



# TACIR

The Tennessee Advisory Commission  
on Intergovernmental Relations



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## **MEMORANDUM**

**TO:** Commission Members

**FROM:** Cliff Lippard *Cliff*  
Executive Director

**DATE:** 15 June 2022

**SUBJECT:** Legislative Update

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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 second session, the 112<sup>th</sup> General Assembly passed or considered legislation on a number of issues related to the Commission's work, many dealing directly with findings and recommendations from Commission reports. The General Assembly has also requested two additional Commission studies. Three other requests for studies passed the Senate but did not pass the House of Representatives, with a fourth request that did not pass either chamber also to be presented to the Commission.

### ***Legislative Action on Issues Studied by the Commission***

#### **Broadband Internet and Small Cell Wireless**

Since the Commission's January 2017 report, *Broadband Internet Deployment, Availability, and Adoption in Tennessee*, there has been a steady focus on broadband accessibility in underserved parts of the state. In 2020 the Commission further contributed a new report, *Small Cell Wireless Facilities and Public Rights-of-Way*, and a 2021 report titled *Broadband Internet Deployment, Availability, and Adoption in Tennessee Four Years After the Broadband Accessibility Act*. Addressing an issue studied as part of the Commission's 2017 report, the 112<sup>th</sup> General Assembly passed Senate Bill 2480 by Lundberg and House Bill 2608 by Vaughan, which exempts the purchase and lease of broadband equipment from the sales and use tax for three years. The General Assembly also

enacted Public Chapter 799, Acts of 2022, which prohibits local entities from discriminating against the installation of small wireless facilities in public rights-of-way.

There were several other broadband bills, not directly related to TACIR recommendations, that the General Assembly considered but did not pass. Senate Bill 2472 by Bowling and House Bill 2474 by Calfee would have granted oversight of broadband and related services to the Tennessee public utility commission, charging it with the responsibility of ensuring that broadband infrastructure is reliable and prepared for emergencies. Meanwhile, Senate Bill 2503 by Akbari and House Bill 28 by Cooper would have allowed electric plants and cooperatives to provide broadband service in distressed counties that were outside of their usual service areas.

### **Court Fees and Criminal Law**

The Commission's 2020 report, *Improving Victim Safety with Global Positioning System (GPS) Monitoring as a Condition of Release for Defendants Accused of Domestic Violence*, advised on ways to improve GPS monitoring programs for defendants. The 112<sup>th</sup> General Assembly considered but did not pass Senate Bill 950 by Kyle and House Bill 1323 by Hardaway, which would have required that, in cases of stalking or involving victims of domestic abuse, law enforcement provide victims with information about GPS monitoring that courts could impose on defendants.

However, the General Assembly did pass Senate Bill 887 by Stevens and House Bill 325 by Curcio, which creates a fund to supply GPS monitoring devices to indigent DUI defendants, as well as Senate Bill 2000 by Bell and House Bill 2040 by Curcio, which requires the treasurer to report on any surplus in the state's electronic monitoring indigency fund by February 1 of each year.

### **Education**

TACIR has been closely involved with the Basic Education Program, or BEP, since it was first initiated 30 years ago. Each year, TACIR produces a model for county-level fiscal capacity for education, which is then averaged with another model provided by the University of Tennessee's Center for Business and Economic Research. The Commission has also periodically published reports on the topic of education funding, most recently with a 2021 staff report, *Gains in Education Spending Equity Continue 20 Years After Fully Funding the Basic Education Program*.

This year, the 112<sup>th</sup> General Assembly enacted the Tennessee Investment in Student Achievement Act, or TISA, which replaces the BEP for determining how education

funding needs are assessed. TACIR has two statutory roles related to TISA. One, the Act assigns the director of TACIR to serve on the TISA review board, which is to first assemble in 2026. Furthermore, just as it has done in the past, TACIR will continue to provide fiscal capacity estimates of local governments under TISA.

## **Elections**

The 112<sup>th</sup> General Assembly considered a variety of bills related to election security, a topic the Commission has studied previously, both in its 2007 staff report, *Trust but Verify: Increasing Voter Confidence in Election Results*, and in a 2018 staff report, *Tennessee's Election Security: A Staff Update*. Both of these reports recommended that the state adopt voting machines that allow for voter-verifiable paper audit trails.

This year the General Assembly did pass Senate Bill 2558 by Jackson and House Bill 2331 by Bricken, which requires that every voting machine used by a county election commission produce a voter-verifiable paper record by default, rather than just have the capability of doing so. The law requires voting machines meet this standard by January 1, 2024.

The 112<sup>th</sup> General Assembly considered but did not pass two similar bills, Senate Bill 687 by Gilmore and House Bill 689 by Beck, along with Senate Bill 2113 by Yarbrow and House Bill 2239 by Freeman. The General Assembly also considered Senate Bill 1865 by Jackson and House Bill 1883 by Rudd, which would have required the secretary of state to conduct forensic audits of at least five counties after every statewide election, starting in 2024. And Senate Bill 2617 by Niceley and House Bill 2827 by Parkinson would have conditioned the use of voting machines to the approval of the local governing body.

## **Land Use and Rights-of-Way**

Just this year the Commission produced a draft report, *Dedications along Existing Public Rights-of-Way, Balancing Property Rights with Local Authority over Land Use Regulation*. The study behind this report examined Senate Bill 1604 by Bailey and House Bill 366 by Williams, which would have prohibited local governments from requiring dedications of property along existing rights-of-way without compensation, though it did not pass. However, Senate Bill 2849 by Bailey and House Bill 2274 by Williams, which did pass, drew on the recommendation of the report to codify in statute the so-called *Nollan/Dolan* standards that have been established by the US Supreme Court. Under these standards, local government planning commissions may only require right-of-way dedications where there is an essential nexus with a legitimate government interest and the amount of land dedicated is roughly proportional to that interest.

A related piece of legislation, Senate Bill 2116 by Bell and House Bill 2435 by Curcio, would have allowed property owners to seek compensation for a diminution in value of their property due to land use regulations, but did not pass.

## **Littering**

The 112<sup>th</sup> General Assembly passed several bills this year related to both littering and illegal tire dumping. This is a subject that the Commission addressed before in its January 2020 report, *Closing Gaps in Tennessee's Waste Tire Program and Giving Local Governments More Flexibility to Prevent Illegal Tire Dumping*, with another study on litter in the state currently ongoing.

Prior law required a pre-disposal fee to be paid on each new tire sold in Tennessee, with the fee to cover recycling of waste tires for some type of beneficial end use. Public Chapter 746, Acts of 2022, amends the law so that the disposal fee can also be spent on direct disposal, rather than only recycling.

Senate Bill 2012 by Bell and House Bill 1833 by Hall extends the offense of aggravated criminal littering to include the illegal disposal of waste tires, making this either a misdemeanor or felony, depending on the number of tires involved. Public Chapter 899, Acts of 2022, raises the fine for mitigated criminal littering from \$50 to \$500, while Public Chapter 941, Acts of 2022, adds aggravated criminal littering to a list of offenses for which neighborhood or homeowner associations can seek injunctions or restraining orders. Additionally, Public Chapter 903, Acts of 2022, authorizes funds from the existing beer and soda bottle tax to be applied towards litter cleanup and prevention programs along roadways, waterways, and shorelines.

However, two other notable bills did not pass this session. Consistent with a recommendation from the 2020 report, Senate Bill 2344 by Yager and House Bill 2381 by Parkinson would have required permits for those hauling waste tires for disposal, while Senate Bill 2693 by Briggs and House Bill 2759 by Faison would have established a commission of thirteen members to address littering issues across the state.

## **Local Government Conflicts of Interest**

The 112<sup>th</sup> General Assembly enacted Public Chapter 656, Acts of 2022, which requires that members of local governments must declare any conflicts of interest before voting on budget proposals or appropriations. This aligns with the Commission's January 2016 report, *County Employees Serving on their County Commissions: Managing Conflict of*

*Interest to Maintain Integrity and Trust*, which offered several options for limiting potential conflicts of interest in local governance.

### **Precious Metals Sales**

In December 2021, the Commission finalized its report *Exploring the Feasibility of a Gold Depository in Tennessee*, which recommended against the formation of a state-backed gold depository in Tennessee, but did suggest the option of exempting some precious metals from sales and use tax. The 112<sup>th</sup> General Assembly had previously considered but did not pass Senate Bill 870 by Stevens and House Bill 514 by Gant, as well as Senate Bill 2576 by Crowe and House Bill 2052 by Holsclaw, both of which would have created such an exemption. Following the publication of the Commission report, however, the General Assembly did pass Senate Bill 1857 by Niceley and House Bill 1874 by Hulsey, which exempts coins, currency, and bullion made of precious metals from sales and use taxes.

### **Professional Privilege Taxes**

In its December 2016 report, *Professional Privilege Tax in Tennessee: Taxing Professionals Fairly*, the Commission assessed the effects of the professional privilege tax and its possible elimination. The report noted that there were certain inequities with the tax, but that its complete elimination would mainly benefit out-of-state professionals. The report made no definite recommendation for alterations to the tax.

The 112<sup>th</sup> General Assembly discussed but did not pass several bills that would have limited or phased out the professional privilege tax. Among these were Senate Bill 1684 by Briggs and House Bill 2342 by Carringer, as well as Senate Bill 2524 by Hensley and House Bill 2776 by Todd, both of which would have eliminated the tax in 2023. Alternatively, Senate Bill 2135 by Reeves and House Bill 2189 by Rudd would have phased out the tax over a four-year period. Other bills would have kept the tax in place but modified it. Senate Bill 2254 by Powers and House Bill 2520 by Sexton, for instance, would have exempted retired professionals from the tax. The 112<sup>th</sup> General Assembly did, however, pass Senate Bill 884 by Stevens and House Bill 519 by Gant, which eliminated the professional privilege tax for physicians.

### **State Contracting**

In January of this year the Commission finalized its report, *Expanding Opportunities for State Contracting through Enhanced Data Collection and Reporting*. To provide greater transparency in state contracting and help ensure that spending goals with diverse businesses are being met, the report recommended that the Governor's Office of

Diversity Business Enterprise include as part of its annual report agency-level data on spending goals and achievements with minority-owned businesses. The 112<sup>th</sup> General Assembly shortly after enacted this into law with Public Chapter 793, Acts of 2022.

### ***Legislative Requests for Further Studies by the Commission***

In 2022, the 112<sup>th</sup> General Assembly passed legislation directing the Commission to conduct two new studies. Requests for four additional studies based on bills that did not pass in both chambers have been brought to the Commission, presenting the Commission with a possible total of six new studies.

#### **Passenger Rail Service**

Public Chapter 1114, Acts of 2022, along with Public Chapter 1124, Acts of 2022, both direct TACIR to carry out a study of the potential for passenger rail service in Tennessee. The former directs TACIR to study rail service that might connect major cities across the grand divisions of the state, while the latter adds that TACIR is to include a survey of state-sponsored Amtrak rail projects initiated in the past 10 years in other states. The first law requires TACIR to share a report of its findings and recommendations with the Senate Transportation and Safety Committee, House Transportation Committee, and legislative librarian no later than July 1, 2023.

#### **Solar Energy Development**

The 112<sup>th</sup> General Assembly enacted Public Chapter 1043, Acts of 2022, which directs TACIR to study the effects of utility-scale solar energy development while specifically examining:

- short- and long-term projections of needed acreage;
- the hazardous waste that may exist in solar energy equipment;
- federal requirements for decommissioning such equipment;
- other states' statutory and regulatory requirements for decommissioning of solar energy equipment;
- financial assurances and responsibilities of owners and operators under various circumstances of system failure;
- the federal and state regulatory agencies responsible for certification and oversight of solar energy systems;
- the state infrastructure needed to collect, transport, and dispose of utility-scale solar energy systems;

- the implications of such systems for local property taxes;
- zoning and regulatory templates for consistent siting of these systems around the state;
- the importance of private property rights and landowners' ability to use or transfer interests in property;
- the importance of a variety of energy sources for the state's economic and community development recruiting efforts;
- the efforts of the Tennessee Valley Authority and local power suppliers to offer utility-scale sustainable power options;
- the required lease terms and conditions to protect future property use lessors' rights in the event of default or lease termination;
- and the installation of solar energy generation and storage on the property of residential electric customers.

The law requires TACIR to report its findings and recommendations no later than September 30, 2023 to the Energy, Agriculture, and Natural Resource Committee of the Senate and the Agriculture and Natural Resource Committee of the House.

### **Healthcare Reference-Based Pricing**

Senate Bill 2330 by Hensley and House Bill 2456 by Sparks directs TACIR to study the overall effects on health insurance of reference-based pricing, in which costs for medical procedures could be indexed to the costs paid by Medicare, plus some margin. This bill passed in the Senate but was sent for summer study by the House Finance, Ways & Means Subcommittee. The Senate bill requests that the study be completed by January 31, 2023.

### **Emergency Communications on College Campuses**

Senate Bill 2827 by Hensley and House Bill 2729 by Ogles passed in the Senate but was referred for summer study in the House. The bill requests TACIR study both the routing and storage of emergency communications on colleges and universities in Tennessee, specifically with regards to how universities store complaints of criminal activity, as well as best policies for how such emergency communications systems and the storage of data might be improved.

### **Liquor-by-the-Drink Taxes**

Senate Bill 2262 by Briggs and House Bill 2419 by Mannis was taken off notice in the House of Representatives, but passed in the Senate, and requests TACIR study the laws in Tennessee and other states regarding “liquor-by-the-drink” and related taxes for the on-premise consumption of alcohol in restaurants, licensing and permitting for the restaurant industry, staffing challenges related to permits, wages, and training in such establishments, and barriers to entry for the industry. The bill requests that the study be completed by January 1, 2024.

### **Criminal Fines and Ambulance Service Funding**

Senate Bill 1964 by Jackson and House Bill 1892 by Haston would have established a \$150 fine for DUI offenses in Perry County, specifically, with the resulting funds being allotted to the county’s ambulance service. The bill did not pass the Senate or the House of Representatives, but discussion of the bill in the House Criminal Justice Subcommittee led to a request for a comprehensive study from TACIR on whether and how criminal fines might support local governments’ needs for ambulance services.