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## Intergovernmental Challenges and Achievements



**Biennial Report**

**Fiscal Years 2012-13 and 2013-14**



# TACIR Publication Policy

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Reports approved by vote of the Tennessee Advisory Commission on Intergovernmental Relations are labeled such on their covers with the following banner at the top: *Report of the Tennessee Advisory Commission on Intergovernmental Relations*. All other reports by Commission staff are prepared to inform members of the Commission and the public and do not necessarily reflect the views of the Commission. They are labeled *Staff Report to Members of the Tennessee Advisory Commission on Intergovernmental Relations* on their covers. *TACIR Fast Facts* are short publications prepared by Commission staff to inform members and the public.

## **Intergovernmental Challenges and Achievements**

### **Biennial Report**

**Fiscal Years 2012-13 and 2013-14**

Senator Mark Norris  
Chairman



Mayor Tom Rowland  
Vice Chairman



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Lynnis Roehrich-Patrick, Executive Director

September 3, 2014

The Honorable Ron Ramsey  
Lt. Governor and Speaker of the Senate

The Honorable Beth Harwell  
Speaker of the House of Representatives

Members of the General Assembly

State Capitol  
Nashville, TN 37243

Ladies and Gentlemen:

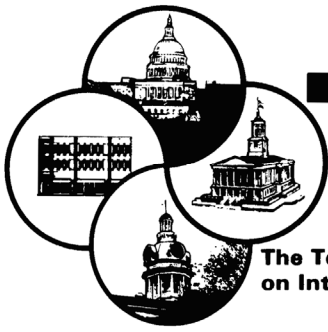
Transmitted herewith is the biennial report for fiscal years 2012-13 and 2013-14 pursuant to Tennessee Code Annotated § 4-10-108. This report was approved by the Tennessee Advisory Commission on Intergovernmental Relations on September 3, 2014, and is hereby submitted for your consideration. It outlines the hard work and effort of the Commission in aiding local governments, the General Assembly, and the State of Tennessee.

Sincerely,

Senator Mark Norris  
Chairman

Lynnis Roehrich-Patrick  
Executive Director





# TACIR

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## ***MEMORANDUM***

**TO:** Commission Members

**FROM:** *Lynnise*  
Lynnise Roehrich-Patrick  
Executive Director

**DATE:** 3 September 2014

**SUBJECT:** Intergovernmental Challenges and Achievements, Biennial Report of the  
Tennessee Advisory Commission on Intergovernmental Relations, Fiscal Years  
2012-13 and 2013-14

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The biennial report on the Commission's work for fiscal years 2012-13 and 2013-14 is submitted for your approval. The report, required by the Tennessee General Assembly, follows the general framework established in previous reports and provides an overview of important program areas—eminent domain, land use, water utility districts, municipal boundary changes and growth policy, blight, and infrastructure—addressed over the two-year period. The full scope of the Commission's work is evidenced in the lists of publications, presentations, relevant legislation, and meeting summaries included in the appendixes.





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## Message from the Chairman and Executive Director

This Biennial Report of the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) describes the accomplishments and primary activities of the Commission during fiscal years 2012-13 and 2013-14. The report outlines the determined work of the Commission in aiding local governments, the General Assembly, and the State of Tennessee.

While it provides a focused overview of some key issues the Commission addressed during the period covered—including eminent domain, land use, water utility districts, municipal boundary changes and growth policy, blight, and infrastructure—the broader scope of the Commission’s work is seen in the lists of publications, presentations, relevant legislation, and meeting participation included in the appendixes.

TACIR takes its mandate to provide a future-oriented perspective to public policy and intergovernmental relations seriously and employs any number of resources to see that its mandate is fulfilled. The expertise and hard work of the talented individuals who serve on the Commission are essential to TACIR’s success. Commission members for fiscal years 2012-13 and 2013-14 are listed in appendix I.



Senator Mark Norris  
Chairman, TACIR



Lynnisse Roehrich-Patrick  
Executive Director, TACIR



## Focus Issues

This report provides highlights of a small number of the issues addressed by the Commission and its staff during fiscal years 2012-13 and 2013-14: eminent domain, land use, water utility districts, municipal boundary changes and growth policy, blight, and infrastructure. This selection of issues demonstrates the wide range of topics that fall within the purview of the Commission's mission to

*serve as a forum for the discussion and resolution of intergovernmental problems; provide high quality research support to state and local government officials to improve the overall quality of government in Tennessee; and to improve the effectiveness of the intergovernmental system to better serve the citizens of Tennessee.*

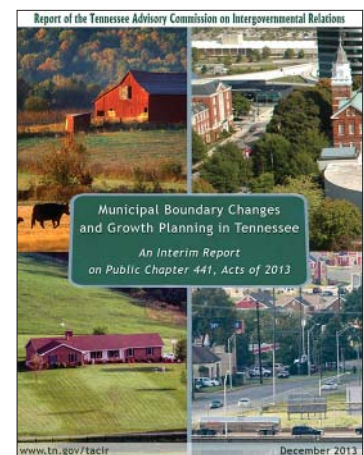
## Municipal Boundary Changes and Growth Policy

Annexation disputes among counties, cities, and affected residents have been a recurring theme in Tennessee's history. Tennessee's Growth Policy Act (Public Chapter 1101, Acts of 1998) was an effort to resolve these disputes by requiring local governments in each of the state's 92 non-metropolitan counties to adopt 20-year growth plans limiting where future incorporations and annexations could occur. In 2013, 15 years after the passage of Tennessee's Public Chapter 1101, questions remained about how well the Act had served its intended purpose and whether other improvements could be made in the annexation process. Public Chapter 441, enacted by the 108th General Assembly, placed a moratorium through May 15, 2014, on using ordinances to annex territory being used primarily for residential or agricultural purposes without the consent of those living on or owning the property. The chapter also directed the Commission to perform a comprehensive review and evaluation of the efficacy of state policies set forth in Title 6, Chapters 51 (municipal boundary changes) and 58 (comprehensive growth plans), including

- expanding city boundaries by annexation,
- deannexation of territory from cities,
- merger of cities, and
- mutual adjustment of city boundaries.

A number of bills that would have amended portions of these chapters were also referred to the Commission for study in 2013. Those bills focused on

- annexation methods,



- informational meetings and public hearings,
- notice requirements,
- annexation of agricultural property, and
- growth plan amendments.

After considerable study over the course of six months, including several meetings at which a wide range of viewpoints were presented to and discussed by the Commission, the members concluded that the issues required additional study. They recommended extending the moratorium imposed by Public Chapter 441 for another year or until the issues were addressed. Specific options for further consideration were noted in an interim report published in December 2013.

The General Assembly addressed the key issue of the study with passage of Public Chapter 707, Acts of 2014, dramatically changing annexation law in Tennessee. The act eliminated annexation without consent and extended and strengthened the annexation moratorium established by Public Chapter 441, Acts of 2013. Beginning May 16, 2015, annexations with less than 100% owner consent will require the existing referendum process for approval. The Act forbids cities to annex property used primarily for agricultural purposes without the owner's written consent. Public Chapter 707 also extended the Commission's comprehensive review of municipal boundary changes and comprehensive growth plans as recommended in the interim report on Public Chapter 441. A draft report on the study will be presented to the Commission for review and comment in late 2014 and for approval in January 2015, in order to meet the General Assembly deadline of February 15, 2015.

As reported to the Commission in a staff update at the June 2014 meeting, three issues from the Commission's prior study were resolved by Public Chapter 707 and other legislation passed in the 2014 session, including annexation of agricultural land, annexation and development standards, and the extension of city utilities beyond municipal boundaries. Four previously reported issues that do not seem to require further study include voting by mail, annexation of state or federal open lands, and allowing property owners to petition a city for removal from its growth boundary.

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. Public Chapter 707 also

left some statutes that refer specifically to annexation by ordinance unchanged, creating ambiguities that should be addressed.

## Land Use

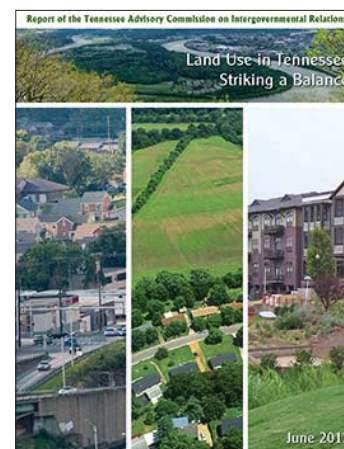
Disputes between landowners over how they use or want to use their property have long been a source of tension, but until the early 20th century, the only recourse people had was to take their neighbors to court, a costly, time-consuming, and uncertain process. By mid-century, through changes in state law, most of those disputes were handled by elected officials or their boards and staff. Even so, land-use issues are no less controversial, and bills aimed at changing the laws designed to settle them are introduced every year. In response to this ongoing concern about the state's land-use laws, the House State and Local Government Subcommittee referred seven bills to TACIR for study in 2012. Those bills focused on four areas of the law: what constitutes a subdivision, who gets to regulate land use outside city limits in areas set aside for them to annex, roads built by developers, and grandfathering of land uses that don't conform to new zoning requirements.

### *Defining Subdivisions*

Tennessee's current framework for subdivision regulation allows but does not require local governments to set standards for the division and development of land into tracts that are five acres or smaller or that require extension of roads or utilities. All states have similar provisions, but only five others limit this grant of authority based on lot size. One bill sent to the Commission (House Bill 2818 by Faison) would have prevented regional planning commissions in the 47 Tennessee counties without countywide zoning from regulating all lots one acre or smaller. Another bill sent to the Commission (House Bill 3042 by Elam) would have enabled local governments to regulate the subdivision of lots between 5 and 25 acres in size. In its report, the Commission notes that exempting lots one acre or smaller from regulation could jeopardize property values by denying property owners such benefits as adequate roads and water as well as assurances that development of adjacent property will comply with standards similar to those applied to their own property. Amending existing law to apply to lots larger than five acres could extend these benefits to more property owners.

### *Planning and Zoning by Cities Outside Their Boundaries*

Current law allows cities in the 47 counties without zoning to apply to the state for authority to zone and regulate subdivision of land in a region larger than the city, itself but only when the county's





governing body agrees. Two bills studied by the Commission would have changed that. One (House Bill 125 by Sargent) would have allowed cities in counties without countywide zoning to both zone and regulate land use outside their corporate limits without the approval of the county. The other (House Bill 3041 by Elam) would have allowed those cities to regulate subdivisions but not zone outside their corporate limits without the county's approval. Support for these bills was based on the cities' concerns about becoming responsible through annexation for development that does not meet city standards. Opposition stemmed largely from concerns of residents living outside the cities about land-use regulations being imposed on them by government officials for whom they cannot vote.

Tennessee law provides two routes for resolving these conflicts, first through creation of joint city-county planning commissions and, since adoption of the state's Growth Policy Act in 1998, through joint economic and community development boards. The report notes that four joint commissions are already operating effectively. These include Knox County and the City of Knoxville, since April 1956; Hamilton County and the municipalities of Chattanooga, East Ridge, Lakesite, Lookout Mountain, Ridgeside, and Walden, since June 1943; Montgomery County and Clarksville, since January 1963; and Pickett County and Byrdstown, since August 1976.

### ***Roads Built by Developers***

Under current law, all local planning commissions can set standards for construction of roads in subdivisions. One bill sent to the Commission (House Bill 3040 by Elam) applied only to roads in cities' planning regions outside their corporate limits and would have required those cities to accept full responsibility for new subdivision roads, relieving the county of any responsibility for those roads. In effect, the legislation would have consolidated responsibility for those roads in the municipalities, but there was no consensus among city officials in support of it. Another bill (House Bill 3105 by Faison) would have permitted developers and lot purchasers to agree through restrictive covenants to develop and maintain the roads within subdivisions themselves. Planning commissions could not prohibit private road maintenance agreements and, consequently, could not deny subdivision plat approval simply because the roads are private instead of public. The Advisory Commission found that it was unclear whether planning commissions would be able to require such roads to meet the construction standards adopted for subdivision roads. The concern leading to introduction of this bill was the cost of building roads to municipal standards, but the



Commission found that concern to be outweighed by the benefits of both increased safety and lower long-term maintenance costs.

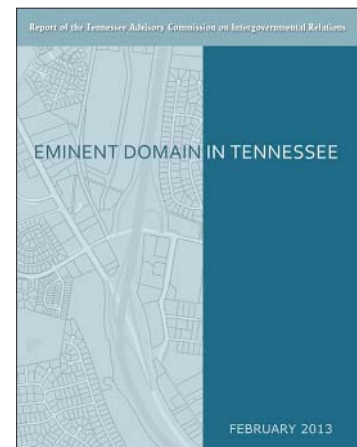
### ***Land Uses That Do Not Conform to Zoning Regulations***

Although a number of bills were introduced in 2012 related to provisions that protect landowners from zoning changes, only one was sent to the Commission. That bill (House Bill 3043 by Elam) would have removed language from current law requiring local governments to prove intentional abandonment or discontinuance of land use that does not comply with current zoning in order to prevent the landowner from re-establishing that use. Local governments would have been required instead to prove abandonment based on criteria such as utility connection information and dated pictures indicating abandonment. The Commission noted that substituting specific criteria for the requirement to prove intent would benefit local governments and clarify for landowners exactly what constitutes abandonment.

### **Eminent Domain**

The government cannot take your land without paying for it, but it can force you to sell. This action is called *condemnation*. The power to condemn is referred to as *eminent domain*. In 2006, the Tennessee General Assembly enacted Public Chapter 863, which made significant changes to the state's eminent domain law, including clarifying the definition of public use. These reforms, made partly in response to the US Supreme Court's ruling in *Kelo v. City of New London*, greatly improved protections for property owners in Tennessee. But concerns remained about the time and expense of determining property value; the authority of housing development agencies, which are arms of the local government, to condemn property; and the ability of former property owners to repurchase condemned property that is not used by the government and later sold.

To help address these specific concerns, additional legislation was introduced by the 107th General Assembly, and two bills related to eminent domain were referred to the Commission for study: Senate Bill 1566 by Ketron (House Bill 1576 by Carr) and House Bill 2877 by Gotto (Senate Bill 2745 by Johnson). In February 2013, the Commission released its report, *Eminent Domain in Tennessee*, in response to those bills and one other bill that dealt with eminent domain but was not referred to the Commission for study, Senate Bill 548 by McNally (House Bill 952 by Dunn). The report's recommendations were eventually used by the General Assembly in passing one related bill and as part of the justification for not passing another.



Senate Bill 1566 would have allowed a property owner to require the local government to submit to binding arbitration in order to determine the price of property to be taken by condemnation. If it had passed, local governments would not have been able to object to the use of binding arbitration. Like litigation, arbitration is a process for dispute resolution whereby a neutral third party renders a decision after a hearing at which both parties have had an opportunity to be heard. With binding arbitration, the parties are legally obligated to comply with the arbitrator's decision. While binding arbitration generally reduces the time required to resolve a dispute, it has many of the disadvantages of litigation. Binding arbitration is less time consuming than litigation, since the decision cannot be appealed simply because the parties do not like the result, but it is potentially as expensive because the parties still hire lawyers, appraisers, and other experts.

One concern raised by local governments about Senate Bill 1566 involved the issue of being forced into a dispute resolution process that can be appealed in only very limited circumstances. The only other state with a similar provision is Oregon, which allows a condemnee to force a condemner into binding arbitration only when the value placed on the property by the parties is \$20,000 or less. The fact that there is only one state that authorizes a property owner to force a condemner into binding arbitration, and only then in cases that involve small claims, suggests that this is not a desirable method for resolving eminent domain disputes. In its report, the Commission points out that since Tennessee already offers a number of alternatives to litigation for resolving valuation disputes, property owners should not have the power to force local governments into binding arbitration.

One alternative to settling disputes that is already widely used in Tennessee is mediation, which is essentially a form of assisted negotiation. Less time-consuming and less costly than other methods of resolving disputes, mediation is an informal process through which a neutral third party, the mediator, helps the parties reach agreement. The Commission found that mediation should always be considered before arbitration. Mediation is generally much quicker and much less costly than either litigation or arbitration. Moreover, the determination of value is left to the parties. If successful, mediation would make the overall process less costly and time consuming and allow the parties to decide the price for themselves.

Based in part on the Commission's recommendation, the House Civil Justice Subcommittee in 2013 voted against House Bill 103, which, like Senate Bill 1566, would have allowed property owners to require local governments to submit to binding arbitration in order

to determine the price of property to be taken by condemnation. The Commission's findings were cited during the discussion preceding the vote on House Bill 103.

The other bill referred to TACIR for study, House Bill 2877, would have eliminated the power of housing agencies to condemn property and would instead require local elected bodies to institute condemnation proceedings on their behalf. In practice, local governments already have oversight of housing authorities' use of eminent domain through approval of the redevelopment plans under which the authorities operate. Under Tennessee's redevelopment law, however, a governing body may delegate authority to approve redevelopment plans to another agency, including a housing authority, which then could both approve a redevelopment plan and use it as a basis for condemnation. The Commission found no local government that has delegated this authority.

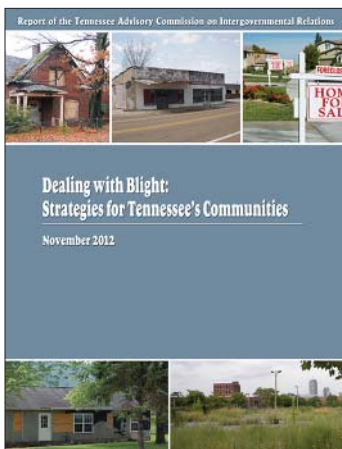
Still, the Commission found that removing language that allows the delegation of authority to approve a redevelopment plan to housing authorities would ensure that such agencies could not approve the plan themselves, thus using it as a basis for condemnation, without the oversight of the local governing body. Removing that language would not preclude housing authorities from condemning property to carry out plans that are approved by the local governing body; it would simply ensure that housing authorities could not be given the authority to approve redevelopment plans that would give them the authority to condemn property. That change would guarantee the local governing body's continued oversight of these projects.

Senate Bill 548 would have given a right of first refusal to property owners whose property was condemned by a local government or a state agency. A right of first refusal already existed in the case of condemnations by the Tennessee Department of Transportation (TDOT). A right of first refusal gives the condemnee the right to repurchase condemned property if the condemner decides to sell it. The provisions of Senate Bill 548 would have required the property, if sold within ten years, to be offered to the former property owner or his heirs or assigns at the price paid by the condemner.

Many stakeholders interviewed for the Commission's report supported the idea of giving property owners a right of first refusal in all condemnation cases. Nine other states already provided a similar right. However, local government officials, in particular, expressed concern about the burden of finding the former owner, and especially his heirs or assigns some ten years later, and about having to accept the original price paid rather than fair market value. Accordingly, the Commission recommended adoption of the

TDOT model, including limiting the right of first refusal to ten years from the date of condemnation, limiting it to the former property owner only, and setting the price based on appraisals of fair market value. This recommendation was adopted by the legislature with the passage of Public Chapter 851, Acts of 2014.

Finally, several persons interviewed for the report said that condemnation doesn't happen very often, so efforts should be made to better inform property owners about their rights, including the right to receive just compensation for their condemned property. The Commission said that this could be accomplished by requiring condemners to include a statement of rights along with the condemnation notice before initiating condemnation proceedings. One option found in other states is an ombudsman, similar to the Office of Open Records Counsel within the Tennessee Comptroller's Office, to assist individuals with their condemnation questions.



## Blight

Blight, always an issue of community concern, is even more of one now because of the recent housing crisis and downturn in the economy. The negative effects of blighted properties and structures are well documented, as are the significant community costs associated with them. A Brookings Institution study found that abandoned or vacant properties heighten the need for fire and police services, code enforcement, and property maintenance and demolition, thereby increasing government expenditures. A study of blight in Washington, DC, found that vacant, blighted properties often are tax delinquent, lower property values, and result in loss of tax revenue. 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. A large number of vacant homes within a neighborhood increases the likelihood that property values will decline, which in turn may cause more homes to be abandoned.

With passage of Senate Joint Resolution 103 in 2011, the Senate asked the Commission to study the overall effects on local governments when blighted properties are left vacant and to recommend solutions that would assist local governments in returning properties to beneficial use. In response, in November 2012, the Commission published *Dealing with Blight: Strategies for Tennessee's Communities*, in which they wrote that laws already on the books in Tennessee were generally adequate. The difficulty that most communities have is finding the resources to use these laws successfully. Four laws, the Neighborhood Preservation Act, the Residential Rental Inspection

law, the Vacant Properties Acquisition Act, and the Local Enterprise Zones law, apply only in certain communities. The Commission said that it may be advantageous to make these laws applicable statewide and further suggested that the General Assembly consider allowing local governments to provide incentives for the renovation or demolition of derelict buildings, as is done in Virginia.

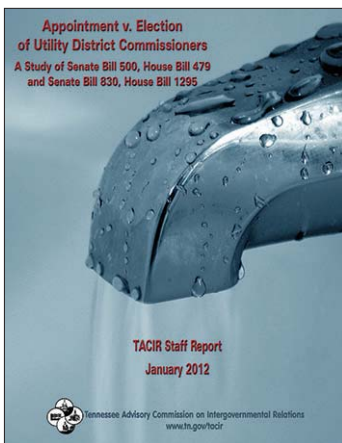
Noting that state law also authorizes municipalities, but not counties, to establish an office of administrative hearing officer to hear cases involving building and maintenance code violations, the Commission also suggested that it may be advantageous to extend similar authority to county governments or otherwise provide for higher fines, as has been done in other states. Municipal administrative hearing officers can impose \$500 fines, which far exceeds the \$50 fine limit placed on courts by the state's constitution.

The report also described another approach to combating blight that has been used elsewhere with success and that was then being tested in Tennessee. In 2012, the General Assembly authorized a pilot land bank program by the City of Oak Ridge. As explained in the law, a land bank can be used by communities to return vacant, abandoned, and tax delinquent property to productive use. The Comptroller's Office was charged with monitoring the pilot program for three years and then recommending whether to continue, expand, or discontinue it. The Commission found that extending this authority to other jurisdictions was an option that should be considered when the Comptroller's report is complete. The 108th General Assembly agreed, extending the pilot program to additional communities. Public Chapter 793, Acts of 2014, authorizes Sevier and Blount counties, any home rule county, and any county with a metropolitan form of government to participate in the program.

In addition to the study directed by Senate Joint Resolution 103, the Commission studied House Bill 2996, which was referred by the House State and Local Committee of the 107th General Assembly. That bill would have required municipalities that cite property owners under slum clearance or vacant properties acquisition ordinances to report the owners and addresses of those properties to the Secretary of State for publication on the Secretary of State's website until such condition is cured. No other state maintains a website listing, but several cities do, which suggests that a web listing of this type may be effective at the local level. Therefore, the Commission found that it is not clear that it would be equally effective at the state level. Moreover, it would be difficult, if not impossible, to ensure the consistency and completeness of a statewide list that depended on submission of information by the hundreds of cities and counties across the state.



Following approval of the 2012 report, the Commission directed staff to study foreclosure-related blight further. Staff presented a draft report at the June 2014 Commission meeting. As noted in the report, foreclosure-related blight is a more serious problem in some Tennessee communities than in others. Memphis and Shelby County are the most severely affected. Conditions have worsened in some neighborhoods that were already suffering from vacancy and blight before the housing crisis, and problems have developed in others because of newly vacant foreclosed homes. As housing markets recover across the state, more and more foreclosed homes are purchased and occupied. However, the housing market in the Memphis Metropolitan Statistical Area has yet to fully recover, and many foreclosed homes are still vacant in some areas. The final report will be presented later in fiscal year 2014-15.



## Water Utility Districts

Most Tennesseans rely on public utilities, primarily city utilities or utility districts, to meet their need for a clean and secure water supply. A recurring theme in the legislature has been how customers of these utilities are represented and how that representation affects their water and sewer rates.

In 2011, the Senate State and Local Government Committee asked the Commission to study two bills that would have changed the utility district commissioner selection method for several non-municipal water utility districts—including the Bon De Croft Utility District in White County and all of the districts in Lawrence County—from appointment by county mayor to election by the customers. The Commission published a staff report on the bills, *Appointment v. Election of Utility District Commissioners*, in 2012, which said that although there are advantages to electing utility district commissioners, appointment by the county mayor from a list of nominees provided by the utility district commissioners is a better choice because it draws on the experience and expertise of current commissioners while providing sufficient accountability to customers through their influence on the county mayor as well as through appeals to the state’s Utility Management Review Board. The report also said that these districts need to have the flexibility to operate like a business, something that might be impeded if the board were elected. Based in part on these recommendations, the House Business and Utilities Subcommittee voted in 2013 against a bill that would have required certain water utility district boards in Lawrence County to be governed by elected boards.

In 2013, the legislature referred to the Commission a bill that would have capped water and sewer rates of non-resident customers of

Johnson City at 150% of rates charged city residents. The bill resulted from complaints by residents of Piney Flats in Sullivan County that Johnson City, without justification, charged them rates double those charged city residents. In its 2014 report, *Ensuring Fair and Equitable Water and Wastewater Rates for Non-resident Customers of City Utilities*, the Commission found that non-resident customers, unlike city residents, have no recourse to elected officials when they believe their rates are unfair. City residents who feel their rates are unjustified can complain to those they elect, who either set rates themselves or appoint those who do. Likewise, utility district customers can complain to their boards, which are either elected directly by the customers or appointed by the county mayor or executive, for whom all county residents vote. While utility district customers can take rate complaints to a state board, city utility customers cannot.

The Commission's 2014 report also pointed out the unintended consequence of rate caps, which have a tendency to become standard rates, and recommended instead giving outside customers an appeal process or representation on city utility boards or both. Echoing a 2008 report by the state's Water and Wastewater Finance Board, the Commission said that rates should be both reasonable and justified and that whether a customer lives inside or outside the city is not enough on its own to justify a rate difference.

## Tennessee's Infrastructure Needs

During fiscal years 2012-13 and 2013-14, the Commission released the tenth and eleventh in a series of reports on Tennessee's infrastructure needs, *Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs*, pursuant to Public Chapter 817, Acts of 1996. This Act requires TACIR to compile and maintain an inventory of public infrastructure needed in Tennessee and present these needs and associated costs to the General Assembly during its regular legislative session. The inventory, by law, is designed to support development by state and local officials of goals, strategies, and programs to

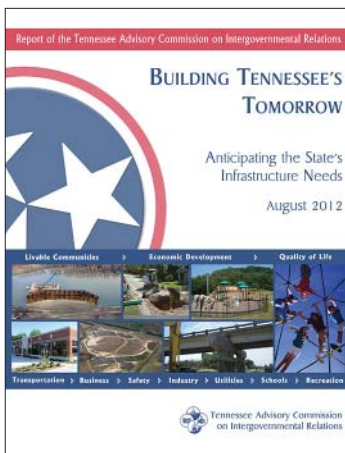
- improve the quality of life of all Tennesseans,
- support livable communities, and
- enhance and encourage the overall economic development of the state through the provision of adequate and essential public infrastructure.

The reports provide information about needed infrastructure improvements and the condition of elementary and secondary public school buildings.

During fiscal year 2013-14, staff also completed collection and analysis of the data for the twelfth report in the series, which was approved by the Commission at the June 2014 meeting and will be published early in fiscal year 2014-15.

### August 2012

The tenth report in the series, covering the five-year period of July 2010 through June 2015, was completed during fiscal year 2012, in August, and published the following October. It indicated that Tennessee needed at least \$38 billion worth of public infrastructure improvements to be in some stage of development during state fiscal years 2011 through 2015. Public infrastructure needs as reported by state and local officials increased \$1.2 billion (3.3%) since the June 2011 report, which covered the five-year period of July 2009 through June 2014. The increase was larger than the previous year's record low increase of less than one percent (0.7%) but smaller than all other years. Infrastructure needs reported in the inventory fall into six general categories:



- Transportation and Utilities: \$19.1 billion
- Education: \$8 billion
- Health, Safety, and Welfare: \$7.3 billion
- Recreation and Culture: \$1.9 billion
- Economic Development: \$1.2 billion
- General Government: \$457 million

The category with the largest increase over the previous year was Health, Safety, and Welfare, the third largest category overall. Health, Safety, and Welfare needs alone increased \$434 million, from \$6.9 billion to \$7.3 billion, making up 19.3% of the total reported for all types of infrastructure.

While state revenue sources for fully-funded local infrastructure increased, local sources—city, county, and special district revenues—remained about the same and continued to be the principal source of funding. (These figures did not include improvements for public elementary and secondary schools or those in state agencies' capital budget requests.) Local officials are asked to report only those funds that are available at the time of the inventory and not to speculate about how a project could be funded.

TACIR's inventory of public infrastructure needs is the only source of statewide information on the condition of public school buildings and what it would take to get them all in good or better condition. According to local school officials, 93% of local public schools were



in good or excellent condition; however, they estimated the cost to put the remaining 7% in good or better condition at \$622 million.

### July 2013

According to the July 2013 report, the eleventh in the series, Tennessee needed at least \$37.1 billion of public infrastructure improvements to be in some stage of development during the five-year period from July 2011 through June 2016. The costs for current infrastructure needs in the inventory fall into six general categories:

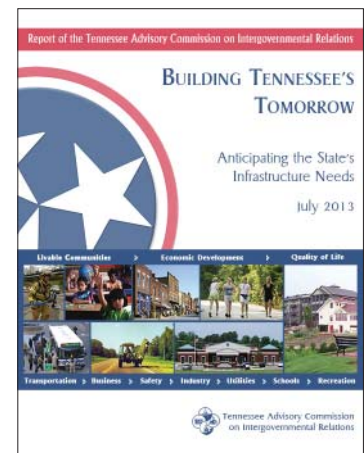
- Transportation and Utilities: \$20.2 billion
- Education: \$7.2 billion
- Health, Safety, and Welfare: \$6.2 billion
- Recreation and Culture: \$1.7 billion
- Economic Development: \$1.2 billion
- General Government: \$488 million

The need for transportation infrastructure increased by \$1.3 billion (6.8%). At 54.1% of the estimated costs for all infrastructure improvements, transportation dwarfed other types of infrastructure needs. Transportation is part of the Transportation and Utilities category, which has always been and remains the single largest category in the inventory.

The estimated costs for Health, Safety, and Welfare infrastructure improvements decreased the most (\$893.6 million) since the last inventory, from \$7.1 billion to \$6.2 billion. All seven types of infrastructure in this category decreased: water and wastewater, law enforcement, public health facilities, storm water, fire protection, solid waste, and housing. That does not necessarily mean that needs reported in past inventories were met. Much of the decrease could be attributed to cancellation or postponement rather than completion of projects.

Local officials were confident of obtaining funding for only \$11.2 billion of the \$30 billion identified as local needs. These figures do not include needs at existing schools or those in state agencies' capital budget requests. Most of this funding, \$10.8 billion, was for improvements that were fully funded; another \$415 million was for improvements that were partially funded. That left another \$18.8 billion of improvements for which funding was not yet available.

According to local school officials, 93% of local public schools were in good or excellent condition; however, they estimated the cost to put the remaining 7% in good or better condition at \$574 million.





## Appendix A: TACIR Accomplishments by Research Area

### Fiscal Year 2012-13

#### *Fiscal and Tax Policy Research*

- Continued to monitor and published a report on the Tennessee Valley Authority's payments in lieu of taxes and the effect of the Electric Generation and Transmission Cooperative Act of 2009, as amended in 2010 (Public Chapter 1035, Acts of 2010).
- Completed a web publication on the effect of the recession on employment in the United States and Tennessee.

#### *Education Finance*

- Completed the fiscal year 2013-14 fiscal capacity model.

#### *Land Use, Transportation, and Growth Policy*

- Continued to monitor the implementation of Public Chapter 1101, Acts of 1998, Tennessee's growth policy law.
- Completed a report to the legislature on eminent domain in Tennessee.
- Continued a study by the University of Memphis on the relationship between school-siting and land-use planning.
- Completed a report to the legislature on dealing with blighted communities in Tennessee.
- Drafted a report to the legislature on land-use issues in Tennessee.

#### *Infrastructure*

- Continued the annual Public Infrastructure Needs Inventory. Collected information from 136 school systems, 95 counties, 347 municipalities, and 255 other entities.
- Completed the annual report to the legislature on Tennessee's public infrastructure needs.

#### *Other Research*

- Completed the biennial report for fiscal years 2010-11 and 2011-12.
- Continued the study of government transparency for a report to the legislature.
- Completed a report to the legislature on House Bill 472 (Senate Bill 1872) on increasing voter access.
- Continued study of fire service funding.
- Monitored intergovernmental tax, fiscal, and education legislation.

### ***Using Technology for Public Information***

- Implemented an interface to display the Public Infrastructure Needs Inventory data on the University of Tennessee's State Data Explorer website (<http://ctasdata.utk.tennessee.edu/statedashboard2/>).
- Disseminated most reports electronically and maintained detailed focus sections on continuing research (<http://www.tn.gov/tacir/pubs.html>).
- Updated the major public information enhancement, Tracking Tennessee's Economic Recovery (<http://capone.mtsu.edu/berc/tacir/tacir.html>), in partnership with Middle Tennessee State University's Business and Economic Research Center.
- Updated the agency's Facebook page notifying the public of new reports, elaborating on topics of interest, and pointing out relevant research by other organizations (<https://www.facebook.com/TN.ACIR>).
- Increased functionality of the agency's website (<http://www.tn.gov/tacir>).

## **Fiscal Year 2013-14**

### ***Fiscal and Tax Policy Research***

- Continued to monitor and published a report on the Tennessee Valley Authority's payments in lieu of taxes and the effect of the Electric Generation and Transmission Cooperative Act of 2009 as amended in 2010 (Public Chapter 1035, Acts of 2010).

### ***Education Finance***

- Completed the fiscal year 2014-15 fiscal capacity model.
- Served on the Governor's Basic Education Program Task Force.

### ***Land Use, Transportation, and Growth Policy***

- Completed an interim report on municipal boundary changes and growth planning in Tennessee pursuant to Public Chapter 441, Acts of 2013.
- Continued to monitor the implementation of Public Chapter 1101, Acts of 1998, Tennessee's growth policy law.
- Began a study of the costs and time involved in foreclosing on blighted property and how they affect the sale and reuse of the property.

### ***Infrastructure***

- Continued the annual Public Infrastructure Needs Inventory. Collected information from 136 school systems, 95 counties, 347 municipalities, and 255 other entities.
- Completed the annual report to the legislature on Tennessee's public infrastructure needs.

### **Other Research**

- Completed a report to the legislature on Senate Bill 2831 (House Bill 3327) and House Bill 3328 (Senate Bill 2832) on government transparency.
- Completed a report to the legislature on House Bill 600 (Senate Bill 735) on ensuring fair and equitable water and wastewater rates.
- Completed a report to the legislature on Senate Bill 624 (House Bill 1004) on insurance as an alternative to surety bonds for public officials.
- Monitored intergovernmental tax, fiscal, and education legislation.

### **Using Technology for Public Information**

- Disseminated most reports electronically and maintained detailed focus sections on continuing research (<http://www.tn.gov/tacir/pubs.html>).
- Updated the major public information enhancement, *Tracking Tennessee's Economic Recovery*, (<http://capone.mtsu.edu/berc/tacir/tacir.html>) in partnership with Middle Tennessee State University's Business Economic Research Center.
- Updated the agency's Facebook page notifying the public of new reports, elaborating on topics of interest, and pointing out relevant research by other organizations (<https://www.facebook.com/TN.ACIR>).
- Increased functionality of the agency's website (<http://www.tn.gov/tacir>).



## Appendix B: TACIR Publications

### Fiscal Year 2012-13 and Fiscal Year 2013-14

*Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs*  
Commission Report  
August 2012

*Increasing Voter Access: Exploring Options*  
Staff Report  
September 2012

*Intergovernmental Challenges and Achievements*  
*Biennial Report: Fiscal Years 2010-11 and 2011-12*  
September 2012

*Dealing with Blight: Strategies for Tennessee's Communities*  
Commission Report  
November 2012

*Eminent Domain in Tennessee*  
Commission Report  
February 2013

*Charting a Course to Tennessee's Future*  
Staff Report  
February 2013

*Tennessee Valley Authority Payments in Lieu of Taxes—Annual Report to the Tennessee General Assembly*  
Commission Report  
February 2013

*The Recession and Employment in the US and Tennessee: A Long Road Back to Normal?*  
Staff Report  
May 2013

*Fire Service in Tennessee*  
Commission Report  
June 2013

*Land Use in Tennessee—Striking a Balance*  
Commission Report  
June 2013

*Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs*

Commission Report

July 2013

*Human Capital—Status and Momentum of Tennessee's Counties*

Fast Facts

August 2013

*Government Transparency: Can One Size Fit All?*

Commission Report

October 2013

*Municipal Boundary Changes and Growth Planning in Tennessee—An Interim Report on Public Chapter 441, Acts of 2013*

Commission Report

December 2013

*Tennessee Valley Authority's Payments in Lieu of Taxes—Annual Report to the General Assembly*

Commission Report

January 2014

*Insurance as an Alternative to Surety Bonds for Public Officials*

Commission Report

January 2014

*Ensuring Fair and Equitable Water and Wastewater Rates for Non-resident Customers of City Utilities*

Commission Report

January 2014



## **Appendix C: Staff Presentations**

### **Fiscal Year 2012-13 and Fiscal Year 2013-14**

*“Facts, Fear, and the Future”*

Presentation at the Tennessee County Services Association (TCSA) Annual Conference  
October 2012

*“The Role of the Tennessee Advisory Commission on Intergovernmental Relations”*

Presentation to the House Local Government Committee  
February 2013

*“Overview of TACIR and 2013 Legislative Assignments”*

Presentation to the Association of County Mayors at the TCSA meeting  
October 2013

*“Investing in Tennessee’s Infrastructure”*

Presentation to The University of Tennessee Institute for Public Service Naifeh Center for Effective Leadership’s Local Government Leadership Program  
November 2013

*“Charting a Course to Tennessee’s Future”*

Presentation to the Tennessee Campus Compact  
November 2013

*“Annexation and Growth Planning in Tennessee—Proposed Changes”*

Presentation to the Tennessee Municipal Attorneys Association  
February 2014

*“Fiscal Capacity in the BEP Formula—the TACIR Model”*

Presentation to Governor Haslam’s Task Force on Education Funding  
May 2014



## **Appendix D: Conference and Meeting Attendance**

### **Fiscal Year 2012-13 and Fiscal Year 2013-14**

American Society for Public Administration, Tennessee Chapter, Annual Symposium

American Society for Public Administration, National Conference

Cumberland Region Tomorrow Regional Summit

Governor's Conference on Economic and Community Development

Middle Tennessee State University Economic Outlook Conference

Southern Political Science Association

Tennessee American Planning Association Annual Conference

Tennessee American Planning Association Winter Retreat

Tennessee County Services Association Annual Fall Conference

Tennessee County Services Association Post-Legislative Conference

Tennessee Development District Association Annual Meeting

Tennessee Development District Association Spring Conference and Meeting

Tennessee Digital Government Summit

Tennessee Municipal League Annual Conference

Tennessee Municipal Attorneys Association Summer Seminar



## Appendix E: TACIR Organization, Mission, and Goals

### Organization

Consisting of public officials from state and local government and private citizen members, the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) “serves as a forum for the discussion and resolution of intergovernmental problems.”

The 25 members of the Commission capture the richness and diversity of perspectives of private citizens and officials representing different branches and levels of government. Of the 25-member commission, 22 members are appointed to four-year terms, while three are statutory members who hold membership by virtue of their positions. Statutory members include the chairs of the House and Senate Finance, Ways and Means Committees and the Comptroller of the Treasury.

Responsibility for the appointment of four state senators and four state representatives rests with the speaker of each respective chamber of the Tennessee General Assembly. Other appointments to the Commission include four elected county officials, one official nominated by the County Officials Association of Tennessee, four elected city officials, one elected development district nominee, two private citizens, and two executive branch officials. In total, ten members have local government as their primary affiliation, eleven represent the legislature, two are drawn from the executive branch, and two are private citizens.

### Mission

In the late 1970s, legislative findings indicated the need for a permanent intergovernmental body to study and take action on questions of organizational patterns, powers, functions, and relationships among federal, state, and local governments. In pursuit of this goal, TACIR was created in 1978 (Tennessee Code Annotated § 4-10-101). TACIR’s enabling act established what has remained the Commission’s enduring mission (Tennessee Code Annotated § 4-10-104), to

*serve as a forum for the discussion and resolution of intergovernmental problems; provide high quality research support to state and local government officials to improve the overall quality of government in Tennessee; and to improve the effectiveness of the intergovernmental system to better serve the citizens of Tennessee.*

### Goals

Many specific duties and functions are required of the Commission by its enabling act, and additional duties are often assigned by the General Assembly. From its broad set of statutory obligations and special charges, the purpose for TACIR’s existence can be summarized in four concise yet encompassing goals. The Commission strives to

1. advance discussion and deliberation of critical and sensitive intergovernmental policy matters;
2. promote action to resolve intergovernmental problems and improve the quality of government;

3. forge common ground between competing but equally legitimate values, goals, and interests; and
4. provide members of the General Assembly and other policymakers with accurate and timely information and analysis to facilitate reasoned decision-making.

## Appendix F: What Does TACIR Do?

### Objectives

TACIR provides a future-oriented perspective to public policy and intergovernmental relations, identifying and diagnosing policy problems that loom on the horizon. To facilitate the achievement of its mission and goals, TACIR is directed by statute to

- engage in activities, studies, and investigations necessary for the accomplishment of the Commission's mission and goals;
- consider, on its own initiative, ways of fostering better relations among local governments and state government;
- draft and disseminate legislative bills, constitutional amendments, and model ordinances necessary to implement the Commission's recommendations;
- encourage and, where appropriate, coordinate studies relating to intergovernmental relations conducted by universities, state, local, and federal agencies, and research and consulting organizations;
- review the recommendations of national commissions studying federal, state, and local governmental relations and problems and assess their possible application to Tennessee;
- study the fiscal relationships between the federal government and Tennessee's state and local governments;
- study tax equivalent payments by municipally-owned electric operations to the various taxing jurisdictions within the state; and
- study laws relating to the assessment and taxation of property (summarized from Tennessee Code Annotated § 4-10-104).

Additionally, the Commission is directed by statute to meet quarterly and report its research and findings. Commission meetings, with invited guests and experts, and lively and thoughtful debate, form the core around which virtually all commission activities are centered.

Given such broad tasks, the Commission adopts an annual work plan to guide its meetings and research. The work plan is designed to ensure the completion of objectives set forth in the Commission's enabling act, as well as the achievement of its mission and goals. From time to time throughout the year, the commissioners address problems that were not anticipated in the work plan. Generally such matters are addressed at the direction of the General Assembly.





## Appendix G: Legislation Affecting TACIR

### Fiscal Year 2012-13

- Public Chapter 441, enacted by the 108th General Assembly in 2013, directed the Commission to perform a comprehensive review and evaluation of the efficacy of state policies set forth in Title 6, Chapters 51 (municipal boundary changes) and 58 (comprehensive growth plans). The original version of this bill (Senate Bill 279 by Watson, House Bill 475 by Carter) would have required a majority vote of qualified voters in the territory proposed for annexation prior to a municipality annexing within its urban growth boundary. The final version also placed a moratorium on unilateral annexations by ordinance of residential and agricultural property, effective April 15, 2013, through May 15, 2014.
- Six other bills that would have amended portions of Chapter 51 or Chapter 58 were also referred to the Commission for study in 2013:
  - Senate Bill 731 by Watson (House Bill 230 by Carter) would have required all annexations within a municipality's urban growth boundaries under an amended growth plan to be by referendum only and not by ordinance.
  - House Bill 590 by Van Huss (Senate Bill 869 by Crowe): The original bill would have required annexation ordinances to be approved by a vote of the majority of qualified voters residing in the territory proposed for annexation before they become operative. This requirement would have applied to annexations by ordinance initiated by municipalities and annexations by ordinance initiated at the request of a majority of the residents and property owners in a territory proposed for annexation. The bill also would have required municipalities to send copies of proposed ordinances to the residents in the areas to be annexed 90 days prior to the referendum. The House Local Government Committee's amendment to the bill would have required referenda before annexations by ordinance can become operative, but only for annexations initiated by municipalities and not for those initiated at the request of the residents and property owners. The amendment also would have required municipalities to send copies of proposed ordinances to the residents of areas to be annexed 180 days prior to referenda.
  - Senate Bill 1316 by Bowling, House Bill 1249 by Van Huss would have prohibited a municipality from annexing any land within its urban growth boundary that is zoned for agricultural use until there is a change in use triggered by a request for a non-agricultural zoning designation or by sale of the territory for use other than agricultural purposes.
  - Senate Bill 1381 by Bowling, House Bill 1319 by Van Huss: The Senate version and the original House version would have required municipalities to mail a copy of an annexation ordinance or resolution to each property owner within any territory proposed for annexation at least 90 days prior to a proposed annexation date. They also would have required any municipality annexing by ordinance to hold a minimum of three public informational meetings. The House Local Government Committee added two amendments: the first would have reduced the number of public informational meetings to one and required that property owners be sent notice of the time, date,

and location of the public informational meeting, and the second amendment would have required the notice to be sent by certified mail, return receipt requested.

- ▶ Senate Bill 732 by Watson (House Bill 231 by Carter) would have restricted the ability of mayors of municipalities that have not annexed all territory within their urban growth boundaries to propose amendments to growth plans and to serve on coordinating committees reconvened or reestablished to amend growth plans.
- ▶ Senate Bill 613 by Yager (House Bill 135 by Keisling) specified that the mayor of a municipality may propose to amend only the urban growth boundary of that mayor's municipality, and a county mayor or county executive may propose to amend only the boundary between a planned growth area and a rural area. It also clarified the procedures for amending growth plans. All other proposals to change growth plans would have been deemed revisions, which would have required resolutions by either the county legislative body or the governing bodies of municipalities containing at least half the population living in municipalities.
- The legislature also referred bills pertaining to water rates and to insuring against breach of fiduciary duty by public officials and employees:
  - ▶ House Bill 600 by Hill, T. (Senate Bill 735 by Green) would have prohibited Johnson City from raising water rates on consumers located outside the city limits within Sullivan County 50% or higher than the rate charged to consumers located within the city limits.
  - ▶ Senate Bill 624 by Norris (House Bill 1004 by Todd) would have authorized any governmental entity to purchase insurance policies to protect against breach of fiduciary duty by public officials and employees. The Senate State and Local Government Committee amended the bill to direct the Commission to study "the issue of possible insurance policy coverage satisfying the requirement of an official surety bond."
- As directed by Public Chapter 1035, Acts of 2010, the Commission continued to monitor whether the current wholesale power supply arrangements between the Tennessee Valley Authority (TVA) and municipal utilities and electric cooperatives were likely to change in the future in a way that could affect payments in lieu of taxes from TVA to the state and its local governments.
- As directed by Public Chapter 817, Acts of 1996, the Commission completed the annual Public Infrastructure Needs Inventory and Report.
- Pursuant to Public Chapter 1101, Acts of 1998; Public Chapter 672, Acts of 2000; and Public Chapter 594, Acts of 2002, the Commission continued to monitor and report on implementation of the state's growth policy act.
- The Commission completed a comprehensive study of land use, including analysis of seven bills referred by the House State and Local Subcommittee in 2012:
  - ▶ House Bill 125 by Sargent (Senate Bill 347 by Haynes)
  - ▶ House Bill 2818 by Faison (Senate Bill 2878 by Southerland)
  - ▶ House Bill 3040 by Elam (Senate Bill 3171 by Haynes)

- House Bill 3041 by Elam (Senate Bill 3119 by Yager)
- House Bill 3042 by Elam (Senate Bill 3167 by Haynes)
- House Bill 3043 by Elam (Senate Bill 3118 by Yager)
- House Bill 3105 by Faison (Senate Bill 2876 by Southerland)
- The staff completed, and the Commission accepted, a study of the provisions of House Bill 472 by Pitts (Senate Bill 1872 by Kyle) on the feasibility of allowing voters to vote in a place of temporary residence. The Commission reported its findings to the House State and Local Government Committee.
- The Commission completed a report on remedies for blight as directed by Senate Joint Resolution 103 by McNally. That report included analysis of House Bill 2996 by Parkinson (Senate Bill 2933 by Norris and Campfield), requiring a registry of owners of blighted property, which was referred to TACIR for study. The Commission reported its findings to the House State and Local Government Committee and the Speaker of the Senate.
- The Commission completed a study of the provisions of Senate Bill 1566 by Ketron (House Bill 1576 by Carr) and House Bill 2877 by Gotto (Senate Bill 2745 by Johnson), both dealing with eminent domain, and reported findings and recommendations to the Senate Finance, Ways and Means Committee, House State Government Committee, and House Local Government Committee.
- The Commission completed a study of the provisions of House Joint Resolution 204 by Haynes on fire service in Tennessee, and reported findings and recommendations to the Speaker of the House.

## Fiscal Year 2013-14

- Five bills were referred to the Commission by the 108th General Assembly in 2014:
  - House Bill 1649 by T. Hill (Senate Bill 1749 by Niceley) would have allowed fire sprinkler exemptions for certain places of worship.
  - Senate Bill 1935 by Johnson (House Bill 2250 by Casada) would have given local legislative bodies a line-item veto over administrative spending in a school district's proposed budget when that spending exceeds 10% of the total proposed budget.
  - House Bill 1855 by Ryan Williams (Senate Bill 1840 by Norris) would have created civil causes of action against any person who physically invaded the privacy of another or who attempted to capture a visual image, sound recording, or any other physical impression of a person engaging in personal or familial activities.
  - Senate Bill 1671 by Southerland (House Bill 1390 by Faison) would have required local property assessors to exclude the value attributable to low-income housing tax credits from properties' total assessed values.
  - House Bill 2457 by Lundberg would have created the Uninsured Motorist Identification Database Program, which would have been administered by the Department of Revenue

with the cooperation of the Departments of Safety and Commerce and Insurance, and maintained by a contractor. The Department of Safety would use the database to enforce compliance with the state's Financial Responsibility Law, which requires drivers to have insurance or other coverage (including a cash deposit or bond held by the Department of Safety), and revokes registrations of uncovered motorists. The House Transportation Subcommittee referred the bill to the Commission for summer study, but the Senate Commerce and Labor Committee created a separate summer study committee for the companion bill (Senate Bill 2517 by Ketron).

- The General Assembly passed three bills requiring further work by the Commission pertaining to annexation by ordinance, abusive conduct in the workplace, and funding for emergency-911 services:
  - Public Chapter 707 eliminates cities' authority to annex by ordinance and extends the Commission's comprehensive review of municipal boundary changes and comprehensive growth plans initiated under Public Chapter 441.
  - Public Chapter 795 creates a new funding mechanism for emergency communications services in Tennessee, and requires the Commission to study funding, functionality, and other effects of the changes and report conclusions to the Joint Committee on Government Operations on or before September 15, 2017.
  - Public Chapter 997 directs the Commission to develop a model policy for employers to prevent abusive conduct in the workplace in consultation with the Department of Human Resources and municipal and county organizations including, but not limited to, the Tennessee Municipal League, the Tennessee County Services Association, the Municipal Technical Advisory Service, and the County Technical Assistance Service. If a state agency or local government adopts the model policy or one that conforms to its requirements, then the employer shall be immune from suit for any employee's abusive conduct that results in negligent or intentional infliction of mental anguish.
- As directed by Public Chapter 1035, Acts of 2010, the Commission continued to monitor whether the current wholesale power supply arrangements between the Tennessee Valley Authority (TVA) and municipal utilities and electric cooperatives were likely to change in the future in a way that could affect payments in lieu of taxes from TVA to the state and its local governments.
- As directed by Public Chapter 817, Acts of 1996, the Commission completed the annual Public Infrastructure Needs Inventory and Report.
- Pursuant to Public Chapter 1101, Acts of 1998; Public Chapter 672, Acts of 2000; and Public Chapter 594, Acts of 2002, the Commission continued to monitor and report on implementation of the state's growth policy act.
- The Commission completed a study of the provisions of Senate Bill 2831 by Ketron (House Bill 3327 by Carr) and House Bill 3328 by Carr (Senate Bill 2832 by Ketron) on government transparency and reported findings and recommendations to the Senate Finance, Ways and Means Committee, the House Local Government Subcommittee, and the House State Government Subcommittee.

- The Commission completed an interim report pursuant to Public Chapter 441, Acts of 2013 on municipal boundary adjustments and growth planning and submitted findings and recommendations to the Speaker of the House and the Speaker of the Senate.
- The Commission completed a study of the provisions of House Bill 600 by Timothy Hill (Senate Bill 735 by Green) on water rates for municipal utilities customers living outside of cities' boundaries and reported findings and recommendations to the House Local Government Committee.
- The Commission completed a study of the provisions of Senate Bill 624 by Norris (House Bill 1004 by Todd) on allowing insurance as an alternative to individual surety bonds and reported findings and recommendations to the Senate State and Local Government Committee.



## Appendix H: Commission Meeting Minutes

### Fiscal Year 2012-13 Scheduled Commission Meetings

#### *September 12-13, 2012*

##### **Panel Discussion on Eminent Domain: Issues and Alternatives**

As part of its study on eminent domain issues—including methods for resolving valuation disputes when property is taken by condemnation, the exercise of eminent domain by housing authorities, and the right of first refusal—the Commission heard from a panel representing various interests. The panel included representatives from the Tennessee Municipal League, Tennessee County Services Association, the City of Brentwood, the Tennessee Association of Housing and Redevelopment Authorities, the Knoxville Community Development Corporation (KCDC), the Tennessee Farm Bureau Federation, and attorneys with alternative dispute resolution experience. Following the discussion, Commission members asked a series of questions about the differences between arbitration and mediation, including questions on their costs relative to litigation, the amount of time required for each process, and how successful they are in preventing litigation.

##### **Biennial Report for Fiscal Year 2010-11 and Fiscal Year 2011-12**

The Commission adopted its biennial report for fiscal years 2010-11 and 2011-12.

##### **Blight Report Update**

The Commission received an update on the blight report directed by the 107th General Assembly and requested comments from the members. The preliminary conclusion of staff was that the current laws give local governments sufficient tools to deal with blight. There was some discussion on urban renewal, blighted properties, and the use of eminent domain, as well as the effects of blight on property values in neighborhoods. Senator Henry said he does not believe property owners should be run out because their homes aren't up to codes. Chairman Norris said that Senator Henry's concerns were the same as those mentioned in the General Assembly and may have to be addressed in different forms in the next session. A few members noted the difference between blight issues in urban and rural areas and stated that the laws should be addressed accordingly.

##### **Fire Service Study Update**

The Commission received an update on a study of the collection methods used by local governments to fund fire service, the overall impact on local governments when not protected by a fully funded fire department, and the impact of making fire service an essential service. Staff highlighted five basic funding methods and described their interpretation of "fully funded" and "essential service," explaining the difficulties of answering the questions posed in the resolution calling for the study without clear definitions of those terms.

Mayor Beets asked about fire tax districts and whether residents of cities that provide fire service are double-taxed if their county uses fire tax districts. Staff said they should not be and explained that the law allows counties to create fire tax districts, and that residents of each fire tax district pay only for their share of fire service. Chairman Norris said any cost-effective way for counties and cities to fund fire service is worth considering.



### **Economic Update**

The Commission received an update on various aspects of the Tennessee economy, including gross domestic product (GDP), employment growth, unemployment claims, changes in the housing market, and sales and property tax collections. GDP had been growing, but at a slow rate. Likewise, employment had been increasing for the previous 23 months, but it was weak. The 2007 recession, unlike the 2000 recession, caused sales and property tax collections to shrink for some years. Five of the ten counties that reappraised their property in 2012 had either zero or negative growth.

### ***November 28-29, 2012***

#### **Federal Action on the Budget—Potential Effects on Tennessee**

The Commission received a presentation from TACIR senior research consultant Dr. Reuben Kyle, the General Assembly Senate Budget Analysis Director, Rick Nicholson, and the director of the Division of Budget, Tennessee Department of Finance and Administration, David Thurman, on the potential effects of federal budget actions relating to the “fiscal cliff” on the state. They were told that if current laws were not changed by the end of December 2012, then the personal income tax, the payroll tax, the alternative minimum tax, the estate tax, and the tax on long-term capital gains would all increase, and the state would lose funding for a number of federal programs. The total effect on Tennessee would have been a loss of \$95 million. They were also told that there is no flexibility with federal funding; the state receives federal dollars for very specific federal programs. The intent was to make reductions to those specific programs. It was unclear what the effect of budget inaction could be on federal programs with non-supplant provisions, with the risk being that the state could be held accountable for maintaining any increases in state or local funds made to backfill the decreases in federal funds.

#### **Recent Trends in Local Sales Tax Bases in Tennessee**

The Commission received an update on local sales tax bases, including information on how an increase in federal taxes resulting from the fiscal cliff would reduce after-tax income, possibly reducing sales tax revenue because Tennesseans would have less money to spend. States reliant on sales taxes faced larger percentage losses because of the potential fiscal cliff than states that also have an income tax. While the state’s economy had been improving overall, the recovery in local sales tax collections had been uneven.

#### **Blight Report—Final Report for Approval**

The final report on legislation related to remedying blight was presented to the Commission. The report concluded that there are a number of laws already on the books in Tennessee that seem to be adequate in dealing with blight. The difficulty that most communities have is finding the resources to use these laws successfully. Four of these laws apply in only certain communities: the Neighborhood Preservation Act, the Residential Rental Inspection law, the Vacant Properties Acquisition Act, and the Local Enterprise Zones law. The report suggested making these laws more widely available. Another law which applies to municipalities but not counties, allows the administrative hearing officer to impose an administrative fine of up to \$500, which is not subject to the constitutional limit of \$50 placed on courts acting without juries. Chairman Norris requested that staff add a footnote to the report about constitutionality being an open question. The Commission also asked staff to add to the list of cities that had already adopted this measure.



The Commission approved the report and, at the request of Senator Kyle, directed staff to conduct a separate study of the cost involved in foreclosures and how it affects the sale and reuse of the property.

### **Sustainable Competitiveness for Tennessee's Counties: A Collaboration between TACIR and TSU**

The Commission received an overview from two Tennessee State University professors, Dr. Soumen Gosh and Dr. Meg Streams, who are working on a TACIR funded study, *Analyzing the Factors Underlining Sustainable Competitiveness of the State of Tennessee and its Counties*. The goals of the study are to operationalize the concept of sustainable competitiveness for Tennessee counties and identify its potential drivers. It will examine whether sustainable competitiveness matters for economic development and whether it is possible to find areas of cooperation between jurisdictions to enhance their competitiveness, as well as identify their strengths and patterns.

Commissioner McMahan asked Dr. Gosh about the applicability of the project across the nine economic development regions used by the Department of Economic and Community Development (ECD) Dr. Gosh responded that the study complements the work of that department. Commissioner McMahan also suggested that Drs. Gosh and Streams interface with ECD and reach out to Launch Tennessee.

### **Eminent Domain Legislation—Draft Report for Review and Comment**

A draft report covering three major issues in eminent domain was presented to the Commission. First, Senate Bill 1566, which was sent to TACIR for study, would have authorized a property owner to force a local government into binding arbitration to determine the price to be paid for condemned property. Local governments would not be able to object to the use of binding arbitration. Second, House Bill 2877, which was also sent to TACIR for study, would have eliminated the power of housing authorities to condemn property and instead require the municipal or county governing body that approved a housing authority project to condemn property if necessary to implement the plan. Third, a related bill not sent to TACIR for study, Senate Bill 548, was also included in the report. It would have given a right of first refusal to property owners whose property was condemned by a local government or a state agency. A right of first refusal gives the property owner the opportunity to repurchase their condemned property if the condemner decides not to use the property and sell it instead.

Vice-Chairman Rowland asked where mediation comes into play under current state law. Staff explained that parties can choose to engage in mediation, but one cannot force the other into it; however, according to Tennessee Supreme Court Rule 31, Alternative Dispute Resolution Section 3(b), once a court case has been filed, the court can require the parties to engage in mediation.

Mayor Waters pointed out that there are often huge differences between the condemning entity's appraisal and that of the property owner. When questions of value reach the jury, the jury often takes the middle ground. Mediation could help the parties get to that point more efficiently. Senator Kyle suggested that the report clearly state that there are many options, but it should explicitly say that binding arbitration is not the way to go.

Chairman Norris agreed that the delegation of authority language should be removed from state law to ensure that the elected body that approved the plan is accountable for it. Responding to Mayor Bragg's concern about taking the power of eminent domain away from housing authorities, Executive Director Roehrich-Patrick clarified that the language being discussed (language in Tennessee Code

Annotated § 13-20-203) relates to approval of a housing agency's plan, not its power of eminent domain. Removing the language would just ensure that a city council could not choose to delegate the entire process to the housing authority and let them operate on their own, deciding where to redevelop as well as where to condemn.

The draft report recommended that the right of first refusal be extended to all state and local government condemnations. Commission members discussed at what price, expressing concerns about determining fair market value and avoiding a double recovery. Senator Kyle pointed out that the local government decides unilaterally to take the property and accepts the risk of its change in value when they condemn it and so should, in effect, pay the penalty if the project is not completed by offering it at the price paid to the original owner. The consensus of the members was to suggest a right of first refusal at the price paid by the government agency for the property. At Senator Henry's suggestion, the members also agreed that the right of first refusal be extended to the former property owner's heirs, although Senator Kyle expressed reservations about identifying heirs, citing an example from Memphis where the federal government razed properties and then took close to forty years to decide not to move forward with a project.

### ***February 5-6, 2013***

#### **Amendment to TACIR's Work Program for Calendar Year 2013**

The Commission amended the work program to add studies of bills assigned by the 108th General Assembly and requested by its committees. The bulk of the bills referred pertained to annexation and Public Chapter 1101, Acts of 1998, the state's growth policy act. The legislature also referred bills pertaining to water rates and to insuring against breach of fiduciary duty by public officials and employees.

#### **Annual Report on Tennessee Valley Authority (TVA) Payments in Lieu of Taxes (PILOT)—For Approval**

The Commission approved the annual report on TVA PILOTs, which found that payments to Tennessee were estimated to decline \$43 million because TVA lost its largest customer and because of the continuing slowdown in economic activity. For counties, the decline was estimated to amount to slightly more than \$1 million, total payments to cities to be \$462,062 less, and the state and its agencies to lose approximately \$2 million. The Commission discussed the need to make local governments more aware of the implications of TVA's new expansion strategies. Mayor Greer said that TVA personnel met with representatives of the Association of Tennessee Valley Governments at its quarterly meeting in January to engage in exactly that kind of discussion.

#### **Fire Service Study—Draft Report for Review and Comment**

In the draft report, staff analyzed data on funding and fire service delivery methods but found no statistically significant relationships, even when looking at issues such as the relationship between property loss and a fire department's per capita budget, the percentage of a department's firefighters that are full-time career employees, and the number of firefighters who are certified. Staff also found no statistically significant relationship between fire deaths and these three measures. Chairman Norris asked that the final report provide further information about the deductibility of fire taxes versus fire fees.

Mayor Beets asked whether mutual aid agreements were studied in the preparation of this report. Staff responded that they looked at the Tennessee Fire Marshal's studies on incidents in which mutual

aid was given or received and found no significant relationship. Commissioner McMahan pointed out that they have mutual aid agreements in Cocke County for fire service for their industrial parks and developments, and that businesses are reluctant to locate there without those agreements. Chairman Norris asked TACIR staff to add more information about mutual aid agreements to the report.

Mr. Schumpert said he had a hard time believing that there wasn't a relationship between funding and service outcomes. Staff explained that while they found no significant correlation between funding and outcomes, they did not conclude that there is no relationship, only that the data available to them doesn't demonstrate one.

### **Rural Interstate Highway Congestion**

The Commission received an overview of an upcoming staff report on rural interstate highway congestion. The staff intends to examine the existing interstate corridor studies and related information, investigate the evolving predictions of the timing of the problem, obtain more detailed data about interstate traffic, and find alternatives to address the problem. Studies of the problem reach the same conclusion with only minor differences in the timing: the congestion on Tennessee's rural and small urban interstate highways is forecast to greatly increase intercity travel times. Studies also show that Tennessee's highways carry more pass-through truck freight than any other state. The question is how much of the state's own resources must it spend to ensure that traffic that does contribute to the state's economy can move freely.

The draft report suggested that state transportation policy makers should

- complete the I-24 and I-65 corridor studies with attention to their unique travel demand markets,
- re-evaluate the previous I-40/I-81 corridor study based on its disaggregated travel demands,
- establish project priorities for the state's rural highways using criteria appropriate to intercity travel demands, and
- include these priorities in the state's transportation planning and budgeting processes.

### **Eminent Domain Legislation—Final Report for Approval**

The Commission amended and approved the final report on eminent domain, which had already been revised based on the comments provided by the Commission at its November 2012 meeting to state that "requiring property to be offered to the former owners at the price paid by the condemner makes the property owners whole and puts them in the same position they would be in had the condemnation not taken place. Extending this right to the owner's heirs and assigns would also ensure that the heirs and assigns could be made whole." Staff also revised the draft report to include additional language further stating that better efforts should be made to inform property owners of their rights. A motion to strike the section on right of first refusal from the report failed for lack of a second. A motion to remove the language recommending that the right of first refusal be extended to heirs and assigns passed, as did a motion to amend the report to recommend that the TDOT model for right of first refusal should be followed.

### **Land-Use Legislation—Draft Report for Review and Comment**

The draft report focused on the seven bills concerning land use that were referred to TACIR during the 107th General Assembly. The bills focused on four basic topics: what constitutes a subdivision,

who gets to regulate land use outside the city limits in areas set aside for them to annex, roads built by developers, and grandfathering in land uses that don't conform to new zoning requirements.

Chairman Norris said one of the challenges is that these bills have expired, but the issues remain. He asked the Commission to provide guidance on how to move forward with this study and how to keep it timely. Mayor Burgess said he would like the legislature to recognize the complexity of these issues and ask TACIR to look, along with them, at Public Chapter 1101 in a comprehensive way. Chairman Norris agreed that the Commission would do so with the growth policy study, as perhaps these issues could be intertwined.

### **Regional Water Supply Planning in Tennessee**

The Commission received a presentation of regional water supply planning by Mr. Robert Martineau, Commissioner of Tennessee Department of Environment and Conservation (TDEC), and Ms. Elaine Boyd, Director of Strategic Management on Regional Water Supply Planning, TDEC. The presentation recapped the regional water supply pilot studies that grew out of the 2007 drought and discussed the role of the TDEC commissioner's Water Resources Technical Advisory Committee (WRTAC) in preparing those studies. The WRTAC completed drought-planning work first and then proceeded with two pilot studies in order to develop guidelines for regional water supply resource planning. The department has added a third pilot study area in Wayne County because the first two studies did not address a groundwater-sourced area. Commissioner Martineau reported that new legislation passed in 2012 had updated the law that created the WRTAC so as to make it optional. He acknowledged that there is more work to be done and so has appointed a new WRTAC, which met for the first time the last week of January, 2013.

Chairman Norris asked whether the Groundwater Institute at the University of Memphis had been of any help concerning groundwater. Commissioner Martineau said of course they would be, but they have not had any formal collaboration with them to date. Chairman Norris asked whether the basin authorities in Middle and West Tennessee were involved. Commissioner Martineau said there are currently many different groups out there with their own data and analyses, but nothing is being analyzed at the statewide level. Chairman Norris asked whether the commissioner had been asked to present to other legislative committees, such as the Senate Energy, Agriculture and Natural Resources Committee. Commissioner Martineau reported that they have not been asked but would gladly do so. Chairman Norris said he would discuss this with Senator Southerland who serves as chair of that committee. Commissioner Martineau responded that he does have a meeting scheduled with Senator Southerland next week.

Mayor Burgess asked how TDEC determines the need for regional water supply plans and expressed concern about requiring everyone to complete these plans. Commissioner Martineau responded that the WRTAC is tasked with figuring that out, adding that regions would be treated differently based on water source, and that intergovernmental and utility district issues would also be raised.

### ***June 19-20, 2013***

#### **Legislative Update on the First Session of the 108th General Assembly**

The 108th General Assembly took action directly related to findings and recommendations in two Commission reports, *Safe Digging: Working Together to Prevent Damage to Underground Utilities* and *Eminent Domain in Tennessee*, as well as one staff report, *Appointment v. Election of Utility District*

*Commissioners.* The General Assembly also referred nine bills to the Commission for study, seven of which pertain to annexation and Public Chapter 1101, Acts of 1998, the state's growth policy act. The legislature also referred bills pertaining to water rates and to insuring against breach of fiduciary duty by public officials and employees.

During discussion of the bills sent to the Commission for study, Chairman Norris emphasized that the study directed by Public Chapter 441 will help add focus to the Commission's comprehensive review of Public Chapter 1101. He asked that the study include consideration of the practical effects of annexation, both positive and negative. Mayor McBride asked that it also review the requirement for mandatory meetings of Joint Economic and Community Development Boards, as part of the PC 441 study, while Senator Henry asked that the chairs of the referring committees be consulted to ensure that their questions were answered. Senator Henry also asked that the report consider the effect of the state's realignment of its planning offices on local governments and their ability to plan growth.

In discussion of the other bills sent for study, Senator Kyle raised his concern that it is improper to use insurance in lieu of surety bonds, suggesting that you cannot insure against a wanton, willful act. Senator McNally asked whether the study on the effect of foreclosures on blighted areas would consider the costs to local governments of holding foreclosed properties. Staff noted that the study would consider those costs. Chairman Norris reminded the members of the land bank pilot program in Oak Ridge that was discussed in an earlier Commission report on blight, and Mayor Bragg asked that when studying water and sewer rates, as directed by House Bill 600, staff be sure to consider situations like those in Rutherford County, where Murfreesboro residents served by the utility district pay higher water rates than those served by the city.

Referring to the panels indicated in the PC 441 research plan, Chairman Norris also asked whether the Commission members would have input into selecting the panelists. Executive Director Roehrich-Patrick said that the staff wants to ensure that no point of view is excluded. They started by speaking with the bill sponsors and have already contacted various representatives, including property rights advocates, chambers of commerce, and the Farm Bureau. She noted that the staff would welcome any additional suggestions. Senator Henry suggested that staff run the research plans for legislative assignments by the committee chairs and their staff.

### **TACIR's Fiscal Year 2012-13 Achievements**

The Commission received an update on TACIR's major achievements during fiscal year 2012-13 (see appendix A).

### **Preliminary Report on the Growth Policy Act Study**

The Commission received an update on the work TACIR staff is doing towards the study of municipal boundary changes and comprehensive growth plans, as directed by the Commission and the legislature. The update included an overview of the bills introduced over the years that have attempted to change these laws—bills passed or failed—and many that were referred to TACIR for study. The update also included a brief history of the work TACIR has done in past years related to annexation issues and growth planning, including several published reports, a discussion of the formation by the legislature of an ad hoc study committee to develop the bill that became Public Chapter 1101 in 1998, and an overview of annexation-related laws in other states.



Representative Carter stated that he only wants to add referendum requirements for annexations under the state’s comprehensive plan laws, adding that PC 1101 is one of the best pieces of legislation ever and should be otherwise left alone. In response, Chairman Norris reminded the Commission that it had begun a comprehensive review of growth planning before Public Chapter 441 became law. Mr. Cardwell agreed with Representative Carter on the usefulness of referendums, stating that annexation works when people get together to make it work for all.

### **Land-Use Legislation—Final Report for Approval**

The Commission approved the final report after discussing a number of issues concerning extraterritorial planning, including who sets road bond amounts, how extraterritorial subdivision regulations and zoning are enforced through the courts, and the extension of an extraterritorial planning authority into an extraterritorial planning region. During the discussion, County Executive Huffman asked whether metropolitan planning organizations and regional planning organizations in extraterritorial planning regions are affected in any way when a municipality chooses to give up its region. Mr. Bill Terry, senior research consultant at TACIR, replied that neither type of organization is affected when a municipality chooses to give up its extraterritorial planning region.

Following a discussion of annexation and extraterritorial planning, Chairman Norris asked for discussion of whether the joint economic and community development boards are being used effectively or are underutilized. Mr. Terry said that they are not used in some counties but are in other counties. Mayor Bragg stated that the intent of the boards was to force cities and counties to sit down and talk. Mayor McBride stated that the communication aspect is evident in his county, but there is no reason to come together to visit because there is not a lot of economic development going on at this time. He suggested reducing the number of required meetings.

Senator Henry suggested that the Commission’s executive committee look into the possibility of reinstating the state planning commission to deal with the issues discussed in the report. Senator McNally said that some local officials have been using nuisance laws to combat criminal activity and asked the staff to look into how easy this is to do.

### **Fire Service Study—Final Report for Approval**

The Commission approved the Fire Service Study. The study, directed by House Joint Resolution 204 of 2011, asked TACIR to answer three questions: 1) How is fire service funded, especially in rural and suburban areas, whether provided by paid or volunteer fire departments? 2) What is the effect on local governments of not having a fully funded fire department? 3) What would it mean if firefighting was made an essential service? Answering the first question, the report found that current funding methods are clearly outlined in state law, with different types of fire departments having access to different types of funding based mainly on whether they are city, county, or private departments. The most notable difference between cities and counties is that counties can establish fire tax districts with differential property tax rates to fund fire service, but cities cannot. The report concluded that there is no obvious reason not to extend this option to cities.

Answering the second and third questions was not as easy because of ambiguity in the language in the resolution and a lack of relevant findings in the data. Because data for both fire incidents and funding of fire departments is self-reported, there are many inconsistencies and gaps in it. Consequently, the limitations of the data, as well as the absence of a statistical relationship between fire department characteristics and fire losses in the data, made formulating recommendations impossible, but a

2011 University of Tennessee study of fire deaths by Census tract provides some important policy suggestions. That study found that 90% of the Census tracts in Tennessee at highest risk for fire deaths are rural tracts characterized by high poverty; low education levels, incomes, and housing values; and a large number of mobile homes. The State Fire Marshal's Office has already begun to target those high-risk areas in an attempt to reduce fire deaths.

#### **Fiscal Capacity for Fiscal Year 2014**

The fiscal year 2014 fiscal capacity results were presented. The TACIR index continues to be averaged with the one produced by the Center for Economic and Business Research (CBER) at the University of Tennessee for use in the state's Basic Education Program (BEP) formula.

The Commission was also presented information on the virtual academy in Union County and its effect on fiscal capacity. The academy has been in operation since the 2011-12 school year. It was authorized by the virtual public schools act, Public Chapter 1096, Acts of 2008, and serves students in grades K-8 from across the state. Some of these students were not enrolled in public schools before enrolling in the virtual academy. For fiscal capacity and funding purposes, it is as if they are physically enrolled in Union County schools. With this increase in enrollment, Union County's fiscal capacity has decreased. Without the virtual school students, its fiscal capacity would have increased. The addition of the virtual school students to the state's overall enrollment increased the total cost of the BEP, and by extension, the total cost of the collective local share. If Union County pays less of the local share, then the other counties pay more. Even if a county has no children going to a virtual school their local share will still increase.

Senator Kyle suggested that the BEP formula might better be viewed as a local government funding formula rather than as an education funding formula. He took notice of concerns about accounting for balkanization within counties and pulling funding from public schools to charter and virtual schools.

Chairman Norris said the Commission could have the Department of Education report back to us on the effect of the virtual academy. He asked staff to give some thought to possible recommendations to address the situation and to consider coordinating with the Department of Education about the possibility of the department reporting to the Commission on the effect of virtual schools on funding.

## **Fiscal Year 2013-14 Scheduled Commission Meetings**

### ***July 25, 2013***

#### **Public Chapter 441**

The Commission received presentations by Mr. Dennis Huffer, Legal Counsel, and Mr. Sam Edwards, Executive Director, Greater Nashville Regional Council, on the history of annexation and growth policy in Tennessee and heard from the first of series of panels presenting information on annexation and other municipal boundary adjustment issues. That panel, representing various non-government points of view, included

- Citizens for Home Rule, Inc., John Avery Emison, President;
- Homebuilders Association of Tennessee, Mitzi Spann, President;
- NAIOP Commercial Real Estate Development Association, Nathan Ridley, Attorney;

- Tennesseans Against Forced Annexations, William Haupt, Founder;
- Tennessee Association of Conservation Districts, Danny Sells, Executive Director, and Spokesperson for Citizens to Maintain Gray;
- Tennessee Association of Utility Districts, Bob Freudenthal, Executive Director;
- Tennessee Chamber of Commerce & Industry, Paul Latture, President of Rutherford County Chamber of Commerce; and
- Tennessee Farm Bureau, Rhedona Rose, Executive Vice President.

Mr. Huffer presented annexation's history and current issues, including a discussion of why cities annex. He noted that the issue of how to deal with services provided by utility districts was, and remains, a difficulty for cities. Following his presentation, several members discussed plan of service requirements. Representative Odom asked whether there is a requirement for cities' plans of service to include a timeline. Mr. Huffer explained that there is no specific requirement in the statute, but that each city does spell out the period in its plan of services. Mayor McBride discussed the problems of cities annexing land in rural areas when they have no intent of providing services to those developing areas. Mayor Bragg noted that different cities provide different services, some more than others, and that his city extends the same services to newly annexed areas.

Mayor Waters asked Mr. Huffer to comment on the downsides of allowing referendums on annexation. Mr. Huffer said only that it is difficult to get people to vote to pay more taxes, even if they will benefit from services. Representative Carter challenged Mr. Huffer's assertion that cities must be able to grow or else they die. He emphasized the fact that annexed citizens have no vote or voice in the process, yet are saddled with existing city debt, noting that some people choose not to live in the city.

Mr. Edwards presented the history and implementation of Tennessee's Growth Policy Act (Public Chapter 1101, Acts of 1998). He stressed the number of legal battles and amount of fighting that took place between cities and counties before PC 1101 passed.

During Ms. Rose's section of the panel presentation, she and Mayor Beets discussed North Carolina's exemption of "bona fide" farms and how that term is defined. The Commissioners discussed Tennessee's Greenbelt Law, which protects certain farms, forests, and open lands from being taxed at higher values. Commissioner McMahan asked about grandfathered properties that had been annexed before PC 1101 was adopted and about land conservancies. Mayor Bragg pointed out the difference between "ratepayer services" and "taxpayer services."

Following the panel presentation, the Commission discussed several issues related to growth planning. Chairman Norris asked if annexation was integral or incidental to the rest of PC 1101. Mr. Edwards responded that it is incidental, because the law covers more than just annexation. It did make the process better and clearer, in his opinion. Vice Chairman Rowland stressed the importance of cities being able to help counties develop commercial and industrial property as well. Mayor Beets stated that failure of a city to extend its boundary to embrace growth would be irresponsible. In his experience, the law is working well.

Senator Kyle and Mr. Edwards discussed the issue of state-shared taxes and also brought up the issue of annexation and municipal school districts. Senator Kyle expressed concern that cities may seek



annexation to add students to their districts. Mayor Waters stressed the importance of cooperation and asked about enforcement of plans of service. Representative Carter asked whether requiring that annexations be approved by referendum would harm the rest of the PC 1101 law. Mr. Edwards responded that it would not, but that there are systems in place that were agreed upon, and that he didn't want to penalize cities that do things right.

### **Annual Report on Public Infrastructure Needs Inventory—For Approval**

The Commission approved the annual report on the public infrastructure needs inventory, *Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs*. Discussion of the report centered on the July 1, 2013, merger of the Memphis City school district and the Shelby County school district, as well as the proposed creation of several new school districts in Shelby county.

### ***August 21-22, 2013***

#### **Background on Insurance and Surety Bond Legislation**

The Commission received background information on Senate Bill 624, sent to TACIR by the Senate State and Local Government Committee with instructions to study whether insurance would be a suitable alternative to the public official surety bonds currently required. The presentation included definitions of common terminology, some of which is confusing, followed by a summary of the state's current law on surety bonds. The presentation included a brief explanation of Arkansas's and Idaho's systems, which have coverage methods other than surety bonds to cover their public officials. Arkansas has a mandatory "Self-Insured Fidelity Bond Program," while Idaho allows for optional insurance coverage in lieu of surety bonds. The Commission requested to hear from proponents of the bill and others parties, such as the Department of Commerce and Insurance, at the October 2013 meeting.

#### **Municipal Boundary Changes and Comprehensive Growth Plans, Public Chapter 441, Acts of 2013**

The Commission received an update on the study directed by Public Chapter 441 and heard from the second and third panels presenting information on annexation and related issues. Those panels represented county and municipal interests. The update included overviews of other states' laws on annexation and on growth boundaries and planning. The majority of states require consent from voters or owners in areas where annexation is proposed. In some states, a third party must approve an annexation before it goes to the voters. Many of the annexation-by-consent states authorize annexation without consent in limited circumstances. Tennessee is one of 29 states that requires at least one public hearing before annexation. Unlike some states, Tennessee does not require any public informational hearings.

Following the discussion on other states' annexation laws by Ms. Leah Eldridge, research manager at TACIR, Mayor Bragg asked whether staff had found other states that are currently going through the same type of study. Ms. Eldridge replied that she was not aware of any, but that North Carolina had very recently made many changes. Senator Henry asked whether the National League of Cities or National Association of Counties had positions on this issue. Neither group has a current policy or position available regarding the requirement of referendum for annexations.

Senator McNally noted that Tennessee is on the low end for notice requirements and asked about mail notification. Ms. Eldridge noted where the chart reflects mail notification and confirmed that Tennessee's requirements for notice are at the low end of all states.

At Vice Chairman Rowland's request, Ms. Eldridge explained that islands are areas of unincorporated territory completely surrounded by a city. Mayor Bragg asked whether Tennessee law currently requires annexation of islands. Ms. Eldridge responded that it does not and that some other states merely permit annexation of islands without consent. Ms. Eldridge confirmed that it is possible to have an unincorporated island in Tennessee.

County Executive Huffman asked whether a city proposing deannexation has to have approval by three-quarters of the entire city or just those within the affected territory. Tennessee Code Annotated § 6-51-201 provides two methods for deannexation, one of which puts the matter to a vote by the entire city and requires three-fourths approval to pass. The other allows for a vote by only residents of the area to be deannexed. The city must provide notice and hold a public hearing for a deannexation ordinance. If the city legislative body approves the ordinance, then the voters within the affected area get 75 days to petition for a referendum. If the petition is signed by 10% of the registered voters in the area, then a referendum among just the voters in the affected area is held. In this case, a simple majority is all that is required to approve the deannexation.

Mr. Bill Terry, senior research consultant at TACIR, provided the overview on other states' growth policy laws. Compared to other states, Tennessee's growth boundary laws are unique in several ways, including the designation of planned growth areas, county coordinating committees, and joint economic and community development boards. Some states require periodic revision of plans, while others' laws are merely permissive and plans may be amended at any time. In Tennessee, local governments may amend the growth boundaries as often as desired or not at all. Approximately 25 counties have revised their growth plans since their initial adoption.

Mr. Terry also noted the 15-year tax benefit to the counties upon annexation of revenue-producing properties and explained that, while the law requires all counties to have a growth plan that incorporates urban growth boundaries and rural areas, and may include planned growth areas, there is no connection between that and the planning provisions of Tennessee Code Annotated, Title 13. Responding to a question from Chairman Norris, Mr. Terry said that in 2014, Blount, Grainger, Madison, Robertson, Sevier, Tipton, and Washington counties will begin to lose revenue that they have continued to receive from areas annexed in 1999. The total amount estimated by the Department of Revenue for those counties was a little over \$601,000. Mayor Huffman asked whether that total included wholesale beer taxes. Mr. Terry said no.

Chairman Norris asked where Tennessee's laws on home rule fit into the discussion. Mr. Terry responded that there are two counties and 14 cities with home rule charters. He added that there is a provision in Tennessee that home rule powers cannot override general law. County Executive Huffman asked whether a home rule city can extend planning and zoning authority beyond its urban growth boundary in the county if the county has zoning. Mr. Terry said no.

Mr. Terry then discussed processes to amend growth plans. Two bills referred to TACIR for study—Senate Bill 613 (House Bill 1035) and Senate Bill 732 (House Bill 231)—would have an effect on amending growth plans. Under current law, Tennessee may amend the growth boundaries as often as desired or not at all. Approximately 25 counties have revised their growth plans since their initial adoption. Mayor Huffman asked whether, under Senate Bill 613, the requirement remains for all cities and counties involved to approve the change. Mr. Terry said yes, all members of the coordinating committee have to agree for the Local Government Planning Advisory Committee to approve the plan.

Mayor Waters said that under the current law a city or county may propose amendments to the boundary and file notice but asked whether the law says what happens if a city or county chooses not to respond to the notice. Section (d)(1) of Tennessee Code Annotated § 6-58-104 says that "... the county mayor or county executive *shall take appropriate action* to reconvene or reestablish the coordinating committee within sixty (60) days ..." It also says, "It is the duty of the coordinating committee to submit the proposed amendment with its recommendation either for or against the amendment to the county legislative body and to the governing body of each municipality within the county for their approval or disapproval within six (6) months of the date of the coordinating committee's first meeting on the proposed amendment." No recourse is defined if the county executive fails to act.

Mr. Terry summarized other states' requirements for amending growth plans. Some states require periodic revision of plans, while others' laws are merely permissive and plans may be amended at any time. Senator Henry asked if these bills would have no application to counties with a metropolitan form of government. Mr. Terry answered that they would not.

Representative Sargent asked Mr. Terry how many counties and cities have planning commissions and how many zone land use. Most counties (78) have active planning commissions, including the three metropolitan governments; 48 have adopted zoning. The majority of Tennessee's 347 cities are served by a municipal (266 including municipal-designated-regional), metropolitan (3), or joint city-county (five commissions serving ten cities including the Shelby-Memphis commission created by private act) planning commission, for a total of 279. Another four cities have agreements with other city or county planning commissions to represent them. Of these 283 cities, 266 have zoning ordinances—enforced by 261 different planning commissions.

Panelists representing counties included

- Shelby County Mayor Mark Luttrell;
- Williamson County Mayor Rogers Anderson;
- Fayette County Mayor Rhea "Skip" Taylor;
- Tennessee County Commissioners Association, David Connor, Executive Director;
- Tennessee County Highway Officials Association, Rodney Carmical, Executive Director; and
- Washington County Highway Superintendent John Deakins.

During the panel presentation, Chairman Norris asked Mayor Anderson whether, if things work so well in Williamson County, would that not mean that referendums for annexation would be easy to pass? Mayor Anderson said he understood that view. Representative Sargent added that it might make more sense for counties with annexation problems to look to Williamson County for guidance rather than change the system. Also, Vice-Chairman Rowland asked Mr. Connor whether fire protection and ratings enter into annexation considerations for counties. Mr. Connor responded that he has not seen a lot of that. Many counties work with municipalities to extend fire protection into unincorporated areas.

Following the presentation, Senator Kyle noted that there are two issues—one is people's lifestyle, the other is economic. People do not want the area where they live to change. Cities also want to invest in development. We need to be sure referendums will not harm that. Mayor Taylor

responded that most cases with a willing landowner are easy. People who do not want to be in the city deserve a voice but should not prevent business from growing. Mayor Luttrell added that infrastructure investment was the key issue, but it was not a focus of PC 1101. Senator Kyle said that cities sometimes invest in infrastructure before knowing how that land will develop. If they are not able to annex that land, they will hesitate to extend services. Mayor Luttrell noted that rates and payment for delivery of services do recoup some of that expense, but the problem is the ability to plan.

Mayor Waters said we need citizens' input, but there will still be problems with irregular annexation. He also urged balance between citizen input and economic development needs. Mr. Deakins again stressed communication. He also noted that developers pay fees for infrastructure connection and users pay rates, and that is how to recoup costs. He wants cities to take care of what they have before annexing more.

Chairman Norris asked Mayor Anderson to speak about cooperation in Williamson County. The Mayor talked about memoranda of understanding and mutual aid agreements with cities. They communicate regularly and focus on schools and education. He added that he does not disagree with what happens in different communities, he just knows what works in Williamson County.

Several members asked about services. Senator Kyle asked whether there are counties providing water and sewer. David Connor said that maybe one or two do so. Mayor Waters said that Sevier County is one of them. Vice Chairman Rowland asked about animal control. Mayor Anderson said the county operates animal control both outside and in the cities. Mr. Deakins said Washington County animal control is governed jointly by the county and Johnson City. Mayor Luttrell said that three cities have animal control, but his county does not.

Senator McNally asked whether counties should get to approve deannexations from cities. Mr. Connor said yes, especially in cases of infrastructure. Mr. Deakins added that cities dodge their responsibility to repair infrastructure. Mayor Anderson then spoke about how Williamson County and the City of Brentwood came to an agreement over a bridge and railroad tracks and how the cities in his county make payments to the county school system as examples of how things work for them.

Panelists representing municipal governments included

- Town of Louisville, Mayor, Tom Bickers;
- City of Kingsport, Assistant City Manager, Jeff Fleming;
- City of Covington, Mayor, David Gordon;
- City of Alcoa, Assistant City Manager, Bill Hammon; and
- City of Portland, Mayor, Ken Wilber.

Following the panel presentation, Chairman Norris asked about the possibility of creating a right to deannex by referendum. Mr. Fleming said that people tend to fear the unknown and say they would vote against being annexed. Once they have been, they are generally satisfied. Cities should be held accountable for providing services.

Chairman Norris said that one of the precepts for passing PC 1101 was to eliminate annexation out of fear. Senator Kyle spoke of the reasons people choose to live where they do. New municipalities were created by people who didn't want to live in bigger cities. It did not have to do with services. The issue needs to be addressed without harming growth in mid-sized cities. We have one law but two kinds of communities, he said.

Representative Carter said Williamson County is doing it right and no one wants to harm them. Adding that laws have to work for everyone, he asked the panelists a series of questions, starting with, "Why do cities always choose to annex by ordinance?" Mayor Gordon responded that Covington has annexed twice in the past eight years. One was a non-consensual annexation of a subdivision. They had septic issues, and the city could provide sewer. Some opposed it, but most peoples' expenses decreased after the annexation. Representative Carter asked whether that was why they were not allowed to vote; did the city know what was better for them? Mayor Gordon said they told them we will annex you if we put the services in.

Representative Carter then asked Mayor Bickers why he did not grant a vote on an annexation. Mayor Bickers said they annex to close holes. He said they wanted certainty and that allowing a vote does not bring certainty. He further said that the annexations were in the interest of the residents; sometimes a government must act to benefit the many even if it affects the few.

Representative Carter said that people in his district do not agree that annexation has no effect on their property rights. He told of a landowner operating a shooting range and a farmer raising special cows. They are being annexed and told they cannot continue their operations. Mayor Bickers said some things are not in the interest of the community. Governing is not easy. You have to make hard choices. Mr. Hammon said it is standard practice in his area to grandfather nonconforming uses as long as they continue in that use.

Representative Carter said that Louisville was a defensively created city and asked Mayor Bickers why he opposed being annexed then and now supports it. Mayor Bickers answered that it is somewhat correct. There were people 20 years ago who wanted to be Louisville rather than Knoxville or Alcoa. They are one of the few with a home rule charter.

Representative Carter said 35 states require referendum. Forty-seven have extreme restraints, yet cities there grow. Why not Tennessee? Mr. Fleming responded by noting that Tennessee's low property taxes are a good deal when people move here. The certainty of having growth boundaries keeps costs down and keeps Tennessee competitive.

In further discussion, Vice Chairman Rowland said the cookie-cutter approach does not fit everybody in the state, but PC 1101 has been fair. He recently considered an annexation and decided not to proceed with it because most of the people did not want it. Chairman Norris said we are at year 15 of the 20-year growth plans, and asked what should happen at 20 years. We have an opportunity to review the 20-year growth plans. PC 1101 depends on an engaged and informed electorate; maybe everybody should be reminded. Mayor Gordon said we should look at our urban growth boundaries and go through that process again but not as the process exists. He added that the two people in Representative Carter's example should be allowed to continue what they are doing.

Mayor Waters asked what the reaction would be to a three-to-five-year phase-in of the loss of counties' 15-year "hold harmless" revenues. Mr. Hammon said the 15-year period was the phase-in. Cities are



counting on that money. Mr. Flemming added that the 15 years is after each individual annexation. He is willing to discuss a transition.

Representative Carter said PC 1101 is a great bill: “We have heard about keeping the cities and counties at the table,” he said. “I would add the people— voters—to the table. Some cities are doing great. That is why referendums will work.” Vice Chairman Rowland said that public hearings give people their opportunity to be listened to.

In a final bit of discussion, Senator Kyle said that annexing an industrial site is entirely different from annexing voters, and that there should be two paths. Senator Henry recommended that more counties look at the metropolitan form of government. Before becoming metropolitan, aggressive annexation was carried out by the city government. It has been good because everyone participates in what the government does.

### **State and Local Government Transparency—Draft Report for Review and Comment**

The Commission was presented a draft of the report on government transparency resulting from two bills sent to the Commission by the 107th General Assembly. Senate Bill 2831, known as the Taxpayer Transparency Act, would have required the state Department of Finance and Administration to create and maintain a searchable budget database website detailing where and for what purpose tax investments in state government are made. House Bill 3328, known as the Local Government Transparency Act, would have required each county, city, and school district to post certain financial information online. Both bills required such features as searchability, historical data, and information about “checkbook level” expenditures and contracts.

Chairman Norris commented that a great deal of information is already available, but perhaps people need to be more aware of it. Senator Kyle asked whether staff had looked at the data on usage. Staff indicated that the final report would include information on usage. Director McMahan commented that in small communities, government meetings often get posted as a story rather than a notice. He added that having information online for people to access directly can help make more effective use of staff resources. Mayor Waters noted that the fiscal note for local governments could be a burden. Senator Henry commented that, if government transparency legislation were introduced, the smallest governments would need to be exempt from the requirements.

### ***October 23-24, 2013***

#### **Presentations on Water and Sewer Rates for Non-residents of Cities**

House Bill 600, which was sent to the Commission for study by the House Local Government Committee, would have prevented any municipality in an area designated by county and city population from charging water and sewer customers who live outside the city over 50% more than the rates charged inside the city. The only area that fell within the population ranges in the bill was outside the city limits of Johnson City in Sullivan County. Several individuals were invited to address the Commission about issues related to House Bill 600:

- Representative Timothy Hill, bill sponsor
- M. Dennis Peterson, City Manager, Johnson City
- Joyce Welborn, Utility Boards Manager, Comptroller of the Treasury

- Bob Freudenthal, Executive Director, Tennessee Association of Utility Districts
- Alan Major, Finance and Accounting Consultant, Municipal Technical Advisory Service

Representative Hill stated that he brought House Bill 600 for his constituents but there is statewide application. He wrote the bill because his constituents in Piney Flats have been unable to get their water rates justified, in part because they have no representation on the city utility board. He noted that state law says cities must justify their rate differentials. If the cost warrants a 100% rate difference then so be it, but he doubts that it does. The city either does not have separate books or is unwilling to share information, and the residents deserve rate relief.

Mayor Bragg observed that sometimes it's the city residents who pay more, noting that Consolidated Utility District charges its Murfreesboro residents double. He asked if Representative Hill would consider including them in the bill. Representative Hill said he would not have a problem with doing so. He said his intention is to hold utilities to the law, which allows them to pass on the actual cost of providing services.

In a discussion of options other than capping water rates, Senator Henry asked Representative Hill if the residents of Piney Flats have a legal remedy to their rate discrepancy, to which Representative Hill responded that litigation is an option. Vice Chairman Rowland asked if Piney Flats residents have any source of water and sewer other than Johnson City and if Johnson City is obligated to provide service to the residents. Representative Hill replied that Blountville Utility District is across the street, and that he is not aware of Johnson City having an obligation to serve the residents.

Representative Odom asked when the service began. Representative Hill stated that it is not a new service and has been in place for decades. Representative Odom asked if bonds were used to pay for the water and sewer lines in Piney Flats. Representative Hill said the rates were set and they just stayed there. There is no way the costs are the same today. Representative Odom asked if any cost of service information is being provided by the city. Representative Hill replied that no information has been provided by the city at this time.

When asked by Chairman Norris if his position is that there is a remedy in the law, but that it is not working and the bill sets a cap as an alternative, Representative Hill replied, "Yes." Chairman Norris cautioned that caps suggest a price, and everyone would raise their price to the cap. Representative Hill noted that the initial bill applied only to water but was amended to include both water and sewer. He noted that if it is found that a 50% cap on rates is not appropriate then another alternative that provides relief is welcome. Representative Carter asked if a viable solution would be to prohibit rate differences dependent on whether customers live inside or outside of a city. Instead Representative Hill responded that equality is a good thing.

Representative Carter brought up the possibility that high water loss contributes to Johnson City's costs, asking for confirmation that Johnson City's water loss is 35%, as had been reported. Representative Hill said, "Yes," noting that this is on the high side.

Discussing density and development issues, Representative Sargent stated that wastewater is more difficult to provide than water, and that it costs less to provide water and sewer services to five houses per acre than it does to serve one house per acre. Representative Odom asked if it is possible that a developer is funding the expansion of the system. If so, how are the fees justified? Representative Carter stated that in Hamilton County the developer extends the system, not the city or county. The

homeowner has the option to hook onto a water line or not. If they do not hook onto sewer then they pay for it as though they are using it. He noted that this is a problem.

Mr. Peterson gave a brief history of the city's water and sewer system and the challenges of providing service across the entire system. Councilmember Senter asked him if water and sewer rates are significant to annexation. Mr. Peterson stated that they can be, but Johnson City is not actively annexing into Sullivan County. At least half of the outside water customers are beyond the urban growth boundary and will not be annexed. Councilmember Senter asked if water rates were limited and if the ability to service outside the city would be affected if annexation by ordinance were removed. Mr. Peterson said cities would think long and hard about whether they could afford to extend utility services. The utility department can get a better rate using the city's AA credit rating. If the outside customer had to stand on their own, they may have to pay far more than double the inside rate.

Discussing rates, Mr. Schumpert asked whether they cannot or will not calculate the cost of the outside areas. Mr. Peterson said they did not have that information, noting that it would be difficult to calculate. Vice Chairman Rowland asked if Piney Flats knew the rates when they were taken over. Mr. Peterson replied that they did. Mr. Schumpert asked if the rate changes for an area that is annexed. If there is a rate increase does it apply to everyone receiving service? Mr. Peterson answered that the rates would decrease.

Representative Carter asked whether, when regional facilities are built, it is guaranteed to the federal government that you will serve everyone in the region. "Do you not certify in that grant that everyone will be charged the same amount?" Mr. Peterson said Johnson City utilities have not received a federal grant in years. Representative Carter noted that grants are for all residents, not just the city residents.

Noting that tap fees are used to pay for infrastructure, Mayor Waters asked if outside tap fees are also double that of tap fees inside the city. Mr. Peterson said they are double, and that if a developer wants water and sewer within the city, the city will reimburse the cost of the material. He did not know of any lines provided by private developers outside the city; there are only the utility districts Johnson City took over.

Ms. Welborn discussed the role of the Water and Wastewater Financing Board (WWFB) in ensuring the financial integrity of the systems. Senator Henry asked her what happens if the utility disagrees about a rate change requested by the WWFB. Ms. Welborn said that the utility boards have the authority to enforce the revenue in chancery court. Mayor Beets asked if the 27 cases reviewed by the WWFB in 2008 involved water or sewer, or water and sewer, and what was the recommendation in the one case where the WWFB made a recommendation? Ms. Welborn replied that the 27 could have been one or the other or both, and that the one recommendation was to lower the outside fixed rate charged by Savannah. Following up, Mayor Beets asked what rates would be considered extreme. Ms. Welborn said every case is different, but that a rate is extreme if it can't be justified. Vice Chairman Rowland said some rates in Hamilton County are greater than the outside rate of Cleveland. Ms. Welborn responded that the Comptroller tries not to compare systems. Senator Kyle asked whether it is possible that charges for things other than water are being slipped into the water rate. Ms. Welborn said they are not supposed to do that.



Returning to the topic of water loss, Representative Carter asked Ms. Welborn if 34% water loss is extreme. She answered the old criterion was 35% water loss. The new criteria are the *validity score* and *non-revenue water as a percent of operating cost*. Thirty-five percent is high, but that's not the criterion any more.

Mr. Freudenthal, noting that the Tennessee Association of Utility Districts represents both utility districts and cities, stated that rates should be justifiable and reasonable. He argued that a cap is not the best approach because each case is different and high differential rates may be justifiable. Chairman Norris and Representative Odom asked whether existing rate review mechanisms are adequate for outside-city customers. Chairman Norris asked if anything in the current system could be improved. Representative Odom asked who the rate policeman is: "Where do people go?" He noted that several systems have a double rate, and that it is either a coincidence or a trend. The Comptroller is looking at fiscal integrity and not looking to see if ratepayers are being gouged. The rates should be justified, but there is nowhere in the process where this is done. Surely some states have tackled this. Representative Odom said it's like annexation. These outside-city customers have no elected officials representing them. Mr. Freudenthal replied that it would be best to improve communication within the existing avenues. He stated that there should be some method of proving reasonableness. He suggested city utilities be required, just as utility districts are, to report their rate and the method of calculation in their audits. He also suggested that perhaps the WWFB could be empowered to hear customer complaints, as the Utility Management Review Board (UMRB) does for utility district customers.

Discussing difference in rates within a county, Mr. Schumpert said that in many areas, water rates should not be cheaper inside than they are outside. Mr. Freudenthal noted that outside extensions may affect the inside system. At least there should be a determination to see if it does. Mr. Schumpert said many times it is a benefit. Having a city limit dictate rates cannot be justified. Senator Kyle said water and sewer are municipal functions almost universally. Counties are not involved in that. There are costs that do not show up in the budget. The justification for higher outside rates is they are not paying city taxes. The city built the infrastructure for the extension. He asked, "Why doesn't everyone pay the same?" Mayor Bragg explained the situation in Rutherford County, noting that the inside-city taxpayer has the full faith and credit, and the outside-city customer is only responsible for the rate. This is why there is a differential. Mr. Schumpert replied that you cannot compare any two situations. He further noted that using the city limit as a boundary for setting rates makes no difference. Annexation would lower a customer's rate, but the cost to the utility stays the same. This does not seem equitable.

Mr. Cardwell noted that every three years Davidson County uses rate consultants to look at the system and determine if rates are sufficient. He asked if other utilities also use rate consultants. Mr. Freudenthal said every three to five years a rate analysis should be done to see what your cost of service is. Most do it, but some do not. A small system may not have much need. Chairman Norris said the idea that residents of a city fund a system may not be precise. Mr. Freudenthal added that a utility must stand on its own and be funded through revenues; a system cannot use general tax revenue. A utility district has higher rates than its neighbor because of density.

Representative Carter said the utility is a stand-alone enterprise based on rates. You are required to count your depreciation as a full loss. If you install new lines, that costs you on your balance sheet and the Comptroller will make you raise your rates. Chairman Norris said this was an issue for the

suburban cities in Shelby County several years ago. Some accounting of the enterprise funds had not been done correctly. The Comptroller straightened them out.

Mayor Bragg said Murfreesboro residents are subsidizing the rural rates. There are eight customers per mile in the county and 800 in the city. The Consolidated Utility District ratepayers in Murfreesboro are not covered by the city council. Representation may not make a difference because everybody's different.

Mr. Major spoke on the potential effect on cities of House Bill 600 passing. Among other things, he said that if House Bill 600 passes there will be \$450,000 the inside-city customers will have to make up. The Municipal Technical Advisory Service believes cities are different from utility districts because districts serve only those within their territory, while cities may serve outside customers. Senator Henry asked what happens if a city water systems shows a profit. Mr. Major replied that either a fund is built up for future expenses or they cut rates. Senator Henry asked Mr. Cardwell if the old Nashville water system produced a profit for the general fund. Mr. Cardwell said that in those days the bonds issued were general obligation bonds. Any profit from the water system went to retire the general obligation bonds. Mayor Beets noted that everyone wants rates to be justified, but House Bill 600 may not be the answer. He asked about using the utility board for customer complaints.

Representative Hill noted that on page 207 of Johnson City's 2012 annual financial statement, the water and sewer department made a payment of \$473,000 to the city. Mr. Peterson replied that the general fund of the city does all of the payroll, human resource functions, and finance for the water and sewer department. The utility is required to pay for those services. He also noted that part of that payment is in lieu of property tax.

Vice Chairman Rowland asked if complaints are handled by the utility board so that they have a way to voice concerns. Mr. Peterson said the city commission's role is to act as the board of the water and sewer utility. Any customer who wants to is able to file a complaint.

### **Presentations on Legislation Concerning Insurance in Lieu of Surety Bonds**

As requested during the update on the study of insurance and surety bonds at the August 2013 Commission meeting, several interested individuals were invited to provide additional information and respond to questions from the Commission:

- John Evans, President, Next Generation Underwriters
- Sarah Hiestand, Senior Counsel, Attorney General's Office
- Joyce Welborn, Utility Boards Manager, Comptroller of the Treasury
- Brian Hoffmeister, Director of Policy Analysis, Department of Commerce and Insurance
- Jack Spann, President, Spann Insurance
- Becky Brock, Director of Member Services, Local Government Insurance Pool
- John Calvin, Director of Underwriting, Tennessee Municipal League Risk Management Pool

While Mr. Evans advocated for the use of insurance as an alternative to individual surety bonds, the other panelists spoke of the long history of surety bonds and how they are different from insurance.

**State and Local Government Transparency Legislation—Final Report for Approval**

The Commission approved the final report on government transparency. The report contained a wide range of options to help local governments improve transparency, regardless of their size or current website status. It noted that governments can also mitigate costs by incorporating greater transparency as they make other upgrades.

Representative Sargent, Senator Tracy, and Mayor Bragg each expressed concern about the fiscal impact on local governments. Ms. Ethel Detch, senior research consultant at TACIR, noted that the report contains a wide range of options to help local governments of all sizes and capabilities improve transparency. Governments can also mitigate costs by incorporating greater transparency as they make other upgrades. Ms. Detch noted that cost estimates need to reflect the idea that placing more information on the web can actually help reduce costs in some situations. Mayor Bragg commented that he will take the report back to his communications department so that they can study the report's recommendations and make improvements to his city's site.

**Municipal Boundary Changes and Comprehensive Growth Plans, Public Chapter 441, Acts of 2013—Draft Report for Review and Comment**

The draft version of the report on changes in municipal boundaries and growth plans was presented to the Commission. The draft did not present any recommendations as the staff was looking to the Commission for those. The presentation highlighted the various topics included in the report: annexation, deannexation, annexation of agricultural land, city mergers and mutual adjustment of boundaries, and growth plans and planning. It also summarized the staff's analysis of the economic performance of the states by type of annexation. The Chairman and Vice Chairman agreed that staff would ask the members for comments and recommendations before the December 2013 meeting.

Discussing the costs of providing services, Representative Sargent voiced the concern some have that residents outside cities want services—especially water and sewer—but do not want to be taken into the city to get them. Representative Parkinson asked how cities recoup the cost of utility investments made outside their boundaries, and Ms. Leah Eldridge, research manager at TACIR, emphasized that those projects are supposed to be paid for through rates to outside customers. Mayor Bragg asked if consideration is made for the financial burden cities assume when they take over road maintenance and other services from a county after an annexation. Dr. Cliff Lippard, deputy executive director at TACIR, answered that the fiscal impact analysis completed by staff did not go to that level of detail; rather, it looked only at comparing states. Vice Chairman Rowland added that benefits from city fire protection and reduced insurance rates should be considered as well.

Regarding tax issues related to annexation, Senator Kyle asked if a property's greenbelt status might be affected, and Ms. Eldridge replied that she did not think it would. Mayor Beets raised the issue of counties beginning to lose sales tax revenue for land annexed in 1998-1999 as the 15-year "hold harmless" provision expires. Some officials have suggested that loss be phased in, and Mayor Beets stated that those counties have already had 15 years to plan for it.

Chairman Norris asked Dr. Lippard to present the staff's analysis of economic indicators and the fiscal impact from states having different methods of annexation. The consensus is that results vary greatly, and that there is no clear indication that the way a state conducts annexation has any impact on its economic performance. Chairman Norris stated that it doesn't appear that states in which cities need consent to annex are hampered. Vice Chairman Rowland talked about problems mostly

coming from Memphis and Chattanooga, and asked about considering requiring a referendum for cities of a certain population, specifically in the large cities in Tennessee. Dr. Lippard reiterated that some states do that, and that it would be up to the commission to recommend it.

Turning to the topic of growth planning, Senator Kyle stated that some counties' growth plans have been more accurate and predictive than others, and that he did not want any changes to put a burden on those counties who have done a good job, but that holding people to growth plans that haven't been accurate leads to conflict. Senator Norris agreed, saying the Commission was looking at how everybody was doing as we are 13 to 15 years into the 20-year planning period. He went on to address the tasks required of the Commission by Public Chapter 441. The review, evaluation, and report are all well underway, but it is time for making necessary recommendations. He expressed concern with the amount of time left before the Commission presents its findings to the General Assembly on January 14th.

Mayor Beets expressed fear of there being unintended consequences and problems with other parts of the growth policy act from moving to annexation by referendum only. Would smaller cities lose protection from bigger cities annexing territory? He agreed that it is good for local government to have flexibility, and referendum-only annexation may not fit all places.

Chairman Norris stated that there has been mostly support for PC 1101, and that the commissioners seem to agree that most of it works well. Some changes to the annexation component should be incidental to the rest of the law. He then summed up a few issues that have been raised, including if you require a referendum for residential and agricultural land, cities will be concerned how to get to commercial or industrial development if they can't get the subdivision in between. Would allowing noncontiguous annexation in some circumstances help?

Mayor Burgess said that states are different, and Tennessee's 95 counties are different. He believes recommendations shouldn't get too specific and would suggest a time period of 2 to 5 years to revisit and redo growth plans. Could annexation methods be a local decision? He suggests asking counties and cities to provide a list of three to four problems they have.

Representative Carter says that the way to account for local differences is through referendum. He only wants to change the annexation statute to require referendum. Chairman Norris clarified that Representative Carter was talking about land within a urban growth boundary, and only residential and agricultural land.

Senator Kyle voiced concern that voters aren't always consistent when asked why they vote. Requiring votes for annexations will bring inconsistent results. The real issues are economic development and sharing risk. Cities want to be the economic engine for their community, and they take risks to build infrastructure; cities want a return on their investment. Cities are different—in suburban cities, people are commuting for jobs. The people in bigger cities take exception to those who benefit from the risk that the city has taken but don't want to contribute. We trust people to vote, but there have to be parameters. We don't want socioeconomic issues in certain counties to drive the passing of a law that hurts the other counties. Senator Kyle emphasized that the Commission needs to be ready to put forth recommendations that the Legislature will pass.

Chairman Norris summed up some of the main points that had been discussed as possible recommendations: population brackets or classification; the need to update plans; whether the

“hold harmless” should be phased out; allowing noncontiguous annexation; requiring more specific schedules for provision of services; better notice and more meetings; agricultural issues; simplifying the process to amend plans; and the composition of coordinating committees and Joint Economic Community Development Boards (JECDBs). All of these center around the issue of allowing people to vote. Mayor Waters said that areas of consensus are found in the reviewing and maintaining of growth plans. People agree with accommodating economic development and providing services for it. Mayor McBride talked about the difference between residential and industrial or commercial development. Lots of residential development intentionally happens outside city limits.

Mayor Bragg said he was reminded that PC 1101 was passed to put people on notice; a broad base of parties came together. Would voting individually harm the “greater good” for the rest of people? There is an understanding of notice within the urban growth boundary, where people are near a growing city and are subject to annexation. City services are a just compensation for bringing someone into a city. Mayor Bragg said he is concerned about islands created by annexing around and avoiding residential areas. Even then those people may not vote to come into the city; they would feel they already have all the benefits. Vice Chairman Rowland added that cities and counties have built plans for the future based on PC 1101. He would like to have a meeting where people present their problems with the law.

Chairman Norris reminded people that nobody is talking about doing away with PC 1101. It would take action from the General Assembly to extend time and study. Representative Carter said he would have no problem with continuing the status quo under Public Chapter 441 to allow time for a more full study. Morphing into a redoing of PC 1101 was not in his mind.

### ***December 10-11, 2013***

#### **Approval of TACIR’s Work Program for Calendar Year 2014**

The Commission approved the calendar year 2014 work program, which was essentially the same as the amended 2013 work program approved by the Commission at the June 2013 meeting. The only changes involved two completed projects, fire service and land-use legislation, that had been removed and the statuses of the remaining projects had been updated.

#### **Setting Water and Wastewater Rates for Non-resident Customers of City Utilities—Draft Report for Review and Comment**

The draft report on water and wastewater rates was presented to the Commission. Because of the likelihood of unintended consequences, the report did not recommend House Bill 600, which would cap water and sewer rates for Johnson City Water and Sewer customers in Sullivan county that live outside the city limits at 150% of the rate charged city residents. The report instead recommended adopting some means of ensuring that rates are fairly set, either appointing non-resident representation on the city utility board or establishing an appeal process, or both.

Chairman Norris thanked Representative Timothy Hill for bringing the issue to the Commission’s attention and said that he is sure that Representative Hill would be happy if the General Assembly could improve upon House Bill 600. He also noted that the report focuses on the inequities of the current system both from a cost and representation point of view.



Mayor Beets asked how many city utilities there are and how many of them charge 200% or more to outside customers and whether it was only 10%. Mr. Ben Smith, senior research consultant at TACIR, replied, yes, that 10% of cities with water systems that extend outside the city charge those outside customers 200% the inside rate or more. Senator Henry asked how affordability can be determined objectively. Mr. Smith noted that determining affordability is not easy, but for this report, staff used the 1.5% of median household income that was used in the University of North Carolina study.

Chairman Norris said the baseline state law is that the systems have to be self-sustaining. Mr. Smith added that outside extensions need to be self-sustaining, too. Chairman Norris asked whether there is a prohibition in state law against making a profit. Mr. Smith answered that there is a prohibition on profits, but payments in lieu of taxes can be paid to the city. Chairman Norris said the report should determine at the outset what the current law requires.

Dr. Doss asked whether the law requires served areas both inside and outside of a city to be self-sustaining. Mr. Smith answered that the law is vague, but a cost of service study could show whether each extension is self-sustaining. Dr. Doss asked whether, if the cost to build an extension is known, there is a way to know the cost to provide service for outside customers. Mr. Smith replied that they may not know the actual cost of each extension, and that a cost of service study is not done each time. County Executive Huffman asked whether sustainable rates include debt and depreciation. Mr. Smith answered that they do and added that net assets cannot decrease two years in a row or the utility will fall under board jurisdiction. County Executive Huffman asked whether North Carolina utilities are required by law to fund depreciation. Mr. Smith replied that studies by the University of North Carolina include depreciation when determining whether rates are adequate. North Carolina does not require city utilities to include depreciation rates.

Commissioner Schumpert asked whether determining the cost of outside service was the real complaint. Mr. Smith answered that it probably is, and that state law does not require a study to determine the cost of outside service. A requirement for outside-cost accounting was considered, but that might place a large burden on some cities.

Vice Chairman Rowland said that the City of Cleveland's water board has five members. Six percent of the customers are outside the city, but one board member is 20% of the board. Mr. Smith added that proportional representation would give customers outside of the city a majority of the representation in 44 cities.

Senator Henry asked whether board decisions that are considered capricious can be appealed. Mr. Smith answered that board decisions can be appealed to chancery court.

Representative Carter said East Side Utility District (ESUD) sells water to Cleveland and charges a 2.17% markup over the rate charged in Hamilton County, which is much less than markups common across the state. Mr. Smith said when extensions are being planned there is more of an effort to determine what it will cost to be self-sustaining, but as years go by there may be a loss of focus on what would be a sustainable rate. Representative Carter added that because ESUD received funding from the Farmers Home Administration, a federal agency, they had to prove their rates were reasonable. Vice Chairman Rowland noted that ESUD rates are the same as the rates the City of Cleveland charges their outside customers.

Senator McNally asked whether any consideration is given to the risks and liabilities to cities when setting rates for customers outside the city. Mr. Smith said that risk could be considered when setting outside rates. Mr. Smith confirmed that the only alternative for outside customers under current law is to go to court.

Representative Carter stated that the law requires a utility to stand on its own. For example, East Side Utility District could not get Hamilton County's backing for their bonds. If ESUD could take advantage of Hamilton County's AAA credit rating, they could borrow at a lower interest rate and charge their customers lower water rates. Chairman Norris recognized Ms. Joyce Welborn from the Comptroller's Office to clarify how different utilities back bonds. Ms. Welborn said that city and county utilities can use tax and revenue bonds. Water authorities and utility districts can only use their own revenue to back their bonds.

Chairman Norris asked whether Ms. Welborn had any comments on the report. Ms. Welborn replied that adding a complaint procedure for city customers to the WWFB would probably put a huge fiscal note on the bill because of the need for additional staff. Chairman Norris asked whether the spirit of the current law could be followed without adding staff. Ms. Welborn replied that it probably could not.

Senator Henry asked whether the WWFB or UMRB have ever been taken to court. Ms. Welborn said the WWFB has been taken to court by the City of Mt. Juliet. The authority of the board was upheld by the state Supreme Court. The UMRB is currently in court on two or three cases.

Commissioner Schumpert asked how many there are of each type of utility. Ms. Welborn said there are 252 city systems, 180 utility districts, 15 county systems, and a handful of water authorities in Tennessee.

Chairman Norris asked for any additional comments or additions to the current draft. Mayor Bragg noted that there are city residents that are served by utility districts. He used the example of the City of Murfreesboro. The city residents served by that utility district are charged more than the city residents served by the city.

#### **Legislation Allowing Insurance in Lieu of Surety Bonds for Local Public Officials—Draft Report for Review and Comment**

The Commission was presented a draft report on the study of whether insurance would be a suitable alternative to the individual surety bonds that are currently required by state statute for certain local public officials. Individual surety bonds have been required in Tennessee since the 19th century to protect against losses caused when public officials do not faithfully perform their official duties. The surety bond does this by providing a guarantee that the surety company will pay the governmental entity for losses caused by the public official up to the amount set in the bond, and that the public official will reimburse it the amount paid on the claim, holding them personally liable. It is unclear that an insurance policy would provide the same coverage and safeguards as Tennessee's individual surety bond requirements, particularly as they relate to holding individual office holders accountable. The report included a draft recommendation based on discussion at the October meeting that the bill is not needed, at least not in the current form, but that the Commission may want to consider endorsing a provision allowing true blanket bond coverage that would provide equivalent coverage to the individual surety bonds currently required.

Following the presentation, Senator Henry pointed out that a few states that allow self-insurance, such as California, Illinois, and Louisiana, are not known for their fiscal strength and jokingly recommended that we not follow their lead.

Chairman Norris stated that he initially sponsored the bill to save money for local governments and, in a roundabout way, we may have gotten to that point with the blanket bond idea. Senator Tracy said that he supports giving local governments the option of blanket bonds, and that he understands the concept because of his long history in the insurance business. He said that he supports looking at this further. Chairman Norris commented that he is intrigued by the blanket bond idea. Commissioner McMahan echoed Senator Tracy's comment, saying that this is a complex issue that needs to be discussed, and that some of the local governments he deals with are really confused on this issue.

Representative Carter said that he had a discussion with the Chattanooga mayor and a person from the insurance industry who said that he wanted the state to make the process quicker, easier, and cheaper. Chattanooga also wants the option to use a blanket bond that has coverage amounts approved by the Comptroller's Office.

Representative Carter said that he would be happy to meet with concerned parties to draft something for the Commission. He asked whether individual bonds were only required for counties in Tennessee. Vice Chairman Rowland responded that he thought cities had discretion as to requirements for individual surety bonds. [Tennessee law requires bonds for city managers and city employees who handle money. With modified city manager-council charters, the city council determines which employees must give a bond. Bond amounts for city employees are set locally.]

Mayor Burgess asked whether blanket bonds would require a duty of indemnification on the official to the surety company, just like with individual surety bonds. Representative Carter responded that anything he would support would have to have that requirement, and without that, you have nothing. The indemnification requirement is essential to this process, and that if we could pass one law that could bring this together, it would be an enormous help to the counties.

Chairman Norris commented that he has heard some impressive figures on potential cost savings from using blanket bonds. He said he was pursuing a simpler and more cost-effective process to get the job done.

Representative Carter asked whether he should put together a prototype and send it to Executive Director Lynnisse Roehrich-Patrick and county members of TACIR for them to analyze. Chairman Norris said that was fine with him, and that the Comptroller's Office and the Department of Commerce and Insurance should weigh in on this as well.

### **Municipal Boundary Changes and Comprehensive Growth Planning in Tennessee**

Executive Director Roehrich-Patrick presented a discussion document on the report on municipal boundary changes and comprehensive growth planning. The document walked through the topics addressed by Chapters 51 and 58 of the Tennessee Code. Ms. Roehrich-Patrick said that any of the options included in the draft could be made a statewide requirement, or counties could be allowed to choose from them locally—by popular vote or other means. She also said that if referendums were required there would be questions on who gets to vote.



On the first discussion point, that people want a more participatory process with more control over whether and when they are annexed, County Executive Huffman, referring to a caveat to the third option—that cities be compensated for infrastructure investments if residents are allowed to be removed from an annexation or excluded from urban growth boundaries—asked who would pay the city for those infrastructure items. Ms. Roehrich-Patrick suggested that if the Commission was interested in this option, staff would look at the other states where deannexation can be initiated by landowners for ideas about how to address this question. County Executive Huffman wanted to know, for example, if 75 residents wanted to be deannexed but there was a \$1 million infrastructure investment by the city, whether those residents would be expected to pay the cost. Ms. Roehrich-Patrick said that that would not be a reasonable expectation, and what would happen, in effect, is that you would not be able to be deannexed in such a situation.

Concerning a discussion point about vesting of development standards—that the same standards should apply before and after annexation—Chairman Norris asked whether they are standards in the county or standards in the adjacent city. Ms. Roehrich-Patrick said that staff is looking for clarification from the members.

On allocation of tax revenue after annexation as it relates to the unique “hold harmless” provision in Tennessee’s Growth Policy Act, Mayor Bragg asked for clarification of the discussion point that beer wholesalers be required to provide specific information tying remission amounts to the location of retailers; he asked whether this was about “locus.” Chairman Norris said yes, but that the term is “situs.”

Chairman Norris asked that the description of Senate Bill 732 by Watson (House Bill 231 by Carter), which would forbid a municipality that has not annexed all territory within its urban growth boundary to propose an amendment to the growth plan or serve on the coordinating committee, be clarified to refer to the mayor of such municipality.

Following Ms. Roehrich-Patrick’s presentation, Chairman Norris said there were several ways for the Commission to proceed. Public Chapter 441 requires TACIR to report to the General Assembly and make recommendations by January 14, 2014. To meet that deadline, the Commission would have to approve what is submitted by the 14th. He added that TACIR’s next scheduled meeting is January 30 and 31. The report could take these discussion points and convert them to recommendations, and it could be submitted and comply with the requirements of Public Chapter 441. However, several members have expressed the sentiment to work more on some of these ideas. A motion to adopt the report was made and seconded for purposes of discussion.

Mayor Huffman asked whether TACIR had looked at letting the JECDBs also serve as industrial development boards. He said that the boards are authorized by separate statutes, maybe because elected officials are prohibited from serving on industrial development boards (IDBs), while JECDBs require certain elected officials to serve. If a JECDB isn’t doing a lot in an area, and they have an IDB that is, it seems the functions are similar. Chairman Norris said that could be a local option and asked Mayor Huffman whether he meant for the functions of the industrial development boards to be moved to the JECDB, or could the reverse be true. Mayor Huffman responded that one of the two would have to be changed regardless of which way you go, and suggested that it may make sense to combine those functions. Ms. Roehrich-Patrick said that it could be recommended as an option, and if the legislature were interested in the option, the Commission could work with them to figure out how exactly it could work.

Mayor Bragg expressed concern about reconciling the prohibition against elected officials serving on an IDB with the requirement for having the JECDB made up of elected representatives. Chairman Norris agreed, saying that it would need further study, and that suggesting it as an option doesn't do any harm.

Vice Chairman Rowland added to the point made earlier by Mayor Huffman about reimbursing a city for investments in an area that deannexes. He noted that those expenses could include things like fire stations as well as basic infrastructure. Vice Chairman Rowland also added that he serves on his IDB and asked whether that was against the rules. Chairman Norris asked that a talking point on this issue be added to the report for consideration.

[Note: While no officer or employee may serve on the board of an industrial development corporation formed by a single local government (Tennessee Code Annotated § 7-53-301), Tennessee Code Annotated § 7-53-104 authorizes officers, city managers, and other comparable chief administrative offices to serve as directors of an IDB formed jointly by two or more local governments.]

Representative Carter called attention to the first discussion point, that the consensus of the Commission is to adopt a more participatory process. He said it should be looked at in two phases and that any significant changes to the law require great study to avoid unintended consequences. He made a motion to recommend changing Tennessee Code Annotated § 6-51-102 on annexation by ordinance to require a referendum on any nonconsensual annexation of homes or agricultural property. He suggested asking for additional time to consider the other issues. The motion was not seconded. Chairman Norris said that although his personal preference is the same as Representative Carter's, rather than telling the General Assembly which option to choose, the Commission might serve them better by offering multiple options.

Vice-Chairman Rowland asked whether Representative Carter was referring to areas both inside and outside growth boundaries. Representative Carter replied that annexations outside the growth boundary already require referendums, and that he wants to apply the same law inside it as well. He mentioned four occasions during which cities attempted to annex outside a growth boundary, and the referendums passed in three of those.

Representative Sargent took the opposite side of the issue and presented a letter from the Middle Tennessee Mayors Caucus. He said that probably two-thirds of the growth in the state over the last ten years has come from the counties represented by the caucus. These city and county planning commissions work together to plan growth, and their plans have worked well. The trouble with requiring referendums is making it the same for everybody; let those with concerns opt in to something rather than having places where it works try to opt out.

Senator McNally said that he'd like to see the one-year moratorium extended. His concern was that the legislature might not have enough time to act between when they get the report in January and when the session ends. He said he agrees with Representative Carter, have annexation by consent only, but since he doesn't feel that can pass the Commission, it is best to look at all the options. Vice-Chairman Rowland agreed with Senator McNally and added that there are a few questions left unanswered. Extending the moratorium gives time to study and make recommendations on these few issues.

Mayor Burgess called attention to a map in the report showing the number of annexations in Tennessee from 2000-2009. Eighty-eight of the counties had fewer than 100 annexations during that time. Three of the counties that had more than 100 were in middle Tennessee. Going back to what Representative Sargent said, he said that in his two terms as mayor of Rutherford County, he had not had a single call from a citizen complaining about being annexed.

Mayor Beets offered to second Senator McNally's motion to recommend to the legislature that the moratorium be extended. Chairman Norris explained that this will just be a recommendation and that the General Assembly will have to decide whether to amend Public Chapter 441.

Representative Sargent said that Thompson's Station in Williamson County had put off an annexation to wait and see what was happening. He wanted to clarify that this motion would continue to exclude commercial property from the moratorium. Chairman Norris said yes.

Mayor Bragg reminded the commissioners that there is redress through the courts to contest annexations. Cases can be tied up in court for years, and changing the laws could complicate matters further. Cities and counties gave up a lot when rural areas and planned growth areas were drawn, requiring referendums for annexation outside urban growth boundaries. Public Chapter 1101 was a compromise, and people living near the city have a reasonable expectation that they can be annexed into the city.

Representative Carter asked whether the motion could be amended to say that the moratorium will continue until a bill is passed, to avoid there being a gap between the moratorium ending and a bill being signed into law. Chairman Norris said that it would be something dealt with in the actual legislation.

Representative Odom suggested including the reason why the Commission is asking for more time in the recommendation—that is, to be able to formulate more detailed recommendations to the General Assembly. Chairman Norris suggested doing this after voting on the motion recommending the extension and looking at the remainder of the recommendations in the report in that light.

The motion to recommend extending the moratorium was adopted. Chairman Norris asked for further discussion on any of the other points in the document and if the Commission wanted to make any further recommendations. Mayor Bragg made a motion to clarify that registered voters who are property owners should be the ones who get to vote in a referendum. Senator McNally asked about cases where a property is in one person's name: "Would a spouse living there get to vote?" Mayor Bragg said, "No." Senator McNally noted that the election commissions would have to look at property records as well as voter registration. The motion was not seconded.

Senator Tracy asked whether a city could annex some territory to extend sewer while a road project was in progress. Chairman Norris said no, depending on the type of land it was, but that they also didn't have to annex the land to be able to run sewer lines. Representative Carter agreed, saying that extending utilities has nothing to do with annexation.

Representative Carter also added that the moratorium is only on residential and agricultural land. Public Chapter 441 limits only "adversarial" annexations, not restricting people or developers who wish to be annexed.

Chairman Norris asked that more explanation be added to the report. He also suggested hearing from election officials and the Attorney General about issues related to referendums. While the legislature can work some of these details out in committees, TACIR's role is to refine the issues and give the General Assembly some options. The Chairman asked whether the Commission wanted to put forth the remainder of the report for further analysis and discussion, subject to the moratorium being extended.

Mayor Burgess said that some of the points are ready, but others remain unclear. Regarding a timeline for plans of service, what services are required? In the cases where cities should be able to recover investment costs, it will take a lot to define the process. It has to be understood that these need more work before the Commission endorses them. Mayor Beets answered that the timeline for "required" services is whatever was called for in the adopted plan of services. He raised the issue of cities taking on debt based on certain tax revenues and then having areas choosing to deannex. Chairman Norris said that he had heard that concern from other members as well.

Commissioner Schumpert commented that the common reason for seeking deannexation is that services have not been provided. Chairman Norris agreed and added that citizens often don't have the resources to sue cities to get those services. Vice Chairman Rowland agreed and asked Representative Carter about a case in Hixson where they were asking for deannexation from Chattanooga because they hadn't been provided services. Representative Carter clarified that this wasn't exactly the situation. There was a settlement to an earlier challenge to annexing that area, and now that it is time for it to go into effect, the people want to stop it. He said that the county provides all of the necessary services and utilities, and the people will see no benefit from annexation.

Chairman Norris asked for a vote to adopt the report as it had been modified, to include the motion that passed to recommend extension of the moratorium. Moved by Representative Odom and seconded by Councilmember Senter, the motion carried. Chairman Norris said that the work is not done and will continue in January.

### ***January 30-31, 2014***

#### **Amendment to TACIR's Work Program for Calendar Year 2014**

The Commission approved amendments to the calendar year 2014 work program. The amendments included an update to the status of the study of municipal boundary changes and comprehensive growth plans, recognizing that an interim report was submitted to the General Assembly in January 2014, termination of the school-siting study being conducted by the University of Memphis, and inclusion of a study of Tennessee's aging government workforce and the potential effects on public services.

#### **Insurance in Lieu of Surety Bonds (Senate Bill 624 by Norris)—Final Report for Approval**

The Commission approved the final report on *Insurance as an Alternative to Surety Bonds for Public Officials*. The report reflected the Commission's consensus that the bill changing current law to allow insurance as an alternative to the individual surety bonds required for various local government officials is not needed, at least not in its current form. The report did, however, endorse a provision allowing blanket surety bond coverage that is the equivalent of the individual surety bonds currently required, which could be less expensive and easier to administer. As requested by the Commission,

the final report included sample language for an amendment to allow local governments the optional use of this type of coverage.

Senator Jim Tracy said that he is familiar with blanket surety bonds and endorsed the idea. Chairman Mark Norris suggested that the sample amendment's caption should include insurance, and a motion to broaden the caption was moved by Senator Tracy, seconded by Commissioner McMahan, and passed unanimously. The Commission voted unanimously to approve the report.

### **Water and Sewer Rates for Non-residents of Cities (House Bill 600 by Hill, T.)—Final Report for Approval**

The Commission approved the final report on House Bill 600. While the report did not recommend House Bill 600, it did recognize that rates should be reasonable and justified. Like the draft report presented in December 2013, it recommended adopting some means of ensuring that rates are fairly set, either by providing non-resident city customers representation on city utility boards or establishing an appeal process through the Water and Wastewater Financing Board to customers of cities or both.

Mr. Tommy Schumpert asked, if just being outside the city is not enough to justify a rate difference, how would a customer outside the city be sure that their rate is reasonable? In response to this question, Chairman Norris said that the report does not recommend House Bill 600 because it "does not pass muster," and so the problem remains. He noted that Representative Timothy Hill, the sponsor of House Bill 600, is working on a new bill that would give non-resident customers certain rights of appeal under particular circumstances and that this bill would probably pass muster.

Councilmember Kay Senter asked whether the recommendations of the report were mutually exclusive. Referring to the last paragraph on page 4, Ms. Lynnis Roehrich-Patrick responded that they are not. Ms. Roehrich-Patrick noted that the consensus of the Commission that just being outside a city is not enough reason for a rate difference and that all rates should be reasonable and justified is consistent with past comments from the Comptroller's office. The comment comes from a letter written by the Water and Wastewater Financing Board in 2008, when they reviewed rates of utilities that charge outside customers more than double what they charged city residents.

### **Annual Report on Tennessee Valley Authority (TVA) Payments in Lieu of Taxes (PILOT)—For Approval**

The Commission approved the annual report on TVA PILOTs, which found that the payment to Tennessee in federal fiscal year 2013 was \$337.7 million. The report, presented by Dr. Reuben Kyle, senior research consultant at TACIR, noted that the estimated PILOT to Tennessee for federal fiscal year 2014 is \$328.3 million, a decline of \$2.7 million in the distribution to county governments, slightly more than \$1 million in the distribution to cities, and approximately \$3 million to the state and its agencies. That follows a decline of \$16.7 million in the previous year. The decline happened because of the economy, the loss of U.S. Enrichment Corporation as a customer, greater energy efficiency, and mild weather. In addition, TVA reduced its forecast of the growth in gross revenues from 2% to less than 1% per year. The report also reviewed the potential effect of sale-and-leaseback and lease-and-leaseback agreements on the PILOTs, noting that the lease-and-leaseback agreement for the John Sevier plant in Rogersville, Tennessee, does not affect the PILOTs because the plant is still owned by TVA.



Senator Kyle asked what the information covered in the report means to Memphis Light, Gas and Water and other sole source purchasers from TVA regarding future rates. [Since Memphis Light, Gas and Water only distributes power provided by TVA, they do not receive any PILOTs, and therefore would not be affected by changes in PILOTs.]

Senator Kyle asked whether anyone monitors how TVA payments in lieu of taxes are spent. Dr. Kyle said that he is not aware of any monitoring. Senator Kyle said if people are watched regarding how they spend money, it might make them more prudent. Chairman Norris said that the state is not monitoring the payments closely, but everyone needs to be aware of them. Dr. Kyle said there was an inquiry from the Southwest Tennessee Development District about the possible use of TVA payments in lieu of taxes. There are no restrictions in Tennessee law on how TVA payments in lieu of taxes can be used. Chairman Norris said Senate Bill 2111 by Overbey would divert 0.005% of TVA payments in lieu of taxes to development districts.

Mayor Huffman said TVA is converting a coal plant to natural gas in Memphis. He asked how that would affect TVA payments in lieu of taxes to Memphis and Shelby County. Dr. Kyle said it would have no direct effect. TVA's allocation is based on the property owned and the power that is sold in the state.

### **Update on the Study of Foreclosure as an Impediment to Remedying Blight**

The Commission received an update on the study of foreclosure as an impediment to remedying blight. The Commission had 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. The presentation highlighted several strategies currently used in Tennessee, reviewed the Commission suggestions made in its 2012 report, *Dealing with Blight: Strategies for Tennessee's Communities*, and covered strategies implemented in other states that require further review. Strategies currently used in Tennessee fall into two categories: prevention of blight by keeping homeowners in their homes, and dealing with foreclosed properties by maintaining them and reselling or repurposing them.

Mr. David Lewis, research manager at TACIR, said that in *Dealing with Blight: Strategies for Tennessee's Communities*, the Commission had recommended that the state consider making certain existing programs that are only available in some areas applicable statewide:

- The Neighborhood Preservation Act
- The Residential Rental Inspection Law
- The Vacant Properties Acquisition Act
- The Local Enterprise Zones Law

The Commission had also suggested extending the ability to establish an office of hearing officer to hear cases involving building and maintenance code violations, now available only to municipalities, to counties. These officers can impose \$500 fines, which far exceed the \$50 fine limit placed on courts by the state's constitution.

Vice Chairman Rowland asked whether the \$500 fine that city hearing officers can impose is daily or the total allowed. A hearing officer has the authority to levy a fine not to exceed \$500 per violation occurring upon residential property. For violations occurring upon non-residential property, a hearing officer has the authority to levy a fine not to exceed \$500 per violation per day.

Senator Kyle said that a Tennessee Housing Development Agency's (THDA) representative had recently told him they are expecting more money from a nationwide legal settlement that will allow THDA to continue assisting borrowers. Mayor Waters asked whether the financial assistance from THDA Mr. Lewis described is through loans or grants, and Mr. Lewis responded that they are loans prorated over a five-year period. If the homeowners have stayed in their home and made payments, the THDA forgives the loan after five years. Commissioner McMahan asked whether the THDA loans are no-interest or low-interest, and Mr. Lewis replied that they are no-interest loans.

Mayor Waters asked whether banking institutions talk to citizens about their options or borrowers are on their own to find out about their options. Mr. Lewis replied that lenders and servicers are supposed to do outreach about borrower options under the various settlements and federal initiatives.

Senator Kyle asked whether cities requiring servicers to post bond at the beginning of the foreclosure process require that for all foreclosures. Mr. Lewis replied that these cities do require bonds for all mortgage foreclosures.

Representative Carter mentioned the bill he sponsored last year that would have authorized cities and counties to have access to Mortgage Electronic Registration Systems (MERS). He said he couldn't get a motion or a second for his proposal, and that the banking industry fought it every step of the way. He said local governments have trouble finding out who owns property, and he asked whether they have access to MERS. The Hamilton County Clerk said they are having a very difficult time keeping up with foreclosures. Mr. Lewis said he had accessed MERS but found that some properties are difficult to find. Representative Carter said he would have the Hamilton County Clerk get in touch with Mr. Lewis.

Senator Kyle said that he believes the largest impediment to dealing with blight is the constitutional impediment that taxes can't be forgiven. If taxes could be forgiven, then somebody might buy a property and fix it up. There is often such a huge tax burden on a property that no one wants to buy it. He suggested an optional program where communities would assess buyers of residential properties a fee, perhaps \$500, but then credit them the same amount, offsetting the charge on the buyer's HUD-1 form. He said this is shifting taxes but not forgiving them. The assessment would go into a fund that the community could use to pay back-taxes on tax-foreclosed properties. The community is essentially paying itself, but under accounting principles the tax has been paid.

Mr. Lewis noted that Senator Kyle's description of the impediment is consistent with what he has heard from local community development corporation officials and others, in that such properties are very difficult to deal with. Senator Kyle said that a community could create a pool of funds through such a mechanism and, for example, could target streets with low-value properties and go in and clean up the area. He said governments give future tax credits all the time for economic development and that his proposal would create just as many jobs as giving tax credits to companies locating in a given area.

### **Presentation on the Collapse of the Housing and Financial Markets During the 2000s, the Slow Recovery, and Federal and State Responses**

Dr. Stan Chervin, senior research consultant at TACIR, presented his research on the collapse of the housing and financial markets during the 2000s, the slow recovery, and government responses. Dr. Chervin also summarized the history of the banking system in the United States, from the Great Depression until present day, and the rise of mortgage-backed securities. He discussed the major

characters, institutions, and financial instruments at center stage of the collapse and the slow resolution of mortgage defaults and foreclosures. He also provided an overview of longer-term programs and legislation implemented as a response to the collapse. He stressed the widely shared false belief that housing prices would never go down as a major contributor to the collapse.

Referring to maps in the presentation, Representative Odom noted that Tennessee was relatively low in housing price appreciation compared to other states but disproportionately represented in the number of foreclosures. He noted that Tennessee appeared more in line with California and Florida in number of foreclosures. Dr. Chervin explained that California had far more foreclosures than Tennessee, but the graphs lumped them together in the same range. He said that approximately 1 per 1000 existing housing units in Tennessee entered foreclosure whereas in California this figure was closer to five or six out of every 1000. He also said that foreclosures were a problem all across Tennessee not just in a few counties.

Representative Odom raised concerns about the spike in sub-prime lending in 2004 and asked whether this was because of a change in regulation in 2003 or 2004. Dr. Chervin said he found no major change in public policy towards these unregulated financial institutions but would further research the issue.

Regarding the Federal Reserve changing the classification of several banks from investment to commercial in order to render financial assistance during the crisis, Representative Haynes inquired whether there was any legislation that authorized such a change. Dr. Chervin explained that legislation was not specifically enacted to authorize this change because everything happened so quickly; however, the Federal Reserve's rules allowed it to take emergency action.

### **June 11-12, 2014**

#### **Work Program Amendment, Legislative Update, and New Research Plans**

The Commission received an update on legislative action during the second session of the 108th General Assembly on issues related to past studies, including six new bills and two new public chapters requiring studies by the Commission. It also approved 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. The legislature 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. Cliff Lippard, deputy executive director at TACIR, 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, in the future we need 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.

### **TACIR's Fiscal Year 2013-14 Achievements**

The Commission received an update on TACIR's major accomplishments during fiscal year 2013-14 (see appendix A).

### **Annual Report on Public Infrastructure Needs Inventory—For Approval**

The Commission approved the report *Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs*. 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. David Keiser, senior research associate at TACIR, said that school officials make the determination during the survey process. Executive Director 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 Dr. Doss from the Comptroller's Office for any insight. Dr. 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. Dr. 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.

### **Foreclosure as an Impediment to Remediating Blight—Draft Report for Review and Comment**

The draft report on the study of foreclosure as an impediment to remediating blight was presented to the Commission. The presentation noted 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. Foreclosure can lead to blight because most foreclosed homes are vacant at least briefly and can be affected by negligence, vandalism, theft, and arson. Foreclosure-related blight is a more serious problem in some Tennessee communities than in others. For a broader discussion of blight and foreclosure-related blight see the discussion in the Focus Issues section of this biennial report.

During discussion, Senator Henry asked how many out of 100 foreclosures in Tennessee are on inhabited versus vacant properties. Mr. David Lewis, research manager at TACIR, 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 Vice Chairman 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 had three different mortgage holders in a 60-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 free access to MERS 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 one 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. Vice Chairman 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.

**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; Mr. Peyton Bullen, Director of Fire Prevention Programs and Policy Development, reviewed state and national fire data; and Mr. Chris Bainbridge, Director of Codes Enforcement, provided some clarification about the fire codes, noting that there are solutions to sprinkling churches in rural areas that don’t have a municipal water supply. Churches 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.

During discussion, Chairman Norris noted that House Bill 1649 was proposed to create exemptions for places of worship with a few conditions. He gathered 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 small volunteer fire departments that are difficult to staff and have long response times.

Vice Chairman 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 were least likely to take place between 9:00 p.m. and 9:00 a.m. 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 firefighters responded to all the fires.

Commissioner McMahan asked who pays the cost for putting 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?

### **Education Funding and Fiscal Capacity**

The Commission was presented the annual update on the fiscal capacity index and was provided background information about the index and education funding in Tennessee. The 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.

During discussion, Mayor Beets asked whether the percentage of revenue that comes from property and sales tax is consistent across counties. Executive Director 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, since 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 regular homes because the cabins bring in revenue. That affects every homeowner through increased 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.

### **Municipal Boundary Changes and Comprehensive Growth Plans (Public Chapter 707, Acts Of 2014)—Update**

The Commission was 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. Bob Moreo, research associate at TACIR, 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 noncontiguous 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 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 to 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.



## **Appendix I: Commission Members**

### **Fiscal Year 2012-13 and Fiscal Year 2013-14**

#### ***Legislative***

- Senator Douglas Henry
- Senator Jim Kyle\*
- Senator Mark Norris
- Senator Jim Tracy
- Representative Mike Carter
- Representative Vince Dean\*
- Representative Lois DeBerry\*
- Representative Curtis Halford\*
- Representative Ryan Haynes
- Representative Matthew Hill\*
- Speaker Emeritus Jimmy Naifeh\*
- Representative Gary Odom
- Representative Antonio Parkinson

#### ***Statutory***

- Senator Randy McNally, Chair, Senate Finance, Ways & Means
- Representative Charles Sargent, Chair, House Finance, Ways & Means
- Justin Wilson, Comptroller of the Treasury

#### ***Executive Branch***

- Paula Davis, Assistant Commissioner of Administration, Department of Economic and Community Development
- Iliff McMahan, Jr., Regional Director, Department of Economic and Community Development

#### ***County***

- Ernest Burgess, Mayor, Rutherford County
- Jeff Huffman, County Executive, Tipton County
- Kenny McBride, Mayor, Carroll County
- Larry Waters, Mayor, Sevier County



### ***Municipal***

- Tommy Bragg, Mayor, City of Murfreesboro\*
- Troy Beets, Mayor, City of Kingston
- Betsy Crossley, Mayor, City of Brentwood
- Tom Rowland, Mayor, City of Cleveland
- Kay Senter, Mayor Pro Tem/Council Member, City of Morristown

### ***Other Local Government***

- Charlie Cardwell, Metropolitan Trustee, County Officials Association of Tennessee
- Brent Greer, Mayor, Henry County, Tennessee Development District Association

### ***Private Citizens***

- Rozelle Criner, Sr., Ripley
- Tommy Schumpert, Knoxville

\*Now a former Commission member.



Tennessee Advisory Commission on Intergovernmental Relations.  
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