

TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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**MINUTES OF THE
TENNESSEE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS
30 January 2014**

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 30 at 1:05 p.m., Chairman Mark NORRIS presiding.

Present 18	Absent 7
Mayor Troy Beets	Mayor Tommy Bragg
County Mayor Ernest Burgess	Mr. Rozelle Criner
Mr. Charles Cardwell	Representative Ryan Haynes
Representative Mike Carter	Senator James Kyle
Ms. Paula Davis	Senator Randy McNally
County Mayor Brent Greer	Representative Antonio Parkinson
Senator Douglas Henry	Representative Charles Sargent
County Executive Jeff Huffman	
County Mayor Kenny McBride	
Mr. Iliff McMahan	
Senator Mark Norris	
Representative Gary Odom	
Mayor Tom Rowland	
Mr. Tommy Schumpert	
Councilmember Kay Senter	
Senator Jim Tracy	
County Mayor Larry Waters	
Comptroller Justin Wilson ¹	

¹ Phillip Doss represented Justin Wilson

1. Call to Order and Approval of the Minutes

Chairman NORRIS called the meeting to order at 1:05 p.m. and requested approval of the minutes. A motion to adopt the minutes was made by Commissioner MCMAHAN, seconded by Mayor GREER, and passed unanimously.

2. Commission Updates

Chairman NORRIS yielded the floor to Executive Director, Lynnis ROEHRICH-PATRICK who, along with the Chairman, recognized Ms. Leah ELDRIDGE, Research Manager, for achieving the service milestone of 15 years of service. Ms. ROEHRICH PATRICK also announced that Ms. Catherine CORLEY, Research Manager, had accepted a position with the Department of Revenue and would be leaving TACIR. She thanked Catherine for her service, and wished her well in her new position. In addition, Ms. ROEHRICH-PATRICK welcomed Ms. Jennifer BARRIE, Research Associate, to TACIR's staff. Chairman NORRIS welcomed Jennifer saying, "TACIR has been a great training ground for a lot of talent and we are happy to have Jennifer with us."

3. Work Program Amendment

Dr. Cliff LIPPARD, TACIR Deputy Executive Director, presented recommended amendments to the calendar year 2014 work program for Commission approval. The amendments included an update to the status of the study of municipal boundary changes and comprehensive growth plans to recognize that an interim report was submitted to the General Assembly in January 2014, termination of the school siting study that was 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. Dr. LIPPARD also requested the Commission's guidance on the disposition of House Resolution 170, which directed the Commission to complete a study of homeowners associations (HOAs) by the end of the 108th General Assembly.

Chairman NORRIS asked whether the school siting project was being terminated because the University of Memphis had dropped it. Dr. LIPPARD responded that the University had submitted a number of drafts but, because of health issues and other factors with the lead researcher, have not submitted one that met the original scope of the project. They did deliver considerable data earlier in the year but did not submit the final draft supporting the data. The University says they still intend to complete the project. Chairman NORRIS asked whether there were any outstanding expenses related to the project. Ms. ROEHRICH-PATRICK said there were not.

Chairman NORRIS noted that there was still work to be done on the municipal boundary changes and comprehensive growth plan study, to which Dr. LIPPARD responded that staff was already working on the revised research plan for the additional work.

Regarding the HOA study, Chairman NORRIS said that he did not feel it appropriate for the Commission to cancel the project unilaterally and, without objection, offered to seek guidance from the General Assembly on how to proceed with the study.

Mayor BEETS moved approval of the amended work program, Trustee CARDWELL seconded, and the Commission unanimously approved.

4. Insurance In Lieu of Surety Bonds (Senate Bill 624 by Norris)—Final Report for Approval

Mr. Nathan SHAVER, Research Associate, presented the final report on *Insurance as an Alternative to Surety Bonds for Public Officials* for the Commission's approval. He reminded the Commission that Senate Bill 624 proposed changing current law to allow insurance as an alternative to the individual surety bonds required for various local government officials. Mr. SHAVER said that the report reflects the Commission's consensus that the bill is not needed, at least not in its current form.

He said that 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. He said that a blanket surety bond similar to those Virginia and Georgia use to provide coverage for groups of officials could meet the Commission's expressed desire to allow a form of coverage that was less expensive and easier to obtain than individual surety bonds while providing the same coverage and safeguards, including personal liability on the part of public officials. He noted that, as requested by the Commission, the final report includes 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 Mr. MCMAHAN, and passed unanimously. The Commission voted unanimously to approve the report.

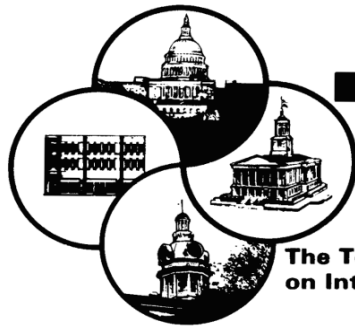
5. Water and Sewer Rates for Non-Residents of Cities (House bill 600 by Hill, T.)—Final Report for Approval

Ms. Catherine CORLEY presented the final report on House Bill 600 for approval, noting that while it does not recommend House Bill 600, it does recognize that rates should be reasonable and justified. The report identified two alternatives. The first was to provide non-resident city customers representation on city utility boards. The second was to provide an appeal process through the Water and Wastewater Financing Board to customers of cities. A similar appeal process already exists for utility district customers through the Utility Management Review Board.

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 HB 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. Lynnise 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.

Vice-chairman ROWLAND moved approval of the report, Senator TRACY seconded, and it passed unanimously.



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**MINUTES OF THE
TENNESSEE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS
31 January 2014**

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 29 at 8:31 a.m., Chairman Mark NORRIS presiding.

Present 17	Absent 8
Mayor Troy Beets	Mayor Tommy Bragg
County Mayor Ernest Burgess	Mr. Rozelle Criner
Mr. Charles Cardwell	Senator Douglas Henry
Representative Mike Carter	Senator Randy McNally
Ms. Paula Davis	Representative Antonio Parkinson
County Mayor Brent Greer	Representative Charles Sargent
Representative Ryan Haynes	Senator Jim Tracy
County Executive Jeff Huffman	Comptroller Justin Wilson
Senator James Kyle	
County Mayor Kenny McBride	
Mr. Iliff McMahan	
Senator Mark Norris	
Representative Gary Odom	
Mayor Tom Rowland	
Mr. Tommy Schumpert	
Councilmember Kay Senter	
County Mayor Larry Waters	

Call to Order

Chairman NORRIS called the meeting to order at 8:31 a.m.

1. Presentation of Annual TVA Report—For Approval

Dr. Rueben KYLE presented the annual update on Tennessee Valley Authority (TVA) payments in lieu of taxes (PILOT) for Commission approval. The TVA Act of 1933 directs TVA to set aside 5% of its gross revenue for states where TVA owns property or generates power. Tennessee has typically received about 60% of that money. The payment to Tennessee in federal fiscal year 2013 was \$337.7 million. At the beginning of every federal fiscal year, TVA estimates what the payments are going to be for the coming year. Each state then allocates that money according to its own methodology. Mayor HUFFMAN asked how TVA determines the direct payments to counties. Ms. Lynnise ROEHRICH-PATRICK said the direct payments are based on the property taxes of the power property when TVA took them over long ago. That is why the payments are so small. Mayor HUFFMAN then asked whether PILOTS are considered taxes. Ms. ROEHRICH-PATRICK said that the distinction makes a difference in a county with multiple school systems. The TVA payments in lieu of taxes are not subject to the division among multiple school systems that other state and local taxes are. Dr. KYLE added that TVA payments are listed separately from other taxes in the state budget.

Dr. KYLE said that the report notes 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 has 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. He 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.

Dr. KYLE also discussed how TVA's strategic decisions regarding the allocation of fuel sources could affect the PILOTS. In its integrated resource plan, TVA's goals were that 40% of its power be from nuclear, 20% from coal, 20% from natural gas, and 20% from other sources including energy efficiency, which reduces gross revenue. The expansion of the nuclear plant in Watts Bar could benefit Tennessee.

Senator KYLE asked what the information covered in the report means to Memphis Light Gas & Water and other sole source purchasers from TVA regarding future rates. [Since Memphis Light, Gas, & 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 on 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 South West 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.

Vice-chairman ROWLAND moved approval of the report, Mr. MCMAHAN seconded, and it passed unanimously.

2. Update on the Study of Foreclosure as an Impediment to Remediating Blight

Mr. David LEWIS, Senior Research Associate, presented an update on the Commission's study of foreclosure as an impediment to remediating blight. He said that the Commission, at the request of Senator KYLE, 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. Mr. LEWIS highlighted several strategies currently used in Tennessee, reminded the Commission of suggestions made in its 2012 report, *Dealing with Blight: Strategies for Tennessee's Communities*, and discussed strategies implemented in other states that require further review and said that staff will present a draft report including analyses of these strategies at the next meeting. Among the strategies used in other states, those of particular interest to the Commissioners were

- requiring servicers to post bond for each foreclosure,
- implementing a mediation program, and
- implementing vacant and foreclosed property registration systems.

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. LEWIS 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.

Mayor ROWLAND asked whether the \$500 fine that city hearing officers can impose is daily or the total allowed. Mr. LEWIS answered that he did not know but would get that information. [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 5-year period. If the homeowners have stayed in their home and made payments, the THDA forgives the loan after 5 years. Mr. 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 whether 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 that are 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 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 by Dr. Stan CHERVIN, Senior Research Consultant, on the collapse of the housing and financial markets during the 2000s, the slow recovery, and federal and state responses

Dr. CHERVIN 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 5 or 6 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.

Mr. MCMAHAN noted how thorough Mr. LEWIS and Dr. CHERVIN's report had been.

Next meeting

The next meeting is scheduled as follows:

- **June 11 and 12, 2014**

Chairman NORRIS adjourned the meeting at 10:32 A.M.