

TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations

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MINUTES OF THE TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

2 September 2015

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 30 at 1:07 p.m., Chairman Mark NORRIS presiding.

Present 21	Absent 3
Mayor Tom Bickers	Representative Harold Love Jr.
County Mayor Ernest Burgess	Mayor Kenny McBride
Mr. Charles Cardwell	Senator Jim Tracy
Representative Mike Carter	
City Commissioner Betsy Crossley	
Ms. Paula Davis	
Ms. Christi Gibbs	
Mayor Brent Greer	
County Executive Jeff Huffman	
Mr. Iliff McMahan	
Senator Randy McNally	
Senator Mark Norris	
Representative Antonio Parkinson	
Mayor Tom Rowland	
Representative Charles Sargent	
Mayor Pro Tem Kay Senter	
Mayor Larry Waters	
Comptroller Justin Wilson ¹	
Representative Tim Wirgau	
Senator Jeff Yarbro	
Mr. Kenneth Young	

¹ Russell Moore represented Justin Wilson.

1. Call to Order and Approval of the Minutes

Chairman Mark NORRIS called the meeting to order at 1:07 p.m. He recognized new member Ms. Christi GIBBS and Russell MOORE, Comptroller Justin WILSON's new designee. Chairman NORRIS requested approval of the minutes. Vice Chairman Tom ROWLAND moved adoption and Mr. MCMAHAN seconded the motion, which passed unanimously.

2. Commission Updates

Executive Director Lynnis ROEHRICH-PATRICK welcomed the returning reappointed members as well as Mr. MOORE. Ms. ROEHRICH-PATRICK introduced the Commission's newest employee, Mark PATTERSON, and congratulated Jennifer BARRIE and Matt OWEN on their recent promotions as well as April SCIVALLY for her 10 years of state service.

3. What is Happening in the World? Reviews of Community-Based Best Practices-Report to Commission

Dr. Bruce TONN, professor in the University of Tennessee's Department of Political Science and research fellow at the Howard H. Baker Jr. Center for Public Policy, presented findings from a study of community-based best practices that he completed with four colleagues from the university. The study, partially funded by the Commission, was motivated by a desire to identify technologies, innovations, tools, and programs to address the numerous difficult, complex, and interrelated challenges facing Tennessee's communities as a result of globalization, declining economies, and the need to increase services and revenues while reducing costs. Dr. TONN discussed four major subthemes from the report, including how Tennessee's communities can take advantage of technology; build rural and urban social, cultural, political, and natural capital; find innovative ways to pay for things; and imagine futures that tie the pieces together.

In response to a question about the use of social impact bonds to pay for services, Dr. TONN said that groups in both Memphis and Knoxville are pursuing the approach but that Knoxville is further along.

In response to a question by Chairman NORRIS, Dr. TONN said that his team would be able to provide assistance and information like that in the report to the governor's new rural task force if called upon.

Mayor ROWLAND asked whether the lack of high-speed internet was contributing to the decline of rural areas. Dr. TONN answered that it may be part of it, but it is really more about the draw of social amenities in urban areas.

4. Homestead Exemption in Tennessee Bankruptcy (Public Chapter 326, Acts of 2015)- Briefing on Initial Research

Research Associate Tyler CARPENTER presented an update on the Commission's study of the homestead exemption in Tennessee. He described the growth of consumer credit and the changing nature of lending from the early 1900s until now. He described the Bankruptcy Reform Act of 1978 by which Congress overhauled the bankruptcy system and created a federal set of exemptions for debtors, including a homestead exemption of \$7,500 for individual and \$15,000 for joint filers. The homestead exemption allows debtors to retain some equity in their home. The federal exemption amounts increase periodically to adjust for inflation (as do those of seven states) and are now \$22,975 for individuals and \$45,950 for joint filers. The reform allows filers to choose between federal and state exemptions unless a state has passed a law saying otherwise; in 1980 Tennessee restricted residents to state exemptions.

Mr. CARPENTER said that in 1978 Tennessee updated its exemption to \$5,000 for an individual and in 1980 added a \$7,500 exemption for joint owners; these have remained unchanged. If Tennessee's exemptions had increased with inflation, the current value of the individual exemption would be \$16,304 and the joint exemption would be \$21,645. The General Assembly has established enhanced exemptions for seniors at least 62 years of age or older and for individuals with one or more minor children. Fourteen states offer at least one enhanced exemption.

Mr. CARPENTER provided a comparison of Tennessee exemptions to other states, pointing out that Tennessee has one of the lowest exemptions in the country for an individual and the lowest exemption for joint filers. He said that 31 states restrict residents to state exemptions, but only eight including Tennessee have exemptions with dollar values below the federal exemption amount. He explained how the use of the homestead exemption differs in Chapter 7 and Chapter 13.

Mayor BICKERS expressed concern that individuals who are irresponsible or reckless could use the homestead exemption, in bankruptcy and outside of bankruptcy, to avoid facing the consequences of their actions. He used a hypothetical example of a drunk driver using the homestead exemption when sued by the surviving victim of a deadly crash. Mayor BICKERS added that he has spent ten years legally representing businesses that have been in situations where people have not kept their promises to pay for goods or services and that this is a hardship for business owners.

Mayor BICKERS asked whether the numbers on medical bankruptcies cited in the memo were applicable to Tennessee. Mr. CARPENTER responded that several reports supported the numbers, but the specific number changes with each study because of the nature of the surveys and the lack of available data. Mr. CARPENTER explained that data on closed cases are difficult to obtain and have limited information about the reasons people file for bankruptcy.

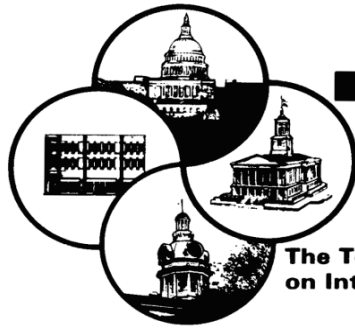
Mayor BICKERS asked why Tennessee has the highest filing rate in the country and whether it would suggest that the current homestead exemption is not preventing people from filing

bankruptcy in Tennessee. Mr. CARPENTER said that the panelists will be able to address why Tennessee has the highest filing rate. Mr. CARPENTER also said that if an individual has assets, they will most likely file under Chapter 13, which allows them to keep their assets while repaying some or all of their debt, because little of the value in their home is protected under Chapter 7.

Representative CARTER said that a Chapter 7 trustee he knows said that the individual and joint exemption amounts should be considered for an increase, but that the values for the other categories are more than adequate. The trustee said that in his practice each year only two or three homes are sold in bankruptcy. Representative CARTER said that, if there is not a problem, then he does not care to fix it, but if there is, then we should consider doing something about it.

Ms. ROEHRICH-PATRICK asked how often an individual filing for bankruptcy owned a home. Mr. CARPENTER explained that roughly 60% of filers are homeowners.

Chairman NORRIS adjourned the meeting at 1:58 p.m.



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MINUTES OF THE
TENNESSEE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS
3 September 2015

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 30 at 8:40 a.m., Chairman Mark NORRIS presiding.

Present 23	Absent 1
Mayor Tom Bickers	Mayor Kenny McBride
County Mayor Ernest Burgess	
Mr. Charles Cardwell	
Representative Mike Carter	
City Commissioner Betsy Crossley	
Ms. Paula Davis	
Ms. Christi Gibbs	
County Mayor Brent Greer	
County Executive Jeff Huffman	
Representative Harold Love Jr.	
Mr. Iliff McMahan	
Senator Randy McNally	
Senator Mark Norris	
Representative Antonio Parkinson	
Mayor Tom Rowland	
Representative Charles Sargent	
Mayor Pro Tem Kay Senter	
Senator Jim Tracy	
Mayor Larry Waters	
Comptroller Justin Wilson ¹	
Representative Tim Wirgau	
Senator Jeff Yarbro	
Mr. Kenneth Young	

¹ Russell Moore represented Justin Wilson.

Call to Order

Chairman Mark NORRIS called the meeting to order at 8:40 a.m.

1. Homestead Exemption in Tennessee Bankruptcy (Public Chapter 326, Acts of 2015)-Panel Discussion

The Commission heard testimony from:

- Henry E. Hildebrand III, Chapter 13 Trustee
Middle District of Tennessee, United States Bankruptcy Court
- Robert H. Waldschmidt, Chapter 7 Trustee
Law Office of Robert H. Waldschmidt
- Tom Lawless, Certified Creditor Rights Specialist
Lawless and Associates, P.C.
- Maria Salas, Certified Consumer Bankruptcy Specialist
Salas Law Group, PLLC, Tennessee Bar Association
- Tim Amos, Executive Vice President/General Counsel
Tennessee Bankers Association
- Keith Slocum, Board Certified Bankruptcy Specialist
Harlan, Slocum, and Quillen
- Steve Hodgkins, President
Home Builders Association of Tennessee

Mr. HILDEBRAND began by giving a brief overview of the bankruptcy process. He explained that exemptions can be divided into three categories and that they make up only a part of the bankruptcy process: (1) exemptions for entire items, (2) exemptions based on dollar amounts that may be applied to personal property, and (3) exemptions for certain items up to a specific dollar amount, including homestead exemptions.

Mr. WALDSCHMIDT explained his perspective and experience as a trustee in dealing with Chapter 7 debtors. He sells property in only 5% of all cases, the rest being no-asset cases. When a debtor does have equity, the trustee must take into account the administrative costs of selling the home. Equity of \$2,000 would most likely not lead him to sell the home because it would not provide a meaningful return for the creditors. He expressed concern about the complexity of the current homestead exemptions and gave the example of a woman who could see her allowable exemption change at least eight times over her lifetime because of changes in marital status, parental status, and age: from \$5,000 to \$7,500 to \$50,000 to \$25,000 to \$5,000

to \$12,500 to \$20,000 to \$25,000. He said that Tennessee has the most convoluted system of homestead exemptions in the country.

Mr. LAWLESS suggested that all bankruptcy exemptions be reduced to two unified exemptions: a large exemption for Chapter 13 and a much smaller one for Chapter 7. This exemption scheme would encourage debtors to repay their debt in Chapter 13. Mr. LAWLESS and Mr. HILDEBRAND both said that some debtors abuse the system by converting nonexempt assets into exempt assets before filing by, for example, paying down their mortgages. Ms. SALAS said that although the Commission is being directed to study the homestead exemption, the Tennessee Bar Association wants the Commission to consider all exemptions.

Mr. AMOS argued that while the homestead exemption amounts of \$5,000 and \$7,500 are low, debtors have access to several large exemptions, specifically the personal property exemption of \$10,000 and the exemptions for the family Bible, pensions, etc.

Mr. SLOCUM said he rarely sees people try to game the system. He explained that many people want to pay back their debt but are unable to withstand aggressive debt collection efforts. These debtors use the system to help repay their debts and end the collection efforts. He agreed that a single number would be better but said that nothing should be taken away from the categories of individuals over 62 or individuals with minor children.

Mr. HODGKINS explained that the low homestead exemption in Tennessee is pushing people, including some of his friends, to move to Florida and Texas, which have unlimited homestead exemptions, to protect their assets. He said that bankers use the system to collect money when they could negotiate with debtors upfront and place a lien on the homes. Further, he argued that the unlimited exemptions in Florida and Texas have not made credit difficult to get or caused interest rates to increase there. He said that the Home Builders Association of Tennessee wants people to invest in Tennessee and feel safe in their investment.

Chairman NORRIS and Representative CARTER asked how Tennessee's homestead exemption compared to the federal homestead exemption and whether allowing the federal exemption would be an option to consider. The panelists explained that the federal homestead exemption is a single number, but the filer may use up to \$11,500 of an unused portion of the exemption on other property. Mr. WALDSCHMIDT said the federal set of exemptions is extremely high. Senator YARBRO asked whether members of the panel think Tennessee's homestead exemption should be lower than the federal. Mr. WALDSCHMIDT explained that setting an exemption amount is a balancing act between fairness to debtors and creditors; Ms. SALAS said that the exemptions that need to be considered for increases are those for those under the age of 62 without minor children.

Mayor WATERS asked why Tennessee has the highest bankruptcy filings in the country. Mr. HILDEBRAND explained that people use the system to help them repay their debt, which explains why Chapter 13s are so high. Mr. AMOS agreed and added that because of the efficiency of the system, creditors are more willing to go along with repayment plans. Ms. SALAS added that Tennessee has the highest divorce rate in the country and that this is a

leading factor. Mayor HUFFMAN asked what effect medical bills have on the filing rate in Tennessee. The panelists responded that this is a major factor. Mr. WALDSCHMIDT said that medical bills often do not show up on the filing forms because people use credit cards to pay for nearly everything but explained that he did his own study of the cases that he worked, and medical bills ranked at the top of reasons people file. Mr. HILDEBRAND said that a Harvard study had found medical bills to be the number one reason for filing. He added that while medical bills may push someone into filing, that could be the result of a lack of coverage or a loss of a job. Mr. HUFFMAN followed up by asking how Tennessee ranks when looking at just Chapter 7 filings. Mr. WALDSCHMIDT said that Tennessee is somewhere in the middle.

Representative PARKINSON asked how people determine which chapter to file. Mr. HILDEBRAND explained that it is up to the debtor but that judges in Tennessee are very willing to accept Chapter 13 repayment plans and that bankruptcy lawyers often encourage people to repay their debt in a Chapter 13. Ms. SALAS explained that people often use the system to help them repay their debt, which greatly influences their filing decision. Other factors include the age of the debtor, job, eligibility, and last time filing bankruptcy. Ms. ROEHRICH-PATRICK asked how eligibility for filing Chapter 7 is determined. Ms. SALAS explained that a filer would have to pass a means test and that generally the filer must fall below the median household income for their family size.

Several alternatives were proposed by the panelists including creating a uniform exemption and creating different exemptions for Chapter 7 and Chapter 13. Chairman NORRIS asked whether any other states currently operate under a uniform exemption. Mr. LAWLESS responded that other states have gone to a more level, transparent, and fair system and have a single homestead exemption but there are no states that have one exemption that covers anything up to a set dollar amount. Creating separate exemptions for Chapter 7 and Chapter 13 would also be a new concept not used by any other state.

When asked by Senator MCNALLY what a good number would be for a uniform exemption, the panelists all said they would not be able to agree on a number. Senator MCNALLY asked what would happen if we had no exemptions. Ms. SALAS responded that individuals with disabilities or people out of work would be forced to give up their furniture, Bibles, clothes, houses, etc. She said it would not be good to get rid of exemptions. The number of Chapter 7 filings would also drop to nearly zero.

Mr. AMOS said the Commission should not recommend allowing the federal exemptions or indexing for inflation because of states' rights issues and periodic changes leading to further uncertainty for lenders. Mr. LAWLESS agreed. Senator YARBRO said the current system already sounds convoluted and that there must be a way to index for increases in inflation without causing too much instability.

Senator MCNALLY and Mayor BICKERS both asked what effect increasing exemptions would have on businesses and consumers. Mr. WALDSCHMIDT said that unsecured creditors must absorb any debt not repaid when exempt property is not sold. Mr. LAWLESS added that businesses build this into their cost of doing business, and as such, we all end up paying for it.

Mr. AMOS said that any significant change in the homestead exemption would cause banks to change their lending practices, though a small or moderate increase would likely not have an effect. Mr. HILDEBRAND warned the Commission against believing that any reform of bankruptcy exemptions would have any significant effect on the filing rate. Many believed the 2005 reform would lower the rate, but several studies have shown it had no major effect on the filing rate.

2. Zoning Process and Consent to Rezone Private Property

Senior Research Consultant Bill TERRY presented a draft report on the zoning process and consent to rezone private property for review and comment. The report responds to Senate Bill 549 by Senator NICELEY and House Bill 775 by Representative DANIEL, which would require the written consent of the owner for any rezoning affecting a single parcel of private property. Mr. TERRY presented highlights from the report including information about the rezoning process in Tennessee and in other states. The draft report concludes that, short of requiring the consent of owners for rezonings, some of the approaches already used by local governments in Tennessee to ensure that property owners are aware of rezonings could be required. Examples include increasing the number of newspaper notices required from one to two; requiring signs on properties proposed for rezoning with multiple signs required when more than one parcel is to be considered; requiring notice by mail, either first-class or registered, to owners of affected properties or for surrounding property owners; and authorizing local governments to require the party requesting the rezoning to pay for notification requirements.

Representative WIRGAU asked how an out-of-state property owner should be notified of zoning changes. Mr. TERRY suggested sending notice in the mail to the property owner's address on the tax rolls.

Representative CARTER said that in 2014 the Tennessee Supreme Court recognized regulatory takings under the Tennessee Constitution in *Phillips v. Montgomery*, which involved subdivision regulations, not zoning. He asked how the case applies to zoning changes. Mr. TERRY said that in the *Phillips* case the subdivision was denied because the county wanted to reserve a right of way for a proposed road. That is not allowed; they have to buy the property.

Chairman NORRIS said that what the original bill was addressing is akin to a regulatory taking, and economic loss could be addressed through the courts. Mr. TERRY agreed, saying that downzoning is not illegal, but the question is how much of any resulting reduction in land value is too much. If the value of a property is reduced too much, a court may consider it a taking.

Representative WIRGAU asked whether any other states allow one property owner to stop a rezoning. Mr. TERRY said no.

Mayor ROWLAND asked how to define an adjacent property owner for purposes of notice requirements. Mr. TERRY said that other states define it in various ways, from people owning

property within 100 feet of the rezoned property and all the way up to 1000 feet. Tennessee leaves it up to local governments.

Chairman NORRIS said there should be reference to the takings issue in the final version of the report. Representative CARTER added that the bill sponsors, Senator NICELEY and Representative DANIEL, agree that pursuing whether a rezoning is a taking or not is a better idea than requiring owner consent for zoning changes.

Chairman NORRIS also said that the suggestions for notice by mail should include mention of possibly requiring certified or return receipt in addition to first class mail. Representative LOVE said that a suggestion that notices be sent by mail to the owner's address of record should also be included. Mayor Pro Tem SENTER recommended including the suggestion that cities consider holding additional public hearings. Mayor HUFFMAN said that, if we suggest that two public hearings be held, then the first meeting should be held by the planning commission and the second one before the legislative body. Mayor ROWLAND added that he would like to see the term "adjacent property owners" better defined.

3. Staff Research Timeline Handout for Review

Ms. ROEHRICH-PATRICK presented a revised workplan timeline reflecting the cancellation of the clean power plan study that had been required by Public Chapter 478, Acts of 2015, and an expedited timeline for the broadband project that was added to the work program at the last meeting. The broadband study timeline was moved up because of interest expressed by the sponsor of legislation related to broadband. Staff will be presenting a detailed memorandum with preliminary research at the January commission meeting. Ms. ROEHRICH-PATRICK went over the broadband study research plan, noting that staff has incorporated an extensive list of research questions provided by the Chairman into the plan.

Ms. ROEHRICH-PATRICK explained that we are no longer required to do the study because the federal regulations prompting Public Chapter 478 have now been finalized and that two conditions in the law that if included in the regulations would eliminate the need for the study have been met. The conditions concerned how nuclear power plants already built or under construction would be considered. Chairman NORRIS said that this project's cancellation has freed up staff resources to help meet the expedited timeline for the broadband study and for other studies.

Chairman NORRIS adjourned the meeting at 11:00 a.m.