

Research Plan: Senate Bill 1942 (Yager)—Transitory Vendors

Research Manager: David Lewis

Lead Research Associate: Bob Moreo

Support: Stan Chervin and Reuben Kyle

Deputy Executive Director Approval: Initial:  Date: 4/15/16

Executive Director Approval: Initial:  Date: 4/18/2016

Purpose

To study the regulation of transitory vendors and the effects of those vendors on local governments and on traditional businesses.

Background

Senate Bill 1942, as amended, directs the Commission to study the effects that transitory vendors have on counties and local businesses and to recommend solutions to assist county bodies in regulating these vendors. Its companion, House Bill 2345 by Calfee, was taken off notice in the House Local Government Subcommittee.

Transitory vendors are defined as “persons who bring into temporary premises and exhibit to the public . . . merchandise for the purpose of selling . . . to the public” that can be provided in a truck, trailer, or similar vehicle-mounted unit that is mobile or capable of being moved by a licensed motor vehicle to the public. Current state law (Tennessee Code Annotated, Title 62, Chapter 30) requires transitory vendors to obtain a mobile vendor’s permit for a fee of \$50 from the county clerk’s office where they seek to do business. State law treats transitory vendors like any other retail business when it comes to sales taxes. Further, mobile food units must follow the Tennessee Department of Health’s Food Service Establishment Rules and Regulations and are considered a “food establishment.”

Senate Bill 1942 directs the Commission to submit a report disclosing the findings of the study and recommendations, including any proposed legislation or interim reports, to the Senate State and Local Government Committee, the Senate Commerce and Labor Committee, the House State Government Committee, and the House Local Government Committee no later than February 1, 2017.

Step 1. Define the Problem

To determine and describe the effects of transitory vendors on counties and municipalities, paying particular attention to the specific topics for the study laid out in the legislation:

- Whether transitory vendors benefit or harm the economy of counties and municipalities.
- Current tax laws that apply to transitory vendors and recommendations to protect counties and municipalities that do not receive local taxes from transitory vendors.
- Effects of transitory vendors on traditional restaurants, retailers, and other businesses.
- Feasibility of allowing local governments to issue temporary permits to transitory vendors to ensure compliance with local laws and regulations.
- How local governments can act to ensure that products and services are lawfully provided.
- The ability of county legislatures to regulate transitory vendors under the County Powers Act.
- Determine the amount of taxes counties and schools do not receive because of transitory vendors' ability to move freely from county to county.

Step 2. Assemble Some Evidence

- Review referred legislation.
 - Review Senate Bill 1942 to determine what the bill asks the Commission to do.
 - Review committee hearings on the bill and summarize comments and concerns of committee members, the bill sponsors, and others speaking for or against the bill.
 - Interview the bill's sponsors, proponents, and other stakeholders to determine what is driving this issue.
 - Tennessee County Services Association
 - Tennessee Municipal League
 - Tennessee Department of Health
 - Tennessee Department of Revenue
 - Nashville Food Truck Association
 - Knoxville Mobile Restaurant Association
 - Tennessee Hospitality and Tourism Association (includes restaurants)

- Tennessee Retail Association
 - MTAS / CTAS
- Review current state and local laws in Tennessee regarding
 - transitory vendors,
 - health and product safety,
 - all applicable taxes, including those that apply to brick-and-mortar businesses but not transitory vendors, and
 - local governments' authority to regulate transitory vendors.
- Identify and interview local government officials in jurisdictions already regulating transitory vendors.
- Assemble data for transitory vendors and their non-transitory competitors on
 - the numbers and types of vendors across Tennessee,
 - current state and local tax and license collections, and
 - known health or safety violations or incidents.
- Review relevant court cases and opinions of the Tennessee Attorney General.
- Review relevant federal statutes and regulations.
- Beginning with applicable National Conference of State Legislatures (NCSL) reports, review similar laws or regulations in other states.
- Review relevant literature and seek opinions of subject matter experts as they relate to the effects of transitory vendors on local businesses.

Step 3. Construct Alternatives

Alternatives will be based on current law and alternatives drawn from the research and analysis in Step 2.

Each alternative will be described specifically enough to project outcomes in Step 5.

Step 4. Select Criteria

- Cost (direct and indirect) to
 - State government
 - Local governments
 - Brick-and-mortar (i.e., non-transitory) businesses
 - Transitory vendors

- General public
- Administrative ease and enforceability
- Effect on public health and safety
- Parity in treatment of vendors
- Estimate receptiveness of
 - State government
 - Local governments
 - Brick-and-mortar (i.e., non-transitory) businesses
 - Transitory vendors
 - General public

Step 5. Project Outcomes

- Estimate costs
 - To vendors
 - To government
- Estimate effect on public health and safety
- Estimate the practicality of implementing and enforcing
- Estimate the acceptability to the state and local governments, the general public, and other affected stakeholders

Step 6. Confront Trade-offs

- How will the differences between the current law and the other alternatives affect the state, local governments, various vendors, and the general public?
- What are the pros and cons of the potential solutions?

Step 7. Decide which alternatives to present to the Commission

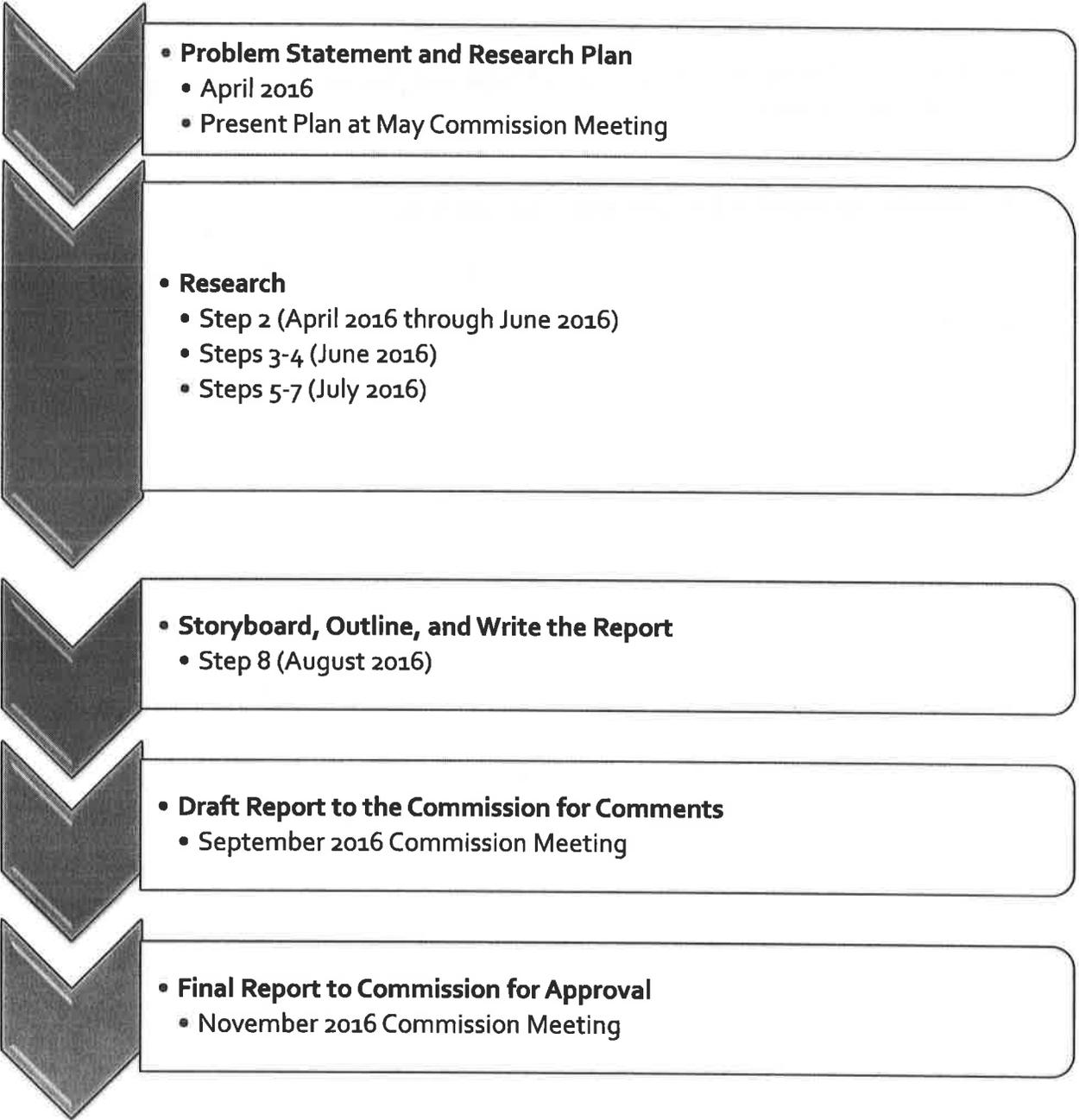
Based on the results of Step 6, choose the alternatives that most practically and realistically resolve the problem.

Step 8. Produce the Draft Report

Develop and present a draft for review and comment to the Commission.

Revisit Steps 5 through 8.

- Respond to feedback from Commission regarding outcome projections, trade-offs, and selection of alternatives.
- Revise and edit the draft to reflect comments of the Commission.
- Submit final report to the Commission for approval.



SENATE BILL 1942

By Yager

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 5; Title 6; Title 47; Title 48; Title 50; Title 53;
Title 55; Title 62 and Title 67, relative to transitory
vendors.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 62-30-102(b), is amended by
designating the existing language as subdivision (1) and adding the following new subdivision:

(2) Beginning July 1, 2016, and quarterly thereafter, the county clerk shall submit
a report to the office of local government, comptroller of the treasury identifying the
number of persons applying for a permit under this section who fail to satisfy the
requirements of subdivision (b)(1).

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring
it.

Senate Commerce and Labor Committee 1

Amendment No. 1 to SB1942

Johnson
Signature of Sponsor

AMEND Senate Bill No. 1942*

House Bill No. 2345

by deleting the language after the caption and substituting instead:

WHEREAS, counties have a vested interest in their economic growth and in attracting restaurants and retail stores that provide a service or product to the public; and

WHEREAS, counties benefit from the products and services provided to the public through the payment of taxes and hiring local residents, which support the counties, municipalities, and local schools; and

WHEREAS, traditional brick and mortar restaurants and retail stores suffer from the influx of transitory vendors because the vendors can forego traditional brick and mortar businesses and provide a product or service to the public in a truck, trailer, or similar vehicle-mounted unit that is mobile or capable of being moved by a licensed motor vehicle; and

WHEREAS, transitory vendors may not be subject to local regulations and do not support the counties or local government where the products and services are provided by purchasing property, paying local taxes, and hiring local residents which support the counties and local schools; and

WHEREAS, the regulation of transitory vendors is necessary for the county legislative body in order to protect the health, safety, and welfare of the public, as well as to promote the public interest by regulating the mobile vendor industry; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1.

Amendment No. 1 to SB1942

Johnson
Signature of Sponsor

AMEND Senate Bill No. 1942*

House Bill No. 2345

(a) As used in this section, "transitory vendor" means any person who brings into temporary premises and exhibits to the public stocks of products or services for the purpose of selling or offering to sell the products or services to the public.

(b)

(1) The Tennessee Advisory Committee on Intergovernmental Relations (TACIR) is directed to perform a study of the overall effects on counties when transitory vendors, who provide a product or service to the public in a truck, trailer, or similar vehicle-mounted unit that is mobile or capable of being moved by a licensed motor vehicle to the public, enter a county without regulation from the county legislative body. TACIR shall recommend solutions that will assist such county legislative bodies in regulating transitory vendors. It is the legislative intent that this study be conducted from TACIR's existing resources.

(c) The study shall include:

(1) The economic benefits of the transitory vendor industry, specifically, whether the industry benefits or harms counties or municipalities;

(2) Examining current tax laws and recommending possible modifications to the laws that will protect counties and municipalities that do not receive local taxes from the transitory vendors when the transitory vendors provide products or services;

(3) Surveying the impact of the vendors on the existing brick and mortar restaurant, retail, and service industry;

(4) Determining the feasibility of allowing local governments to issue temporary permits to the transitory vendors to ensure compliance with local laws and regulations;

(5) How the local government can act to ensure that the products and services are lawfully provided to the public;

(6) The ability of the county legislative body to regulate the transitory vendor industry under the County Powers Act to allow local governments to issue permits and charge fees to the transitory vendors; and

(7) The amount of taxes the local counties and schools do not receive because of the transitory vendors' ability to freely move from county to county.

(d) All appropriate state agencies and departments shall provide assistance to TACIR upon the request of its executive director. TACIR shall seek input from representatives of the mobile vendor industry, existing brick and mortar businesses, the local government, counties, and municipalities in conducting such study.

(e) TACIR shall submit a report disclosing the findings of the study and recommendations, including any proposed legislation or interim reports, to the state and local government committee of the senate, the commerce and labor committee of the senate, the state government committee of the house of representatives, and the local government committee of the house of representatives no later than February 1, 2017.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring

it.

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 1942 – HB 2345

February 18, 2016

SUMMARY OF ORIGINAL BILL: Requires county clerks to submit a report, beginning July 1, 2016, and quarterly thereafter, to the Comptroller of the Treasury identifying the number of persons applying for a transitory vendor permit who fail to satisfy the requirement to provide an adequate description of any motor vehicle used by the vendor in conducting business.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

IMPACT TO COMMERCE OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (012223): Deletes all language of the original bill. Directs the Tennessee Advisory Committee on Intergovernmental Relations (TACIR) to conduct a study of the overall effects of transitory vendors who enter and conduct business within counties without regulation from the county legislative bodies. Requires TACIR to recommend solutions that will assist county legislative bodies in regulating transitory vendors. Declares as the legislative intent that the study be conducted from TACIR's existing resources and outlines results required from the study. Requires TACIR to submit a report to the State and Local Government Committee and the Commerce and Labor Committee of the Senate and the State Government Committee and the Local Government Committee of the House of Representatives no later than February 1, 2017.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

SB 1942 – HB 2345

Assumption for the bill as amended:

- TACIR will conduct this study and create a report within regular business hours utilizing existing staff; any increase in state expenditures is estimated to be not significant.

IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:

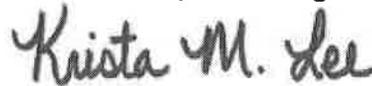
Unchanged from the original fiscal note.

Assumption for the bill as amended:

- Directing TACIR to conduct a study within its existing resources on the effect of transit vendors to counties will have no impact to commerce or jobs in Tennessee.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

/amj