The Tennessee Advisory Commission on Intergovernmental Relations

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MINUTES OF THE TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
28 November 2012

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in room 30 of the Legislative Plaza at 1:07 p.m., Chairman Mark Norris presiding.

Present 18	Absent 6
Mayor Troy Beets	County Mayor Jeff Huffman
Mayor Tommy Bragg	Senator Randy McNally
County Mayor Ernest Burgess	Representative Gary Odom
Mr. Charles Cardwell	Representative Charles Sargent
Mr. Rozelle Criner	Mayor Pro Tem Kay Senter
Ms. Paula Davis	Comptroller Justin Wilson
Representative Vince Dean	
Mayor Brent Greer	
Representative Curtis Halford	
Senator Douglas Henry	
Senator Jim Kyle	
County Mayor Kenny McBride	
Mr. Iliff McMahan	
Senator Mark Norris	
Mayor Tom Rowland	
Mr. Tommy Schumpert	
Senator Jim Tracy	
County Mayor Larry Waters	

1. Call to Order and Approval of the Minutes

Chairman NORRIS called the meeting to order at 1:07 p.m. and requested approval of the minutes. A motion to adopt the minutes was made by Mr. MCMAHAN, seconded by Mayor MCBRIDE, and passed unanimously.

2. Staff Service Awards

Chairman NORRIS presented certificates to four staff members for meeting employment milestones. Executive Director ROEHRICH-PATRICK recognized each recipient and gave a brief description of their years of services and job duties.

3. Federal Action on the Budget—Potential Effects on Tennessee

Chairman NORRIS introduced Reuben KYLE, Rick NICHOLSON, Senate Budget Analysis Director, Tennessee General Assembly, and David THURMAN, Director, Division of Budget, Tennessee Department of Finance and Administration.

Dr. KYLE discussed the fiscal cliff and what would happen if present laws were not changed by the end of December 2012. 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 be a loss of $95 million. After discussing sequestration, Dr. KYLE emphasized that the fiscal cliff won't happen instantly and that by this spring the new Congress may resolve the impact of the cliff.

Vice-Chairman ROWLAND asked whether the US Army Corps of Engineers is exempt from the defense cuts. Dr. KYLE did not know for sure, but believed the answer to be no. He said that there may be things that are, for example, programs that were funded before the end of the year where the money has already been appropriated—even if it hasn't been obligated yet—that money is not sequestered. (According to the Office of Management and Budget's 2012 Sequestration Transparency Report, p. 116 and following, the US. Army Corp of Engineers is partly exempt and partly sequestrable.)

Chairman NORRIS asked Mr. THURMAN to address some of the specifics, referring directly to Governor HASLAM's comments on the impact of some of the federal cuts on education. Mr. THURMAN said that two education programs, Title 1 and Special Ed, face possible reductions of about $20 million each. This is forward funding; if the reduction occurs or is made in January, it would not go into effect until the next school year. He noted that the cuts should not affect basic education program (BEP) funding.

In addressing how the department is planning for the vagaries with the potential fiscal cliff, Mr. THURMAN said that the planning preceded his taking his position with the office, but that the budget office was prepared to make any necessary adjustments. He noted that there is no flexibility with the federal funding; the state receives federal dollars for very specific federal programs. The intent is to make reductions to those specific programs. The state has not committed to replace funding for those federal programs with state dollars. The loss of federal funds for programs that require a state match may free up some of the match money, but the details are unclear. He also noted that it is unclear what the effect may be on federal programs with non-supplant provisions, with the risk that the state may be held accountable for maintaining any increases in state or local funds made to backfill the decreases in federal funds.

4. Recent Trends in Local Sales Tax Bases in Tennessee

Chairman NORRIS introduced Stan CHERVIN. Dr. CHERVIN discussed how an increase in federal taxes resulting from the fiscal cliff would reduce after-tax income, which would reduce sales tax revenue because Tennesseans would have less money to spend. One revenue source, the Hall Income Tax, could however increase as taxpayers sell off non-retirement mutual funds to avoid an increase in the capital gains tax. States reliant on sales taxes would face larger percentage losses because of the fiscal cliff than states that also have an income tax.

Dr. CHERVIN also discussed how counties' local sales tax revenues have changed over the last six years, noting that some counties have not recovered as well as others from the recession. While the state's economy is improving overall, the recovery in local sales tax collections has been uneven. The economy bottomed out in mid-2009. Since then, many counties' sales tax collections have recovered, but there are still lots of counties that are as bad off as they were in 2006 and 2007. There are 37 counties that in the July through October 2012 period collected less sales tax than for the same period in 2011. There are 3 counties whose revenue never declined during the July through October period at any time in the last six years, and 15 with declines in only one July through October period over the last six years. While no county suffered five straight years of negative collections in the July through October period over the whole six years period, there are still 22 counties that collected less from local sales taxes in July through October 2012 in than they did in 2006, and 30 that collected less than they did in 2007. The problem is exacerbated by the fact that counties and cities have limited ability to raise money. They have the sales tax and the property tax and many minor revenue sources that they use to fill the gaps. With sales tax rates already maxed out in many counties—46 are at the maximum local sales tax rate of 2.75%, and 12 others are at 2.5%—the property tax becomes the tax of last resort. There are also several counties that while they are not at the maximum rate, their major trade center is.

Dr. CHERVIN also noted that there would be significant pressure on the four most populous counties when they reappraise next year. While values are generally lower than they were four years ago, appraisals are based on the most recent year's sales. Since the housing market has bottomed out and sales are increasing, he expects to see a large increase in appeals.

5. Blight Legislation from the 107th General Assembly

Mr. TERRY presented the final report on legislation related to remedying blight for Commission approval. The report concludes 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, the Neighborhood Preservation Act, the Residential Rental Inspection law, the Vacant Properties Acquisition Act, and the Local Enterprise Zones law, apply in only certain communities. The report suggests making these laws more widely available. Another law, the office of the administrative hearing officer, applies to municipalities, but not counties. This law allows the administrative hearing offer to impose an administrative fine of up to a $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.

Senator KYLE requested an additional study by the Commission of the cost involved in foreclosures and how that affects the sale and reuse of the property. By action of the Chairman, the project was adopted without objection.

Senator HENRY asked whether the Chair would offer a bill to extend these laws as recommended in the report. Chairman NORRIS said he could or it could go back to those members who brought the bills for study. The sponsors and committees could review the report and perhaps determine that it may be advisable.

Representative DEAN made a motion to approve the report; Mr. MCMAHAN seconded the motion. The report was approved.

Other Matters

Chairman NORRIS adjourned the meeting at 2:32 p.m.

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MINUTES OF THE TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
29 November 2012

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in room 30 of the Legislative Plaza at 8:35 a.m., Chairman Mark Norris presiding.

Present 19	Absent 5
Mayor Troy Beets	Representative Curtis Halford
Mayor Tommy Bragg	Senator Randy McNally
County Mayor Ernest Burgess	Representative Gary Odom
Mr. Charles Cardwell	Representative Charles Sargent
Mr. Rozelle Criner	Comptroller Justin Wilson
Ms. Paula Davis	
Representative Vince Dean	
Mayor Brent Greer	
Senator Douglas Henry	
County Executive Jeff Huffman	
Senator Jim KYLE	
County Mayor Kenny McBride	
Mr. Iliff McMahan	
Senator Mark Norris	
Mayor Tom Rowland	
Mr. Tommy Schumpert	
Mayor Pro Tem Kay Senter	
Senator Jim Tracy	
County Mayor Larry Waters	

1. Call to Order

Chairman Norris called the meeting to order at 8:35am.

2. Sustainable Competiveness for Tennessee's Counties: A Collaboration between TACIR and TSU

Chairman NORRIS introduced Drs. GOSH and STREAMS of TSU, who are working on a TACIR funded study, *Analyzing the Factors Underlining Sustainable Competitiveness of the State of Tennessee and its Counties.*

Dr. STREAMS stated the goals of the study as operationalizing the concept of sustainable competitiveness for Tennessee counties and identifying 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 competiveness, as well as identify the strengths and patterns. In a modern view of public sector competitiveness infrastructure, cultural, natural, social, and institutional capital feed into sustainable competiveness along with the traditional factors of production and human capital.

Dr. GOSH presented a flow chart to the Commission and explained their two pronged approach: qualitative and quantitative. The first step is to use TACIR's existing data to determine the drivers of existing competitiveness, measuring GDP and productivity at the county level with a time series cross section of data for the 95 counties. The quantitative part of the study will identify the drivers and then identify patterns and clusters to group counties. The qualitative part of the study will begin with two focus groups early in 2012 to develop a survey instrument that will help verify the results of the quantitative analysis and identify areas for cooperation.

Chairman NORRIS added that they will complete the study in 2014.

Mr. MCMAHAN asked Dr. GOSH about the applicability of the project across the nine economic development regions used by ECD. Dr. GOSH responded that the study complements the work of ECD. Mr. MCMAHAN thanked them for their work and suggested that they interface with ECD and reach out to Launch Tennessee.

The final draft report will be submitted at the November meeting.

3. Eminent Domain Legislation—Draft Report for Review and Comment

Research manager Ms. Leah ELDRIDGE presented the draft report, which covers three major issues in eminent domain. 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. Under current law, both parties must consent to the use of binding arbitration.

The main alternative suggested by the report is mediation. With respect to the example in the report from Oregon, where forced arbitration is allowed only for property valued at $20,000 or less, the members expressed concern about having any threshold, much less one so low as to make arbitration unreasonably expensive. Vice-Chairman ROWLAND commended TACIR staff for what he called one of the best, in-depth reports that has ever been presented to the Commission. He asked where mediation comes into play under current state law. Ms. ELDRIDGE 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.

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. As an alternative, the report suggests removing the statutory language authorizing delegation by a local government to a housing agency of authority to approve a redevelopment plan.

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 and is accountable for it rather than delegating complete authority to some agency. 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 the 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.

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. The report recommends 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.

Finally, the report also suggests that, because condemnation is something that does not happen very often, more should be done to better inform the public about their rights with regard to condemnation by either by creating an ombudsman office to answer questions property owners or by having condemners send a landowner's notice of rights to a property owner before condemning property.

Mayor BURGESS agreed with Vice-Chairman ROWLAND assessment of the quality of the report calling it really great, comprehensive, and complete, and expressed his appreciation for it. Mayor BEETS recalled being impressed with the panel discussion at the last meeting and commended staff for putting that program together. He supported the concept of an ombudsman as something that should be pursued to facilitate a better understanding among property owners. Chairman NORRIS expressed concern about the cost.

4. Next meeting

The Commission did not set the next meeting but asked that the members be polled to determine the dates.

Chairman NORRIS adjourned the meeting at 9:48 a.m.