



# TACIR

The Tennessee Advisory Commission  
on Intergovernmental Relations



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## ***MEMORANDUM***

**TO:** Commission Members

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

**DATE:** 28 June 2023

**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 first session, the 113<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 past Commission reports or ongoing studies. The General Assembly also considered requests for four new Commission studies, but none of them passed both chambers.

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

#### **Broadband Internet Access**

The Commission has visited the topic of broadband several times in recent years, with notable reports in both 2017 and 2021. With new legislation arising each year, the status of broadband accessibility and grant programs has continued to evolve, and this year, Public Chapter 320 introduces several changes to the state's broadband accessibility grant program. In particular, it sets a minimum standard for broadband funding projects of 100 Mbps (megabits per second) for download speeds and 20 Mbps for uploads—thereby aligning state grant programs with federal requirements—and it prohibits the Department of Economic and Community Development (ECD) from awarding grants in areas that already have at least one service, or have received funding for new service, that meets that standard. Additionally, as the 2021 report recommended, the new law requires ECD to maintain a map of broadband coverage on

its website, and, similar to another recommendation from that report, it enacts a financial penalty for funded projects that do not meet their obligations.

A second piece of legislation, Senate Bill 1358 by Southerland and House Bill 943 by Alexander, would require certain broadband providers to file detailed maps for three years showing exactly where within their operating area they offered internet service at speeds of at least 100 Mbps for downloads and 20 Mbps for uploads. The bill was taken off notice in the Senate Commerce and Labor Committee.

Another piece of legislation, Senate Bill 1095 by Bowling and House Bill 1343 by Doggett, specifies that the Tennessee Public Utility Commission shall deem an applicant to have satisfied all requirements necessary for approval of a state-issued certificate of franchise authority if the applicant has provided fiber-to-the-premises to at least 1,000 customers for a period of at least one year prior to the application. The bill was sent to the General Subcommittee of the Senate Commerce and Labor Committee but remains in the Business and Utilities Subcommittee of the House Commerce Committee.

### **Court Fees and Criminal Fines**

In 2020, the Commission's report *Improving Victim Safety with Global Positioning System (GPS) Monitoring as a Condition of Release for Defendants Accused of Domestic Violence* recommended that local governments using GPS monitoring for pretrial defendants consider prioritizing certain types of offenses, including those involving domestic violence. Senate Bill 727 by Campbell and House Bill 1496 by Clemmons, which remains in the House Criminal Justice Subcommittee, would require GPS monitoring devices for defendants on bail under certain offenses involving strangulation or firearms.

Several bills from this year dealt with court fees, an issue that the Commission investigated in the 2017 report *Tennessee's Court Fees and Taxes: Funding the Courts Fairly*. Among other things, that report noted that it can be difficult for those recently released from prison to pay court costs. Public Chapter 329, Acts of 2023, allows some of those imprisoned for felonies to postpone paying court fees or costs for 180 days after they are released. Public Chapter 147, meanwhile, requires the Department of Correction to advance or reimburse expenses for witnesses in a criminal case if requested by the district attorney general and approved by the court. And Senate Bill 889 by Akbari and House Bill 749 by Powell would exempt people adjudicated in juvenile court from certain court fees, though it was taken off notice in both chambers.

Additionally, in March the Department of Mental Health and Substance Abuse Services received approval for its residential re-entry housing program to serve those recently incarcerated. This program aligns with a recommendation from the 2017 report *Housing Tennessee's Convicted Felons: Improving Outcomes while Balancing State and County Needs*, which called for funding this program statewide.

### **Land Use and Growth Plans**

Since the passage of Public Chapter 1101, Acts of 1998, the Commission has, as a statutory requirement, monitored the implementation of the Tennessee Growth Policy Act and published reports on its effects. The Act requires nearly every county and city across the state to maintain growth plans with defined urban growth boundaries. Senate Bill 75 by Watson and House Bill 28 by Lamberth, introduced this year, would delete the Act, but consideration of the bill has been deferred to 2024 for the Senate State and Local Government Committee and House Finance, Ways and Means Subcommittee.

Public Chapter 398, Acts of 2023, allows owners of land that is primarily agricultural to petition for deannexation from a territory, provided it sits on the border. Deannexation and issues surrounding it were specifically addressed in the 2015 report *Municipal Boundaries in Tennessee: Annexation and Growth Planning Policies after Public Chapter 707*, which noted that allowing landowners to petition for deannexation was unlikely to create issues so long as the land was contiguous with the border of the territory.

Senate Bill 490 by Stevens and House Bill 560 by Todd, which was taken off notice in the Senate Judiciary Committee, would allow property owners to seek compensation for a diminution in the value of their property caused by any land use regulation. The Commission's 2022 report *Dedications along Existing Public Rights-of-Way, Balancing Property Rights with Local Authority over Land Use Regulation* found that some other states do authorize property owners to file lawsuits if they believe that government actions have diminished the value of their property, though it did not make any recommendation for using such a measure in Tennessee.

### **Liquor Laws**

Last year, the Commission voted to take up a study of "liquor-by-the-drink" taxes and other issues related to the on-premise consumption of alcohol in restaurants. That study is currently ongoing, but this year several bills did come under consideration that may fall within the scope of the final report.

Public Chapter 355, Acts of 2023, amends the requirements for server permits, so that whereas previously a server with a felony conviction could not apply for a permit until after eight years had passed, that period has now been reduced to four years. Senate Bill 1327 by Bailey and House Bill 594 by Garrett would prohibit a local beer board from issuing a fine based only a report from another local government agency—with the exception of law enforcement—or issuing a citation to a permitted beer seller without an independent investigation. The bill passed in the Senate, but was taken off notice in the House. Senate Bill 1023 by Campbell and House Bill 743 by Mitchell would authorize licenses for package stores in metropolitan government jurisdictions, including general services districts, if approved by a local election. That bill passed in the Senate, while action in the House Finance, Ways and Means Committee has been deferred until next year.

Several other bills did not pass in the Senate and were taken off notice in the House Department and Agencies Subcommittee. Among these, Senate Bill 304 by Lundberg and House Bill 376 by Marsh would modify some of the classifications of alcoholic beverages based on their alcohol content. Senate Bill 998 by Yager and House Bill 677 by Littleton would allow for one person to serve as the designated manager for wholesale wine purchases at up to 10 retail food stores. And Senate Bill 1032 by Yarbrow and House Bill 1407 by Johnson would reduce the grace period that the Commissioner of Revenue may extend to a liquor-by-the-drink licensee for failing to timely file their taxes from 30 days to 15.

### **Local Government**

Senate Bill 463 by Briggs and House Bill 168 by Wright would prohibit county employees from serving as part of the legislative body for the county in which they are employed, though at present it is off notice in the House. This is an issue that was touched on in the Commission's 2016 report *County Employees Serving on their County Commissions: Managing Conflict of Interest to Maintain Integrity and Trust*, which recommended that county employees not be allowed to serve on policy-setting bodies that they directly report to.

### **Personal Property Tax**

The Commission's 2022 report on *Both Businesses and Local Governments Could Benefit from Improvements to Tennessee's Personal Property Tax* looked at ways that the tangible personal property tax paid by businesses could be improved, and made several recommendations for making the filing process less burdensome. One of those recommendations was to add additional certification tiers that would allow smaller

businesses to file and pay their tax without the need for a time-consuming itemization of all of their property. This year, Public Chapter 341 enacted that recommendation by establishing two certification tiers, one for \$2,000 and one for \$10,000. Additionally, the law requires that the Commission monitor and periodically report on the impact of the act to the General Assembly.

Relatedly, this year House Joint Resolution 81 by Darby proposed amending Article II, Section 28 of the Constitution to prohibit property taxation by the state. The resolution was adopted in the House, though a companion resolution was not introduced in the Senate.

### **Precious Metal Depositories**

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. Senate Bill 150 by Niceley and House Bill 1480 by Hulsey would create a Tennessee bullion depository, but the bill was deferred for consideration to next year.

### **Professional Privilege Tax**

The Commission previously examined the professional privilege tax in its December 2016 report *Professional Privilege Tax in Tennessee: Taxing Professionals Fairly*, which observed that while there were some issues with the equity of the tax, its tax burden largely fell on professionals from outside the state, and the report made no recommendation on the elimination of the tax. In the years since, several pieces of legislation have eliminated most of the categories of professionals subject to the tax, most recently removing it for physicians. As of the start of 2023, only three categories of professionals are still subject to the tax, namely registered lobbyists, certain licensed financial professionals, and attorneys.

This year, several bills sought to eliminate or make changes to the privilege tax, although none passed. Senate Bill 689 by Reeves and House Bill 504 by Rudd as amended would reduce the tax from \$400 to \$300. Likewise, Senate Bill 641 by Powers and House Bill 585 by Gant would gradually eliminate the tax by stepping down the amount over several years. Additionally, both Senate Bill 640 by Powers and House Bill 586 by Gant and Senate Bill 1122 by Bowling and House Bill 580 by Bricken would eliminate the tax for attorneys. Each of these four bills has been taken off notice in the House Finance, Ways and Means Subcommittee.

## **Sales Tax**

The Commission has had occasion to examine policy issues around state and local sales taxes several times over the years. More than 20 years ago, the 1999 staff report *Sales Tax on Food: Targeting Relief to the Working Poor and Elderly Poor*, discussed the possibility of a credit or rebate on food sales taxes for those groups. This year, a number of bills aimed to exempt food from the sales tax to one extent or another. Senate Bill 1352 by Hensley and House Bill 243 by Hale, for example, would offer a sales tax holiday on food for those aged 70 and older. Meanwhile, Senate Bill 1522 by Campbell and House Bill 1438 by Mitchell would eliminate the 4% state sales tax on food for human consumption, while increasing the tax on cigarettes and other tobacco products; it has been deferred to the first calendar of 2024 in the Senate Finance Revenue Subcommittee. However, Public Chapter 377, Acts of 2023, did create a sales tax holiday for food from August through October of this year.

## **Transportation**

This year, the 113<sup>th</sup> General Assembly enacted Public Chapter 159, also known as the Transportation Modernization Act. The Act includes a provision for raising the yearly registration fees on electric vehicles (EVs), a topic discussed in the Commission's report from last December, *Electric Vehicles and Other Issues Affecting Road and Highway Funding in Tennessee*. That report recommended raising EV registration fees, noting that because drivers of electric vehicles do not contribute to road funding through the gas tax, a higher registration fee would ensure that they still have a share in funding the state's roadways. The report further recommended that the revenues from these fees be shared with local governments. The Transportation Modernization Act expanded on these recommendations so that the registration fee for EVs is to be raised to \$274—and \$100 for plug-in hybrid electric vehicles—and then indexed to inflation (although capped to a 3% annual increase), with 11.8% of the revenues shared to municipalities and 22% to counties.

Regarding other modes of transportation, as of this month the Commission has also prepared a draft report on the feasibility of passenger rail in Tennessee. In line with a recommendation in that draft report to establish a state office for passenger rail, Senate Bill 373 by Campbell and House Bill 598 by Powell would create a state office of rail and public transportation. The bill will be taken up for consideration again at the start of 2024 in the Senate Transportation and Safety Committee and the House Transportation Subcommittee.

## **Water and Outdoor Recreation**

Last year, the Commission's report *Managing Tennessee's Public Waterways for Recreation: Balancing Access, Safety, and Protection of Natural Resources* recommended that the state consider a task force that would be able to address issues in water recreation and help resolve conflicts between agencies, perhaps by establishing a state office of outdoor recreation. Senate Bill 375 by Campbell and House Bill 1337 by Camper would create just such an office. The bill was moved to next year's calendar in the Senate Energy, Agriculture and Natural Resources Committee as the Governor's Office and Department of Tourism wished to consult first on how such an office might be implemented.

The same study recommended that motorized and nonmotorized boating should be added to the list of subjects on which members of the Tennessee Fish and Wildlife Commission should be well-informed. This was codified by Public Chapter 120, Acts of 2023.

Public Chapter 235 makes several changes to the regulation of nonmotorized watercraft outfitters, including making the Tennessee Wildlife Resources Agency responsible only for regulating outfitters using waterway access ramps that it owns or manages itself, and not those owned and managed by other agencies. While this was not a recommendation, it does address the issue of duplication of regulation and fees noted in the Commission's report.

Meanwhile, Senate Bill 1145 by Niceley and House Bill 1009 by Grills seeks to codify penalties for those who engaged in activities that interfered with boating launch points or docks, but the bill was taken off notice in the House Departments and Agencies Subcommittee.

## **Water and Utility Systems**

The 113<sup>th</sup> General Assembly this year enacted Public Chapter 463, which establishes a Tennessee Board of Utility Regulation within the office of the comptroller to oversee water, wastewater, and natural gas utility systems across the state. Within its provisions, the law provides for an appeal process by which utility customers may argue that a utility's rates are either too high or too low. This coincides with an observation from the Commission's 2014 report *Ensuring Fair and Equitable Water and Wastewater Rates for Non-resident Customers of City Utilities*, which noted that all utility customers would benefit from having such an appeals process being made available to them.

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

This year, the 113<sup>th</sup> General Assembly considered several pieces of legislation directing the Commission to conduct new studies. Two of these were in the form of bills, and two others were joint resolutions originating in the House. One of the joint resolutions was adopted by the House, while the other three items did not pass in either chamber.

House Joint Resolution 139 by Sparks requested a review of impact fee policies and how they might affect home affordability. The resolution was adopted by the House, though a companion resolution was not filed in the Senate.

Senate Bill 941 by Oliver and House Bill 277 by McKenzie requested the Commission examine the lengths of sentences for those currently incarcerated, identify any possible disparities among sentences for similar offenses, and determine the causes of those disparities. The bill was sent to summer study by the House Criminal Justice Subcommittee.

Senate Bill 962 by Lamar and House Bill 1037 by Miller requested a study of Tennessee's power grid and its reliability. In particular, the study was to assess the grid's reliability in cases of extreme weather, review the precautions taken by utility companies to withstand extreme weather scenarios, and investigate whether utilities have the means to make their own annual assessments of grid reliability and their ability to supply power.

Lastly, House Joint Resolution 137 by Towns sought for the Commission to conduct a study in conjunction with the Department of Health and the Department of Environment and Conservation on the security of the state's water infrastructure.