



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MINUTES OF THE TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

11 June 2014

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 29 at 1:07 p.m., Chairman Mark NORRIS presiding.

Present 17	Absent 8
Mayor Troy Beets	County Mayor Brent Greer
County Mayor Ernest Burgess	County Executive Jeff Huffman
Mr. Charles Cardwell	County Mayor Kenny McBride
Representative Mike Carter	Representative Gary Odom
Mr. Rozelle Criner	Representative Antonio Parkinson
Mayor Betsy Crossley	Representative Charles Sargent
Ms. Paula Davis	Councilmember Kay Senter
Representative Ryan Haynes	Senator Jim Tracy
Senator Douglas Henry	
Senator James Kyle	
Mr. Iliff McMahan	
Senator Randy McNally	
Senator Mark Norris	
Mayor Tom Rowland	
Mr. Tommy Schumpert	
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 1:07 p.m. and introduced new member Mayor Betsy Crossley of Brentwood, saying “We are delighted to have you join us, welcome aboard.” Chairman NORRIS informed the Commission that Mayor CROSSLEY has been appointed by Governor HASLAM to fill the vacancy left when former Mayor and Commissioner Tommy BRAGG chose to leave office. Chairman NORRIS requested approval of the minutes. A motion to adopt the minutes was made by Commissioner MCMAHAN, seconded by Commissioner CARDWELL, and passed unanimously.

2. Commission Updates

Executive Director Lynnis ROEHRICH-PATRICK, also welcomed Mayor CROSSLEY and recognized Mayor BRAGG saying the Commission was sorry to lose him. Chairman NORRIS invited Deputy Executive Director Cliff LIPPARD to present for the Commission’s approval a resolution honoring Mayor BRAGG for his decade of service to the Commission and his many other accomplishments. Following the presentation, Mayor ROWLAND moved and Trustee CARDWELL seconded approval of the resolution. Senator HENRY and Senator KYLE commended Mayor BRAGG for his service, and that of his father, to the Commission and the State of Tennessee. Chairman NORRIS presented a copy of the resolution to Mayor BRAGG. Chairman NORRIS yielded the floor to Ms. ROEHRICH-PATRICK, who advised the Commission that County Executive Jeff HUFFMAN’S term on the Commission expired earlier in June but he will continue to serve until the next appointment is made. Ms. ROEHRICH-PATRICK announced that Christopher ALDRIDGE will join the Tennessee Advisory Commission’s staff in July as a full-time research associate, and Scott WHITE and Tyler CARPENTER are interning with TACIR over the summer.

3. Work Program Amendment, Legislative Update, New Research Plans

Dr. LIPPARD reviewed legislative action during the second session of the 108th General Assembly on issues related to past studies, discussed six new bills and two new public chapters requiring studies by the Commission, 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, *Dealing with Blight: Strategies for Tennessee’s Communities* and *Eminent Domain in Tennessee*. The legislature referred bills pertaining to fire sprinklers in rural churches, alteration of school board administrative budget proposals, taxation of property tax credits for affordable housing, homeowners associations, civil causes of action for invasion of privacy, and uninsured motorist identification and passed two bills requiring further work by the Commission pertaining to abusive conduct in the workplace and funding for emergency 911 services.

During discussion of the new bills and public chapters sent to the Commission, Mayor BEETS asked how many school districts would be affected if the bill allowing legislative bodies to alter school board administrative budget proposals had passed. Dr. LIPPARD responded that the figure given during committee hearings was 14, adding that staff has not yet verified that number. Senator HENRY asked that, when making recommendations on any new homeowners

association laws, staff be sure to point out any draft language from model laws that is not recommended and why.

Chairman NORRIS said that, given the Commission's workload, we need in the future to clarify how new studies are sent to TACIR. He suggested that perhaps both the Senate and House version of a bill be appropriately amended and sent for study.

Without objection, the amended research plan was adopted.

4. FY 2013-2014 Accomplishments

Dr. LIPPARD provided a summary of the Commission's major accomplishments for the past fiscal year. The summary will be incorporated into the biennial report for fiscal years 2012-13 and 2013-14.

5. Annual Report on Public Infrastructure Needs Inventory—Final Report for Approval

David KEISER, Senior Research Associate, presented the report *Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs* for approval. Discussion of the report centered around the determination of school ratings, using the report to bolster the case for increasing transportation revenue sources, whether the inventory collects information about school debt, how new schools are surveyed, and whether the Comptroller's risk performance audit of TACIR has an effect on the passage of this report.

Senator MCNALLY asked how school condition ratings were determined in the inventory, saying that he was surprised that Knox and Davidson counties rated 20-30% of their school buildings fair or poor. Mr. KEISER said that school officials make the determination during the survey process. Ms. ROEHRICH-PATRICK added that the survey includes rating definitions, but applying them is subjective and there will be differences in the way each district reports these ratings.

Senator HENRY asked what the Commission's position is on transportation funding, saying that any increase should be framed as a service charge and not a tax. Senator NORRIS responded that the Southern Legislative Conference will be covering that topic at its meeting on July 10, 2014.

Senator KYLE asked whether the survey took into account the debt on existing school infrastructure and advised staff to look into this matter because Shelby County has refinanced a number of school buildings. Mr. KEISER answered that we currently do not ask that question on the survey but will look into it.

Mayor WATERS asked whether we include only new and replacement schools in the inventory that have been formally approved by their local governing body. Mr. KEISER answered that we do not ask that specific question on the survey form. We ask only whether the school district needs a new school.

Senator NORRIS informed the Commission that the Tennessee Comptroller's Office is in the middle of conducting a risk performance audit on TACIR that is focusing on last year's infrastructure report. He asked the commission members who were interviewed by the

auditors to talk about the questions they received. Senator MCNALLY asked whether the data was compiled only by the nine development districts. Mr. KEISER explained the data collection process for data received from state agencies and the nine development districts and confirmed that staff performs quality control throughout the process. Mayor BEETS said that the main question the auditors asked him was about how he would react if he knew some of the infrastructure data was incorrect. Senator NORRIS said that there are adequate disclaimers in the report and that the few examples he has seen were insignificant. Senator NORRIS asked Mr. DOSS from the Comptroller's Office for any insight. Mr. DOSS answered that this audit is not part of his responsibilities, but the auditors will proceed with their report regardless of what happens during this vote. Mr. DOSS added that performance audits are intended to improve performance, and Senator NORRIS added that this is not a fraud audit but a highly technical performance audit.

Senator NORRIS asked for a motion to approve the report. Mr. SCHUMPERT moved approval, and Mr. MCMAHAN seconded. The report was approved unanimously.

6. Foreclosure as an Impediment to Remedying Blight—Draft Report for Review and Comment

Mr. David LEWIS, Research Manager, presented the draft report on the study of foreclosure as an impediment to remedying blight for review and comment. Mr. LEWIS explained that a final report on the study will be presented for approval at the next meeting. He said that the Commission, at the request of Senator KYLE, directed staff to study how the protracted foreclosure process is affecting local governments' ability to remedy blight and to identify strategies that might assist in the redevelopment of affected areas. Mr. LEWIS pointed out that although the housing market has improved significantly in most of Tennessee since the peak of the foreclosure crisis in 2008, many properties have been foreclosed on or are still in the foreclosure process, and many are vacant. He stated that foreclosure can lead to blight because most foreclosed homes are vacant at least briefly and can be affected by negligence, vandalism, theft, and arson.

Noting that foreclosure-related blight is a more serious problem in some Tennessee communities than in others, Mr. LEWIS said that Tennessee and its local governments have already taken a number of generally effective steps to prevent and address the blight problems associated with the high number of foreclosures. Strategies already in use in Tennessee include providing monetary assistance to homeowners facing foreclosure so they can keep their homes, counseling homeowners on how to keep their homes, rehabilitating and reselling vacant foreclosed properties, and requiring owners to maintain vacant foreclosed properties. Strategies used in other states include vacant and foreclosed property registration systems, requiring servicers to post bond for each foreclosure, mediation programs, using eminent domain to seize underwater mortgages, and shortening time to foreclose. The draft report has no recommendations.

Senator HENRY asked how many out of 100 foreclosures in Tennessee are on inhabited versus vacant properties. Mr. LEWIS replied that some data might be available at the county level, but we have not tried to collect it.

Senator KYLE noted there is a positive correlation between foreclosed homes and homes that are vacant, and Mayor ROWLAND stated that for homes about to be vacated, conditions will deteriorate quickly. Mr. LEWIS said that a vacant home is more likely to become blighted regardless of who owns it if it is abandoned. If the owner is not on site, it's difficult for them to monitor its condition, and many foreclosed homes are owned by banks and investors who live in another state.

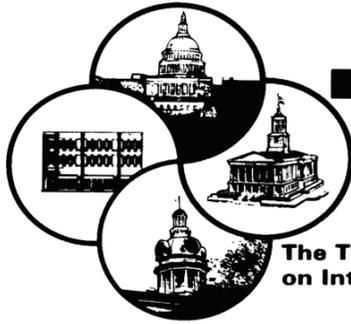
Representative CARTER said that he proposed a bill that would make the Mortgage Electronic Registration Systems (MERS) open to local governments, but that banking interests blocked his bill. There have been properties that have three different mortgage holders in a sixty-day period. Mr. LEWIS explained that it is his understanding that subsequent to Representative Carter's bill, the Mortgage Bankers Association became increasingly opposed to registries and worked with MERS to allow local officials access to MERS free as an alternative to developing property registration systems. Mr. LEWIS said that he had been able to gain access to MERS and found accessing and using it straightforward.

Senator KYLE said that a problem is that government bears the burden of proving who owns tax-delinquent properties when giving notice of pending tax sales. He proposed that the Commission look into a process to shift the burden to the delinquent owner. Another big problem is getting tax liens off the land—without violating the Tennessee Constitution's prohibition against forgiving taxes—so the land can be sold to someone who will develop it. Senator KYLE said you can spend \$50,000 at a mortgage broker trying to find out who owns these properties. The goal should be to build a program with reasonable due process where local governments can get a tax lien off the land so the land can be developed. The fact that people are living under bridges while there are empty houses makes him wonder whether we are doing our job. Senator KYLE wondered whether the constitutional prohibition was unique to Tennessee.

Mr. CARDWELL said that Davidson County doesn't have many blighted areas. Sometimes foreclosures happen, and companies won't maintain properties. He noted that the foreclosure process can last 18 months. Senator KYLE said that we should take advantage of the new technology available to us and shorten the process time. Mayor Rowland said that the Cleveland newspaper has excellent records of legal advertisements in the local paper, and it only takes city officials a few minutes to identify property owners.

Senator HENRY asked whether there is a downside to Baltimore's approach of selling abandoned houses for as little as a dollar. He said it is a simple solution in response to a large tax bill. Mr. LEWIS responded that for Tennessee there would be an issue of tax delinquency laws and who is responsible for delinquent properties. Mr. LEWIS said that to duplicate what Baltimore did would require a boots on the ground approach.

Senator KYLE said that when we inadvertently take vacant property from absent owners, the damages are not that much. The risk of damages is far less than the benefit we would receive from getting these properties back on the tax roll, and it's hard to prove more than miniscule damages.



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**MINUTES OF THE
TENNESSEE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS
12 June 2014**

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 29 at 8:40 a.m., Chairman Mark NORRIS presiding.

Present 17	Absent 8
Mayor Troy Beets	County Mayor Brent Greer
County Mayor Ernest Burgess	Representative Ryan Haynes
Mr. Charles Cardwell	County Executive Jeff Huffman
Representative Mike Carter	County Mayor Kenny McBride
Mr. Rozelle Criner	Representative Gary Odom
Mayor Betsy Crossley	Representative Antonio Parkinson
Ms. Paula Davis	Representative Charles Sargent
Senator Douglas Henry	Councilmember Kay Senter
Senator James Kyle	
Mr. Iliff McMahan	
Senator Randy McNally	
Senator Mark Norris	
Mayor Tom Rowland	
Mr. Tommy Schumpert	
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 8:40 a.m.

1. Background On Sprinkler Requirements In Places Of Worship And Assembly—(House Bill 1649 by Hill, T.)

Mr. Gary WEST, Assistant Commissioner of the Fire Prevention Division, gave an overview of the importance of fire sprinkler systems for fire protection in churches. How far the fire has progressed will determine the amount of water needed to extinguish the fire. Time always works against fire fighters; fires grow rapidly and fire loads and potential for injury for fire fighters are higher than ever. The fire department that brings the water to the fire has to provide the required fire flow, either by accessing fire hydrants or by using a building's suppression system. The larger the building, the more difficult it is to carry enough water to the scene to extinguish the fire. Churches lacking fire protection is an insurance risk that affects insurance premiums not just for occupants or owners but also for the community because the community is rated on the buildings that the fire department covers. By building the fire protection, the risk is reduced for occupants and for fire fighters, who are most in danger.

All churches are classified as assembly occupancies. A legislative meeting room, a theater, or a restaurant are examples of assembly occupancies, and are all treated the same way. The limit set on the number of occupants before fire sprinklers are required is 300. Where does this number come from? The occupant load limit is there for a reason: lives saved.

Fire department capabilities in every community differ, and in the rural areas, the departments find it difficult to extinguish a fire in a large building and need help from other departments. Church fires happen in Tennessee all the time—a lightning strike the day before the Commission meeting caused a church fire near Soddy Daisy. The small, local fire department was able to extinguish it only with the help of other departments. The state fire marshal's office does not see a good reason to exempt churches from fire sprinkler requirements. In large structures with large, open areas there is potential for the building to collapse, which happens very rapidly. This is how most fire fighters are killed. Maybe the standards should be changed and the occupant load should be increased before sprinklers are required, but if the codes are changed, it should be done through the codes revision process (building and fire) and not by statute.

Mr. Peyton BULLEN, Director of Fire Prevention Programs and Policy Development, reviewed state and national fire data. In the US from 2007 through 2011, there were an estimated average of 1,780 structure fires on religious and funeral properties, averaging a loss of \$62,000 per fire. There are approximately 32 church fires each year in Tennessee, averaging \$92,000 in loss per fire, 48% more per loss than the US average. The average loss in a church with fire sprinklers in Tennessee is \$14,467, while the average loss in a non-sprinkled church is \$122,590, an 82% difference. Approximately 96% of churches are not sprinkled currently, so a substantial loss is incurred. Approximately 19 civilians sustain fire injuries and two die in the US each year

in church fires, and in Tennessee in the last month there were three church fires, in Memphis, Nashville, and Dandridge, where fire fighters were injured and property was lost. Fire fighters are consistently under direct threat in large assembly buildings. Since 1994, approximately 12 fire fighters have perished in church fires in the US. Most fire fighters die of heart attacks, but of these 12, only one died of a heart attack. The rest died as a result of the building collapsing and trapping them.

Mr. Chris BAINBRIDGE, Director of Codes Enforcement in the State Fire Marshal's Office, provided some clarification about the fire codes. The fire codes for fire sprinklers in churches are not retroactive, so they apply only to new buildings and not existing ones. He noted that there are solutions to sprinkling churches in rural areas that don't have a municipal water supply. They can use tanks, ponds, and pumps, and the fire marshal's office often approves churches using alternative water sources. It can be done and does not prevent a church from building in a rural area.

Chairman NORRIS noted that House Bill 1649 was proposed to create exemptions for places of worship with a few conditions. He gathers from Mr. West's testimony that the state fire marshal's office does not want the General Assembly to entertain legislation like this.

Mr. WEST responded yes, that would be the wish of the state fire marshal's office. The fire marshal's office is available to work with churches and will consider alternatives such as pumps and ponds and any other solutions. Mr. WEST understands that the bill is about rural areas, but these areas have the small volunteer fire departments that are difficult to staff and have long response times.

Mayor Tom ROWLAND asked how many of the fires happened when the building was not occupied. Mr. BULLEN replied that he did not have that data for Tennessee, but in the US from 2007 through 2011, church fires are least likely to take place between 9:00pm and 9:00am. He also noted that 40% of fires occurred in properties with no fire detection equipment. Mr. WEST said that from his experience, in most cases, churches are not occupied at the time of the fire, but fire fighters responded to all the fires.

Commissioner MCMAHAN asked who pays the cost for putting in the sprinkler systems in rural churches, especially churches that have already been built. Mr. WEST replied that the church incurs that cost. Commissioner MCMAHAN asked whether Mr. WEST is aware of any grants or monies available to churches that could help them specifically with fire protection. If there are, can the state fire marshal's office facilitate and help churches comply if the law is not changed? Mr. WEST said he is not aware of any individual grants that have to do with the building itself. Grants are available to improve water systems, which is what churches need in many cases to bring water to the building.

Commissioner MCMAHAN mentioned that water tanks are more popular and cheaper than pumps in East Tennessee mainly because of the topography in that area. The tank can service the community as a water source and provide fire protection. A 500,000-gallon tank is very expensive for small communities and they usually go through CDBGs (Community Development

Block Grants) to access funding. A water line like that would have to service a whole community, but if a church is sitting by itself in a rural area, how do they find the extra money to be able to comply?

Mr. WEST said there are other alternatives and water system grants are out there, but some areas are so rural it is virtually impossible to access water depending on the topography. An alternative water supply could be a tank or pond on site that belongs to the church or water from a nearby stream to feed the sprinkler system. The tank could be donated or reclaimed, and the fire department could fill the tank so the supply is just for the sprinkler system. The most affordable option is to provide water just for the building, not for the community, unless a grant could pay for water mains for the community.

Mr. WEST closed by saying that if a change needs to be made to the fire sprinkler requirement, the most important thing to the state fire marshal's office is that the change is made in the building and fire codes, not in statutes.

2. Education Funding and Fiscal Capacity

Michael MOUNT, Senior Research Associate, presented the annual update on the Commission's fiscal capacity index and provided background information about the index and education funding in Tennessee. Mr. MOUNT's presentation included an update on the effect of Union County's virtual school students on fiscal capacity. The addition of the virtual school students caused Union County to fall to last in revenue per student, and it appears that local revenue is not being used to support the virtual school students.

Mayor BEETS asked whether the percentage of revenue that comes from property and sales tax is consistent across counties. Ms. ROEHRICH-PATRICK said it varies some. For example, Stewart County relies more on TVA payments in lieu of taxes to fund education than the rest of the state does. Mayor BEETS asked, because property and sales tax are such a large percentage of revenue, why not use them to determine fiscal capacity? Ms. ROEHRICH-PATRICK said that is what the University of Tennessee's Center for Business and Economics Research (CBER) model does. The TACIR model includes those measures, but it also adjusts for per capita income, tax burden, and service burden. Two counties with the same property and sales tax bases may have very different incomes. The low-income county may not be able to pay as high a sales or property tax rate. Rutherford County is able to export some of its tax burden through its Nissan plant to those who purchase Nissan cars all over the world. Counties with large malls are also able to export their tax burden. The TACIR model adjusts for these things to ensure taxpayer equity.

Senator HENRY asked whether the new Governmental Accounting Standards Board (GASB) standard would affect fiscal capacity. Ms. ROEHRICH-PATRICK said it probably would affect revenue to the extent that school systems have to raise revenue to create a reserve to cover post-employment benefit liabilities. But fiscal capacity looks at where money comes from rather than where money goes. The standard will not affect the other factors in the model.

Mayor WATERS said many have pointed out that Sevier County has a low tax rate, but there are two factors when figuring local property tax: the assessment and the tax rate. He added that in Sevier County, rental cabins have sold for more than a regular home would because they bring in revenue. That affects every homeowner through increased the assessments. In 2007, with the new formula, Sevier County lost \$8 million and had to raise taxes by 20%. The county's revenue is not increasing at all, even when the number of students increases.

3. Municipal Boundary Changes And Comprehensive Growth Plans,(Public Chapter 707, Acts Of 2014)—Update

Bob MOREO, Research Associate, presented an update on the continued study of changes in municipal boundaries and growth plans, reflecting conditions after passage of Public Chapter 707, Acts of 2014. This act eliminates cities' ability to annex property without consent and extends a moratorium on annexation put in place by Public Chapter 441 in May 2013 through April 2014.

Mr. MOREO explained that some issues from the Commission's prior study were resolved by Public Chapter 707 and other legislation passed in the 2014 session, including annexation method, annexation of agricultural land, annexation and development standards, and the extension of city utilities beyond municipal boundaries. Issues that staff will continue to study for the next report include who votes in referendums, plans of services, deannexation, informational meetings, annexing non-contiguous land, allocation of tax revenue after annexation, adjustment of shared city boundaries, reviewing and updating county growth plans, allowing cities to unilaterally retract their own urban growth boundaries, and the role of joint economic community development boards.

Mr. MOREO said that Public Chapter 707 left some statutes that refer specifically to annexation by ordinance unchanged, creating ambiguities. He also explained that some issues previously reported on do not seem to require any further study, including voting by mail, annexation approval by petition, annexation of state or federal open lands, and allowing property owners to petition a city for removal from its growth boundary. Mr. MOREO mentioned the Municipal Technical Advisory Service's concern about whether all plan-of-services statutes that applied to annexations by ordinance will also apply to annexations by resolution. Chairman NORRIS asked to clarify the statement in the memo that courts are likely to interpret the language in the statutes in a less restrictive way. Mr. MOREO replied that Attorney General opinions and case law consider all parts of a law, not just specific words in one part. Chairman NORRIS added that he wanted to mention this so that others could decide whether they want existing plan of services laws applied to annexations by referendum.

Vice-Chairman ROWLAND asked whether the law specifies when referendum elections are held, whether in conjunction with an existing election or as a special election. Mr. MOREO explained that Public Chapter 707 did not change the process for conducting a referendum or address whether annexation referendums should be held as special elections. The law as it stands requires that elections be held 30-60 days after final notice of the public hearing on the annexation resolution.

Chairman NORRIS mentioned that he and Representative CARTER had been corresponding to discuss their lists of open questions and that the list presented by Mr. MOREO seemed consistent with theirs. Constituents have contacted them expressing interest in how things will work during this transitional period.

4. Next meetings

The next meetings are scheduled as follows:

- 3-4 September 2014
- 19-20 November 2014
- January 2015 to be determined

Chairman NORRIS adjourned the meeting at 10:30 A.M.