage greater investment in the national highway system and, in particular, the interstate highways.

The report suggests that state transportation policy makers should

- complete the I-24 and I-65 corridor studies with attention to their unique travel demand markets,
- re-evaluate the previous I-40/81 corridor study based on its disaggregated travel demands,
- establish project priorities for the state's rural highways using criteria appropriate to intercity travel demands, and
- include these priorities in the state's transportation planning and budgeting processes.

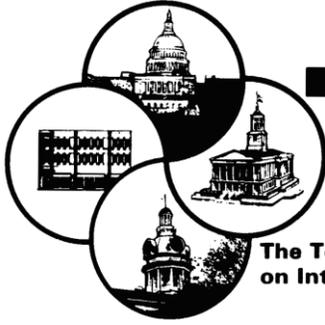
The report, which has been reviewed by TDOT staff, also suggests that the state's transportation planners update the statewide travel demand model, recalibrating total travel demands and incorporating component travel demand markets; base the development

strategy for each corridor on these travel demand markets; and develop this planning focus in concert with new MAP-21 requirements for system performance goal setting and asset management planning.

Chairman NORRIS reminded the Commission that this is a staff report that was approved in the work program. He enquired about the report's benefit to TDOT; Mr. SMITH responded that TDOT has found it useful.

7. Other Matters

Chairman NORRIS adjourned the meeting at 2:41 p.m.



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**MINUTES OF THE
TENNESSEE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS
6 February 2013**

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in the conference room at 226 Capitol Boulevard at 8:44 a.m., Vice Chairman Tom Rowland presiding.

Present 12	Absent 12
Mayor Troy Beets	Mr. Rozelle Criner
Mayor Tommy Bragg	Representative Vince Dean
County Mayor Ernest Burgess	Representative Curtis Halford
Mr. Charles Cardwell	Senator Douglas Henry
Ms. Paula Davis	County Executive Jeff Huffman
Mayor Brent Greer	Senator Jim Kyle
Mr. Iliff McMahan	County Mayor Kenny McBride
Senator Mark Norris	Senator Randy McNally
Mayor Tom Rowland	Representative Gary Odom
Mr. Tommy Schumpert	Representative Charles Sargent
Senator Jim Tracy	Mayor Pro Tem Kay Senter
County Mayor Larry Waters	Comptroller Justin Wilson ²

² Phillip Doss represented Justin Wilson.

1. Call to Order

Vice Chairman ROWLAND called the meeting to order at 8:44 a.m. Ms. ELDRIDGE provided members with the Commission's bylaws and gave a brief overview. Dr. LIPPARD and Ms. CORLEY provided the corrected appendix for the fire service report and Dr. LIPPARD gave additional information about the methodology used in the study.

2. Presentation by Ms. Leah Eldridge, Research Manager, TACIR, on Eminent Domain Legislation—Final Report for Approval

Ms. ELDRIDGE presented the final report, which was revised based on the comments provided by the Commission at its November meeting. Senate Bill 1566, which was sent to the Commission by the Senate Finance Ways and Means Committee would have authorized a property owner to force a local government into binding arbitration to determine the price to be paid for condemned property. Local governments would not be able to object to the use of binding arbitration. Ms. ELDRIDGE noted that based on the directives received from the Commission at the last meeting, staff revised the report to clearly state that property owners should not have the power to force local governments into binding arbitration to resolve disputes over the price to be paid for condemned property and that mediation should always be considered before arbitration.

Ms. ELDRIDGE explained that House Bill 2877, which was sent to the Commission by the House State and Local Government Subcommittee, would have eliminated the power of housing authorities to condemn property and would instead require the municipal or county governing body that approved a housing authority project to condemn property if necessary to implement the plan. Current law authorizes housing authorities to use condemnation to acquire land for public housing, urban renewal, and redevelopment projects. Housing authorities cannot condemn property for a redevelopment project unless the local governing body has approved the redevelopment plan, but under Tennessee's redevelopment law, Tennessee Code Annotated § 13-20-203, a governing body may delegate the authority to approve redevelopment plans to another agency. This could include a housing authority; however, to staff's knowledge, no local government has delegated this authority to a housing agency. The report recommends that the statutory language authorizing delegation of authority by a local government to a housing agency to approve a redevelopment plan be deleted. This would ensure that no local government could delegate the authority to approve a redevelopment plan to housing authorities and then the housing authorities use the plan as a basis for condemnation.

She noted that a related bill not sent to TACIR for study but included in the report, Senate Bill 548, would have given a right of first refusal to property owners whose property was condemned by a local government or a state agency. The provisions of the bill would have required the property to be offered to the former owners, or their heirs or assigns, at the price paid by the condemner. The right of first refusal would exist for ten years after the condemnation. Currently, the right of first refusal exists only in the case of condemnations by

the Tennessee Department of Transportation (TDOT). The report recommends that the right of first refusal be extended to all state and local government condemnations.

Ms. ELDRIDGE said that based on the directives from the Commission at the last meeting, staff revised the report to state that “requiring property to be offered to the former owners at the price paid by the condemner makes the property owners whole and puts them in the same position they would be in had the condemnation not taken place. Extending this right to the owner’s heirs and assigns would also ensure that the heirs and assigns could be made whole.” Staff also revised the report to include additional language further stating that better efforts should be made to inform property owners of their rights.

Chairman NORRIS made a motion to approve the report; Mayor BEETS seconded. A motion by Mayor BRAGG to strike the section on right of first refusal from the report failed for lack of a second. A motion by Mayor BRAGG to remove the language recommending that the right of first refusal be extended to heirs and assigns was seconded by Mr. SCHUMPERT and passed unanimously. A motion by Mayor BRAGG to amend the report to recommend that the TDOT model for right of first refusal should be followed was seconded by Mayor BEETS and approved by the Commission. Chairman NORRIS renewed his motion to approve the report as amended, Mr. CARDWELL seconded it, and the motion was unanimously approved.

3. Presentation by Mr. Bill Terry, Senior Research Consultant, TACIR, on Land Use Legislation—Draft Report for Review and Comment

Mr. TERRY presented a draft of the report on land-use legislation sent to the Commission and requested comments from the members. The report focused on the seven bills referred to TACIR during the 107th General Assembly. Two of the bills would have taken subdivision regulations in opposite directions. House Bill 3042 would have enabled local planning commissions to regulate more by authorizing local governments to regulate subdivision lots under 25 acres in size. House Bill 2818 would have prevented regional planning commissions in the 47 counties without countywide zoning from regulating all lots one acre or less. Mr. TERRY noted that exempting lots less than one acre would mean exempting most subdivisions. Amending current law to apply to lots larger than five acres could extend the benefits of subdivision regulation to more property owners.

Two other bills focused on the authority of municipalities to regulate land use outside their corporate boundaries in the 47 counties without zoning. House Bill 125, which would have enabled municipalities in these counties to both zone and regulate land use outside their corporate limits without prior approval from the county legislative body, was sent to TACIR for study in 2011, and a draft report was presented at the December 2011 meeting. House Bill 3041 was similar to House Bill 125, but it did not include zoning. Support for these bills is based on the concern of city officials about becoming responsible through annexation for development that does not meet city standards. Opposition comes from county officials and residents living outside the cities concerned about land use regulations being imposed on them by officials for whom they cannot vote. Current law provides two routes for resolving these conflicts, first through creation of joint city-county planning commissions and, since the

adoption of the state's Growth Policy Act in 1998, through joint economic and community development boards.

Two additional bills referred for study related to roads built by developers. Current law authorizes planning commissions to adopt standards for subdivision roads but makes no distinction between public and private roads. House Bill 3040 would have required cities to inspect, develop, accept, and hold the bonds for public roads outside a city's corporate limits but within its planning region. Some cities support this; others do not. House Bill 3105 would have permitted a developer and lot purchasers to enter into a private road maintenance agreement for the development of roads in a subdivision with the agreement to become restrictive covenants recorded with the deed or plat of the development. The planning commission could not refuse approval of the plat solely because the roads are private instead of public. A major problem with private roads is that landowners find they are expensive to maintain and therefore ask the county or city to take them over, which makes the taxpayers responsible for them. This is especially problematic when the roads are not built to proper standards, which is often the case.

The final bill referred for study focused on land uses that do not conform to current zoning regulations. Those businesses, industries, or commercial uses that are annexed or where the zoning regulations are changed remain protected under state law. However, if a business is discontinued or abandoned for 30 months, it loses its protection if local governments can prove that the use was intentionally or voluntarily abandoned. Current law is silent on what constitutes proof.. House Bill 3043 would have added criteria and removed language requiring that abandonment be intentional or voluntary. Another bill, House Bill 3694, would have completely rewritten current law. This bill was not sent to TACIR for study, but there is consensus that the law needs to be rewritten, albeit no agreement on what it should say.

Chairman NORRIS said one of the challenges is that these bills have expired, but the issues remain. He asked the Commission to provide guidance on how to move forward with this study and how to keep it timely. Mayor BURGESS said he would like the legislature to recognize the complexity of these issues and ask TACIR to look at Public Chapter 1101 along with them in a comprehensive way. Chairman NORRIS agreed that the Commission will do with the growth policy study and perhaps these issues could be intertwined. Director ROEHRICH-PATRICK said that staff would need guidance from members to do that and asked for direction regarding the bills referred for study. Chairman NORRIS responded that he would continue to discuss this with Director ROEHRICH-PATRICK so they can get a handle on it.

4. Presentation on Regional Water Supply Planning in Tennessee by Mr. Robert Martineau, Commissioner of Environment and Conservation, and Ms. Elaine Boyd, Director of Strategic Management on Regional Water Supply Planning, Tennessee Department of Environment and Conservation (TDEC)

Chairman NORRIS greeted the Commissioner, noting that the border dispute with Georgia continues and asking whether TDEC was aware that the Georgia General Assembly has introduced a new bill this session to realign the border to gain access to the Tennessee River.

Commissioner MARTINEAU responded that both TDEC and the Attorney General's office are aware of the issue but not of the new bill. He added that his office has not received any formal overtures from Georgia on this matter. He also added that Memphis and Mississippi have had similar disputes over groundwater.

Director BOYD briefly recapped the regional water supply pilot studies that grew out of the 2007 drought. The Commissioner's Water Resources Technical Advisory Committee (WRTAC) was appointed in 2007 and charged with updating the department's 1987 drought management plan and developing guidelines for local drought management plans and for regional water resource planning. The WRTAC completed its drought-planning work first and then proceeded with two pilot studies in order to develop guidelines for regional water supply resource planning. Director BOYD concluded her presentation by reporting that the WRTAC has now finalized these guidelines, and the department anticipates posting them on its website in February. She also noted that the department has added a third pilot study area in Wayne County because the first two studies did not address a groundwater sourced area.

Commissioner MARTINEAU reported that new legislation passed in 2012 updated the law that created the WRTAC to make it optional. He acknowledged that there is more work to be done and so has appointed a new WRTAC, which met for the first time the last week of January.

Chairman NORRIS asked whether the Groundwater Institute at the University of Memphis had been of any help concerning groundwater. Commissioner MARTINEAU said of course they would be, but they have not had any formal collaboration with them to date. Chairman NORRIS asked whether the basin authorities in Middle and West Tennessee were involved. Commissioner MARTINEAU said there are currently many different groups out there with their own data and analysis, but nothing is being analyzed at the statewide level. Chairman NORRIS asked whether the commissioner had been asked to present to other legislative committees, such as the Senate Energy, Agriculture and Natural Resources Committee. Commissioner MARTINEAU reported that they have not been asked, but would gladly do so. Chairman NORRIS said he would discuss this with Senator SOUTHERLAND who serves as chair of that committee. Commissioner MARTINEAU responded that he does have a meeting scheduled with Senator SOUTHERLAND next week.

Mayor BURGESS asked how TDEC determines the need for regional water supply plans and expressed concern about requiring everyone to complete these plans. Commissioner MARTINEAU responded that the WRTAC is tasked with figuring that out, adding that regions would be treated differently based on water source and that intergovernmental and utility district issues would also be raised.

5. Next meeting

The Commission set the next meeting for June 19-20, 2013. Chairman NORRIS adjourned the meeting at 10:13 a.m.