



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM: Cliff Lippard *Cliff*
Executive Director

DATE: 9 June 2021

SUBJECT: Legislative Update

Each year at this time, the Commission reviews legislative action on issues related to past studies and amends its work program to add new studies submitted to it by the General Assembly. In its first session, the 112th General Assembly passed or considered legislation on several issues related to the Commission's work, some dealing directly with findings and recommendations from Commission reports. The General Assembly also requested four additional Commission studies. The House of Representatives passed a bill requesting a fifth Commission study, but the bill has not passed in the Senate.

Legislative Action on Issues Studied by the Commission

Internet Sales Tax

The 112th General Assembly passed Public Chapter 285, Acts of 2021, relating to the Streamlined Sales and Use Tax Agreement (SSUTA)—a multistate effort aimed towards reducing the burden of sales and use tax collections on retailers. In 2007, Tennessee adopted some SSUTA provisions to become an associate member of the SSUTA, along with other provisions with delayed implementation that were necessary for full membership. The implementation of these provisions has been postponed every two years since they were originally scheduled to take effect. Following the 2018 US Supreme Court decision in *South Dakota v. Wayfair*, it became apparent that a state did not need to be a full member of the SSUTA as a prerequisite for taxing out-of-state-dealers without a physical presence in the state.

The SSUTA was discussed in the Commission’s February 2019 interim report, *Leveling the Playing Field: Internet Sales Tax in Tennessee*. In this report, the Commission recommended that the General Assembly not allow two SSUTA provisions in state law that were intended to move Tennessee toward full membership to go into effect: changing Tennessee from origin-based to destination-based sourcing for intrastate sales and limiting the single-article cap to motor vehicles, aircraft, watercraft, modular homes, manufactured homes, and mobile homes. Consistent with the Commission’s recommendation, the new law—Public Chapter 285—deleted both provisions, along with all of the other remaining SSUTA provisions needed for full membership that the state did not implement.

County Jails

The 112th General Assembly enacted Public Chapter 410, Acts of 2021—known as the Reentry Success Act of 2021—which creates a program consistent with a Commission recommendation in its August 2017 report, *Housing Tennessee’s Convicted Felons: Improving Outcomes while Balancing State and Local Needs*. Among other provisions for reducing recidivism, the new law requires the Department of Correction to pay an accreditation stipend to eligible counties for each convicted felon the county houses either pursuant to a contract with the state or while awaiting transfer to a state facility. The stipend will be available to counties that offer evidence-based programming that reduces recidivism to all felons housed by the county that matches the individual risks and needs of offenders, among meeting other criteria.

The Commission’s report found that as Tennessee’s felon population increased, more and more felons were remaining in local jails that often lack the beneficial services and programs available at state prisons. The report recommended the state offer funding assistance beyond the daily reimbursement rate for housing state prisoners to help counties implement programs proven to reduce recidivism and improve outcomes for prisoners and communities. The report noted that some Tennessee counties were already implementing such programs, often at their own expense, with reported improvements in recidivism.

Elections

The 112th General Assembly considered, but did not pass, Senate Bill 687 by Gilmore and House Bill 689 by Beck—consistent with a recommendation in the 2007 Commission staff report, *Trust but Verify: Increasing Voter Confidence in Election Results* and reiterated in the 2017 staff report, *Tennessee’s Election Security: A Staff Update*. The legislation would require every county election commission that purchases a direct

recording electronic (DRE) voting system after July 1, 2021, to ensure that the DRE system has the capability to create a voter-verifiable paper audit trail for each ballot cast.

Professional Privilege Tax

In 2019, the 111th General Assembly passed legislation eliminating the professional privilege tax for 15 professions. Tennessee's professional privilege tax was discussed in the Commission's December 2016 report, *Professional Privilege Tax in Tennessee: Taxing Professionals Fairly*. While the Commission's report did not make a specific recommendation on eliminating the privilege tax, it did note that over the years, legislators and representatives of various professions have argued that Tennessee's professional privilege tax is not equitable, saying that some professions that are not taxed have greater incomes than those that are taxed, that incomes of professionals vary significantly within the taxed professions, and that those in professions earning lower salaries have to pay the same amount as those earning more.

The 112th General Assembly considered several bills this legislative session aimed at eliminating the professional privilege tax—Senate Bill 184 by Bowling and House Bill 987 by Rudder as well as Senate Bill 884 by Stevens and House Bill 519 by Gant. The legislature also considered Senate Bill 1195 by Lundberg and House Bill 1241 by Parkinson, which would have exempted judges and chancellors who are prohibited from practicing law from the professional privilege tax assessed on attorneys. None of the bills to exempt professionals from or eliminate the professional privilege passed.

Broadband Internet

Broadband internet access—the issue discussed in the Commission's January 2017 report, *Broadband Internet Deployment, Availability, and Adoption in Tennessee* and its January 2021 report, *Broadband Internet Deployment, Availability, and Adoption in Tennessee Four Years After the Broadband Accessibility Act*—was the subject of several bills filed this legislative session, none of which passed:

- House Bill 28 by Cooper would authorize municipal electric systems, electric cooperatives, and telephone cooperatives to provide broadband internet service in geographical areas in distressed counties that are outside their service areas. Additionally, the bill would require the Tennessee Department of Environment and Conservation to make broadband internet service available in state parks located in distressed counties.

- Senate Bill 375 by Yager (House Bill 1009 by Gary Hicks), as amended in the Senate Finance, Ways and Means Revenue Subcommittee, would have created a tax credit to offset pole attachment fees paid by broadband providers with the funds being redeposited into the broadband accessibility grant program to expand broadband access.
- Senate Bill 565 by Bowling and House Bill 623 by Rudder, as well as Senate Bill 1512 by Bowling and House Bill 1531 by Rudder, would have authorized municipal electric systems, electric cooperatives, and telephone cooperatives to provide broadband and other services outside their service areas.
- Senate Bill 580 by Crowe and House Bill 821 by Holsclaw would authorize a municipal energy authority in a tier 3 or 4 enhancement county with a population of 25,000 or less to provide broadband internet service to parts of the county outside the authority's service area if the authority obtains the consent of each applicable telephone cooperative, electric cooperative, and municipal or other governmental electric system in the area.
- Senate Bill 904 by Stevens and House Bill 804 by Griffey would include projects relating to the provision of broadband internet service in a tier 3 or tier 4 enhancement county among the projects with which an industrial development corporation (IDC) may be involved and would authorize local governments to provide financial assistance to an IDC for such projects.
- Senate Bill 978 by Campbell and House Bill 817 by Clemmons would have authorized a municipal electric plant to provide broadband service within the corporate or county limits of another municipality without needing to obtain consent and would have also increased the minimum download and upload speeds required for an entity to be awarded a broadband accessibility grant.
- Senate Bill 1006 by Yarbrow and House Bill 1580 by Camper would increase, from 10 to 25 Megabits per second (Mbps), the minimum download speed and increase, from 1 to 3 Mbps, the minimum upload speed thresholds of broadband service required for grant eligibility under the Broadband Accessibility Grant Program.
- Senate Bill 1186 by Jackson and House Bill 1139 by Grills would authorize electric cooperatives to provide broadband or similar service outside their electric service areas and within the service area of another cooperative with a concurrent or adjacent service area and that gives prior written consent.

Small Cell Wireless Facilities

Senate Bill 857 by Bowling and House Bill 1397 by Rudder—which revises provisions of the Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018—was considered by the 112th General Assembly but did not pass. This law was the subject of the Commission’s December 2020 report, *Small Cell Wireless Facilities and Public Right-of-Way: Assessing the Effects of Public Chapter 819, Acts of 2018*. Among other provisions, the bill would have clarified that Public Chapter 819, Acts of 2018, does not prohibit a local authority from preventing the installation of wireless facilities in a right-of-way that is within an area with existing internet coverage. The Commission said in its report that some local officials, including Commission members, questioned whether local governments retain enough authority under the Act to protect and accommodate other right-of-way infrastructure and users in addition to small cells, noting that rights-of-way in some areas were crowded with existing infrastructure.

Resiliency

The 112th General Assembly considered Senate Bill 928 by Yarbro and House Bill 936 by Freeman, which intended to “create multi-service entities composed of representatives from local and state government, private businesses, community organizations, and other entities to address existing gaps and long-term resiliency planning in transportation, water, and other infrastructure.” This bill follows the Commission’s recommendation in its September 2020 report, *Collaborating to Improve Community Resiliency to Natural Disasters*, that the state ensure ongoing resiliency efforts by Tennessee local governments and state agencies continue—including collaborative efforts among these entities. While the Commission took no position on the exact structure of these efforts, it recommended they include a focus on community resilience planning features such as assessing social and economic vulnerabilities and engaging community members in the decision-making process in addition to hazard mitigation strategies. The bill was moved to the Senate Government Operations Committee’s first calendar of 2022.

Public School Building Transfers

The transfer of school property from a county school system to a municipal school system—a topic discussed in the Commission’s December 2020 report, *Effects of Sharing Resources among School Systems in Counties with More than One School System*—was the subject of Senate Bill 898 by Stevens and House Bill 917 by White, which the 112th General Assembly considered but did not pass. As amended in the Senate Education Committee, the bill would transfer all school property owned by the county school

system to a municipal school system in the county upon its creation if the parties did not enter into an agreement for the county to continue operating a school system within the geographic boundaries of the municipal school system. In its 2020 report, the Commission recommended that the General Assembly establish a method for transferring both real and personal school property to new school systems formed by existing cities. The Commission further recommended that a local committee be created to determine what property should be transferred and what the city should pay for it, noting that whoever determines the city's liability should consider past and future contributions of the city and county to procure and maintain the property in question.

Text-to-911

The 112th General Assembly considered, but did not pass, Senate Bill 182 by Massey and House Bill 173 by Mannis relating to an issue discussed in the Commission's 2017 report, *Tennessee's 911 System: Functionality and Funding Adequacy*. The bill would require the Tennessee Emergency Communication Board to develop a statewide implementation plan for text-to-911 service. The Commission's 2017 report included information about the implementation of Next Generation 911 (NG911) in Tennessee, which supports the receipt of texts, photos, videos, and other forms of data. The report noted that guidelines and standards were being developed at the state and national levels to help emergency communications districts adapt to NG911 and to train employees to handle text messages.

Legislative Requests for Further Studies by the Commission

In 2021, the 112th General Assembly requested four new TACIR studies. Three studies are directed by public chapter, and one study is requested by a letter from Speaker of the House Cameron Sexton and Speaker of the Senate Randy McNally. Additionally, The Tennessee House of Representatives passed a bill requesting a fifth Commission study, but the bill has not passed the Senate.

State Gold Depository

Public Chapter 585, Acts of 2021, directs TACIR to study the feasibility of creating a state gold depository, including whether other states or jurisdictions have created a gold depository. The law requires TACIR to report its findings and recommendations to the speaker of the senate, the speaker of the house of representatives, and the legislative librarian no later than January 1, 2022.

Non-Fish and Game Recreational Activities

The 112th General Assembly enacted Public Chapter 497, which directs TACIR to study:

- procedural and financial measures necessary to accommodate the increased demand for non-fish and game recreational activities and the resources required to manage such activities by the department of environment and conservation and the Tennessee Wildlife Resources Agency (TWRA);
- how TWRA-managed resources are being utilized by non-motorized vessels for non-fish and game related recreational activities, such as paddle boarding, canoeing, tubing, and kayaking;
- the accessibility to and funding for all non-fish and game recreational activities;
- the annual fees and taxes charged to paddle craft and commercial outfitters in the previous four fiscal years;
- any duplicative fees charged by the department of environment and conservation and the TWRA, and what action may be taken to eliminate such duplicity in fee structures and their regulatory authority generally;
- the extent to which customers of non-motorized vessels contribute to revenue derived from the purchase of fishing licenses and registration of watercraft;
- the amount of funding needed to manage, sustain, and improve access to and the management of non-motor vehicle activities in this state and what fundraising options are available to support non fish and game and other similar activities;
- what fee structure is most appropriate for recreational users generally, given that the benefits of non-fish and game programs are broader than just outfitters, who are already paying sales tax;
- the feasibility of outfitters who pay additional fees to the department of environment and conservation and the TWRA receiving a credit on the sales tax paid on such fees and whether the local option sales tax should be included in the credit; and
- what measures the department of environment and conservation and the TWRA can implement to improve their strategic plans, their organizational structures, and the oversight and sustainability of non-fish and game related recreational activities.

The law requires TACIR to submit a report disclosing the findings of the study and recommendations, including any proposed legislation or interim reports, to the general assembly no later than December 31, 2022.

Childhood Obesity

Public Chapter 503, Acts of 2021, directs TACIR to perform a comprehensive evaluation on the socioeconomic impact childhood obesity has in Tennessee and its short and long-term effects. The law requires TACIR to report its findings and recommendations, including any proposed legislation, regarding childhood obesity to the Health and Welfare Committee of the Senate and the Health Committee of the House of Representatives on or before January 31, 2023.

Right-of-Way Dedications

On April 1, 2021, Speaker of the House Cameron Sexton and Speaker of the Senate Randy McNally sent a letter to TACIR formally requesting a study on the issues presented in Senate Bill 1604 by Senator Bailey and House Bill 366 by Representative Williams. The bill would prohibit state and local governmental entities, including planning commissions, from requiring a right-of-way dedication that requires a landowner to transfer ownership of any portion of the landowner's property located along an existing public right-of-way to the governmental entity as a condition of approving any application made to the governmental entity. The bill would authorize a governmental entity to require a right-of-way reservation, subject to certain terms, as a condition of approving any subdivision of a property and would require the governmental entity to compensate the property owner for land taken pursuant to the right-of-way reservation. The bill would also specify that a real estate licensee has no duty to inform any party to a real estate transaction concerning a right-of-way reservation or related rights attached to the property.

State Contracts with Businesses Owned by African Americans

House Bill 1593 by Miller directs TACIR to conduct a study on disparities in the issuance or award of state contracts to businesses owned and operated by African Americans and requires TACIR to include in the study recommendations for reducing such disparities. The bill specifies that the study should strive to provide information on the impact of disparities in issuing or awarding state contracts on the African-American business community and information on other states' and jurisdictions' methods for addressing these disparities. The bill requires TACIR to report its findings and recommendations on or before January 31, 2022. The House of Representatives

passed House Bill 1593, but its companion bill—Senate Bill 1235 by Gilmore—did not advance past the committee stage.