226 Anne Dallas Dudley Blvd, Suite 508
Nashville, Tennessee 37243-0760
Phone: (615) 741-3012
Fax: (615) 532-2443
www.tn.gov/tacir

**MINUTES OF THE
TENNESSEE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS**

January 31, 2019

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in House Hearing Room I of the Cordell Hull Building at 1:08 p.m., Acting Chairman Larry WATERS presiding.

Present 22	Absent 3
Mayor Rogers Anderson	Metropolitan Trustee Charles Cardwell
Mayor Tom Bickers	Ms. Christi Gibbs
Mayor Buddy Bradshaw	Mr. Kenneth Young
Mayor Keith D. Brooks	
Representative Mike Carter	
Representative John Crawford	
Deputy Commission Paula Davis	
Mayor Brent Greer	
County Executive Jeff Huffman	
Representative Harold Love Jr	
Senator Jon Lundberg	
Representative Susan Lynn	
Mayor A. Keith McDonald	
Regional Director Iliff McMahan	
Representative Antonio Parkinson	
Senator Katrina Robinson	
Vice Mayor Kay Senter	
Mayor Larry Waters	
Senator Bo Watson	
Comptroller Justin Wilson[1]	
Senator Ken Yager	
Senator Jeff Yarbro	

[1] Lauren Spires represented Justin Wilson

1. Call to Order and Approval of the Minutes

Acting Chairman Larry WATERS called the meeting to order at 1:08 p.m., dispensed with the calling of the roll, and requested approval of the minutes of the December 2018 meeting. Regional Director Iliff MCMAHAN moved approval, and Senator Ken YAGER seconded the motion, which passed unanimously.

2. Commission and Staff Update

Executive Director Cliff LIPPARD welcomed five new members to the Commission: Loudon County Mayor Buddy Bradshaw, Representative John Crawford, Representative Susan Lynn, Senator Jon Lundberg, and Senator Katrina Robinson.

Following those introductions, Dr. LIPPARD informed the Commission that the panel to discuss Senate Bill 1989/House Bill 2154 (Cigarette Sales and Escrow Payments) that had been scheduled for the meeting had been cancelled at the request of the panelists. The panel was to have included representatives from the Attorney General's office and attorneys representing Xcaliber Tobacco. Dr. LIPPARD said that lobbyists representing Xcaliber plan to request that the Senate and House Finance, Ways and Means Committees withdraw their requests to the Commission for the study. [The Committees have since withdrawn the study request.]

Dr. LIPPARD also provided staff updates, recognizing Senior Research Manager Leah Eldridge for 20 years of state service and Senior Research Associate Jennifer Barrie for 5 years of state service.

3. Public Chapter 693, Acts of 2018 (Excess Property)—Final Report for Approval

Senior Research Associate Bob MOREO presented the final report on excess property for the Commission's approval. The report was required by Public Chapter 693, Acts of 2018, which directed the Commission to study and determine the amounts of non-tax-producing property held by the state and local governments, and make recommendations regarding ways to put surplus properties to productive use.

Mr. MOREO said the report covers the requested information, and that its recommendations, if adopted, provide for more efficient and responsible management of government-owned real property, particularly through better data collection to help guide decision making in the future. He said the report improved upon the draft presented in December by better describing the various sources of property information staff obtained and reviewed for the study and by adding more information about how other states require their agencies to report property information to their real estate management offices for maintaining their inventories, planning future needs, and identifying surplus real property.

Mr. MOREO explained a recommendation added to the report that goes a step further than the draft's recommendation that state agencies be required to report their property use and future plans to STREAM (the "State of Tennessee Real Estate Asset Management" division of the Department of General Services). The final report suggests that unused state-owned properties with no planned, future use reported to STREAM for 10 years should be automatically offered back for purchase to the prior owners or evaluated for potential sale as surplus.

Another recommendation added builds on the draft's recommendation for the state to expand its use of Geographic Information Systems (GIS) for real property management. The final report adds that, at a minimum, the state should list a complete inventory of all its state-owned real property online, but goes on to say that an online, searchable, GIS database of state-owned real property could allow for more valuable and insightful analysis, as well as increased transparency. Mr. MOREO said that the state can charge users for data like this to help offset costs.

Representative Mike CARTER moved to approve the report, seconded by Vice-Mayor Kay SENTER, and the report was approved unanimously.

4. Public Chapter 795, Acts of 2018 (Food Deserts)—Final Report For Approval

Senior Research Associate Tyler CARPENTER presented the final report on food deserts for the Commission's approval. The report was required by Public Chapter 795, Acts of 2018, which directed the Commission to study the benefits and costs of creating a special reserve fund in the state treasury for the sole use of funding grants and loans to encourage the financing and development of supermarkets, grocery stores, and farmers markets in food deserts, whose residents tend to have a less nutritious diet and poorer health outcomes than those living in other communities. Mr. CARPENTER reviewed minor changes made to the report since the December meeting, including clarifying that cost figures provided in the report for opening a grocery store are estimates provided by grocery store owners to the president of the Tennessee Grocers and Convenience Store Association.

Regional Director Iliff MCMAHAN moved approval of the report, Representative LOVE seconded the motion, and it was approved unanimously.

5. Cord Cutting and Local Government Revenue—Panel

Policy Coordinator Dr. Matthew OWEN introduced a panel of speakers who provided information on the taxation of cable and satellite television and their internet-based alternatives and the laws governing cable television franchises in Tennessee. This panel included

- Andy Macke, vice president of external affairs, Comcast, speaking on behalf of the Tennessee Cable Telecommunications Association (TCTA);

- Bruce Mottern, manager, state government affairs, TDS, speaking on behalf of the Tennessee Telecommunications Association (TTA);
- Damon Stewart, of counsel, Orrick, Herrington and Sutcliffe, speaking on behalf of DISH;
- Jeremy Elrod, director of government relations, Tennessee Municipal Electric Power Association (TMEPA), speaking on behalf of both the TMEPA and the Tennessee Electric Cooperative Association (TECA); and
- Joelle Phillips, president, AT&T, Tennessee.

Mr. Andy MACKE said that the way people are consuming video content is changing; they are moving toward using over-the-top video services (OTT) that provide access to streaming video over the internet like Netflix and away from cable television. However, he noted that the tax code has not been adjusted to reflect these changes in the industry or in consumer behavior. Consumers viewing the same content pay different tax rates based on the type of service to which they subscribe, and these taxes vary significantly. For example, a person would pay up to a 14.85% tax to watch Game of Thrones on cable but would pay a 8.25% tax to watch it on satellite television and a 9.5% tax to watch it on an OTT service. He said that the current regulatory regime for gaining access to rights-of-way (ROW) to expand communications networks can be burdensome and this is related to the lack of change in the regulatory structure. Mr. MACKE said that cable providers must pay franchise fees of up to 5% of their annual revenue from cable TV service to get access to local governments' ROW and this often far exceeds the actual costs incurred by local governments from allowing cable companies to deploy infrastructure in their ROW. There is also a concern that franchise fee revenue of local governments will decline as cable viewership declines. He said communications tax and fee policy should ensure similar services are treated alike, while encouraging investment and taxing services in a non-discriminatory manner.

In response to Senator YAGER's question about whether the state needs to modernize its tax laws as applied to these services, including its cable franchise laws, Mr. MACKE said that TCTA would be in favor of a fee for companies based on their use of the ROW and the costs incurred by local governments for that use and a separate communications services tax applicable to all providers. Senator YAGER asked whether this would mean moving toward an impact-based fee system. Mr. MACKE responded that it would. He noted that in Michigan ROW fees are calculated based on the number of linear feet of ROW used. [Note: In Michigan, these ROW fees can be credited against providers' franchise fees.]

Mayor MCDONALD said that for local governments ROW issues are not only about costs and fees but also about maintaining the ability to regulate what infrastructure is placed in the ROW and where it is placed so that space remains available for other uses, including governmental uses. He noted that state legislation has often preempted local governments' ability to manage ROW and asked the Commission to look at both the cost and availability of ROW.

Ms. Joelle PHILLIPS said that the tax and fee structure and franchising processes are governed by state and federal law, and she described differences between franchise fees and ROW access fees currently authorized under state law, characterizing franchise fees as a tax based on a percentage of revenue. In contrast, ROW access fees are cost-based. She also explained that, as the cable and telephone industries have evolved with the rise of the internet, the same networks that once provided either telephone service or cable television service now provide telephone, television, and broadband access.

She said that in the communications sector there are lots of unequal fees and taxes. For example, cable providers are required to pay franchise fees, but satellite providers are not. She suggested that rather than trying to correct these disparities, the state should figure out how much revenue it hopes to generate from the sector, how they want to spend it, and then design a taxing mechanism using good tax policy like lowering the rate and broadening the tax base. She encouraged the state to move to a more uniform, predictable, and all-inclusive tax for communications services.

In response to Senator YARBRO's question about how to separate taxes and fees for content from taxes and fees related to the platform over which content is delivered, Ms. PHILLIPS said that the state should look at the category of customers' use as one category and ROW issues as another category. She recommended looking at the market as a whole as well, saying that you don't want to raise taxes so high it discourages people from using and investing in these services. She also suggested broadening the tax base so you can lower the rate and encourage the use of these services.

Mayor MCDONALD expressed concern that local governments have lost the authority needed to ensure local interests, including access to service, are being met by providers. Ms. PHILLIPS said that tax and fee issues should be dealt with separately from other local issues like ROW management and aesthetic concerns and that when they aren't separated these issues can slow access to ROW and slow the deployment of infrastructure. Mayor MCDONALD responded that these issues cannot always be separated because taxes and fees are often the only way to get providers' attention to work with local governments to address local concerns related to ROW management and aesthetics.

Mayor BICKERS asked where the panel sees technology evolving over the next five or 10 years and said that he is concerned that any changes made in the tax and fee structure would once again become obsolete as the industry and consumer preferences continue to change. Ms. PHILLIPS agreed that both the industry and consumer preferences would continue to evolve, including changes and advances in the technology used to deliver service. She said that the two big trends she sees are the movement away from using wires to deliver service and changing patterns of use based on consumer needs such that equipment is used in different ways depending on the time of day. She recommended moving away from a tax structure that is based on infrastructure toward one based on revenue.

In response to County Executive HUFFMAN's question about whether the federal laws and policies would limit what the state could do to address issues related to its tax and fee structure, Ms. PHILLIPS said that it would. County Executive HUFFMAN next asked whether there are other states that could serve as models for Tennessee. Ms. PHILLIPS responded there is no state she could recommend that has addressed the issue in a holistic way. Florida has implemented a tax that addressed ROW issues, including fees, for deploying networks but did not address taxes on the consumption of services provided over those networks.

Mr. Damon STEWART said that franchise fees are not taxes but are fees for the use of local government property, and he characterized them as similar to fees one would pay for an easement on private property. He explained that satellite companies don't pay franchise fees because they don't use or impinge on local government property when providing their television service. He said that franchise fees should be considered as operating costs no different than the costs incurred by satellite providers to design and launch satellites into space.

Mr. Bruce MOTTERN said that the sales tax that applies to videos services in Tennessee should be simplified. He also noted that TTA members have had difficulty in negotiating pole attachment agreements with municipal electric systems and electric cooperatives, neither of which is subject to Federal Communication Commission's (FCC) pole attachment regulations. This results in increased costs and delays when deploying networks and negatively affect's private sector investment and the pricing of services. He recommended that the state encourage the Tennessee Valley Authority (TVA) to negotiate with providers on pole attachment rates. He also said that it can be costly and time consuming for providers to obtain permits for crossing railroad ROW as well as permits related to highway crossings and wildlife, and he noted that the cost of obtaining rights to transmit programming from content providers is a major cost driver.

Mr. Jeremy ELROD said that the electric utilities and cooperatives that provide video services in Tennessee pay taxes to the same extent as private providers do. Municipal electric utilities that provide video service make payments in lieu of taxes (PILOTs) as well as payments similar to the taxes a private provider would pay. Electric cooperatives that provide video service pay ad valorem taxes and franchise fees.

Mayor BICKERS asked whether the municipal utilities and electric cooperatives that provide internet service in Tennessee make their internet service available to all of their electric customers throughout their electric service areas. Mr. ELROD answered that most of the municipal electric utilities that provide internet service currently offer it to all of their electric customers, and those that offer internet to only a portion of their electric customer have a goal of expanding service to their entire electric footprint. Speaking on behalf of electric cooperatives, Mr. Mike KNOTTS, vice president of government affairs for TECA, responded that an electric cooperative that provides internet service through a subsidiary is required to provide service throughout its entire electric service area, under state law; but if it provides service through a third party partner, it is not required by law to provide service throughout their territory. Mayor BICKERS said that the biggest complaint local governments receive is about internet availability not ROW access or fees. He said that it is important to address issues related to availability when addressing issues related to taxes and fees.

Mayor ANDERSON asked whether staff had contacted the Tennessee Highway Officials Association. He noted that some counties have found that infrastructure has been deployed in public ROW without going through the permitting process. He said that this was the biggest cost to county governments related to the broader tax and fee issue. Dr. LIPPARD indicated that staff has spoken with the Highway Officials Association about this project.

Acting Chairman WATERS adjourned the meeting at 2:34 p.m.

The Tennessee Advisory Commission on Intergovernmental Relations

226 Anne Dallas Dudley Blvd, Suite 508
Nashville, Tennessee 37243-0760
Phone: (615) 741-3012
Fax: (615) 532-2443
www.tn.gov/tacir

MINUTES OF THE TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

February 1, 2019

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in House Hearing Room I of the Cordell Hull Building 8:44 a.m., Acting Chairman Larry WATERS, presiding.

Present 17	**Absent 8**
Mayor Rogers Anderson	Metropolitan Trustee Charles Cardwell
Mayor Tom Bickers	Representative John Crawford
Mayor Buddy Bradshaw	Ms. Christi Gibbs
Mayor Keith D. Brooks	Senator Jon Lundberg
Representative Mike Carter	Senator Susan Lynn
Deputy Commissioner Paula Davis	Senator Katrina Robinson
Mayor Brent Greer	Senator Bo Watson
County Executive Jeff Huffman	Mr. Kenneth Young
Representative Harold Love Jr	
Mayor A. Keith McDonald	
Regional Director Iliff McMahon	
Representative Antonio Parkinson	
Vice Mayor Kay Senter	
Mayor Larry Waters	
Comptroller Justin Wilson[1]	
Senator Ken Yager	
Senator Jeff Yarbro	

[1] Lauren Spires represented Justin Wilson

Acting Chairman Larry Waters welcomed former chairman, Judge Mark Norris, and invited him to the podium to be recognized. Policy Coordinator Dr. Matthew OWEN read a resolution honoring Judge Norris for his service to the Commission and to the State. Following the presentation, Judge Norris offered his thanks and reflections on serving with the Commission, and several members offered their thanks to the Judge. The resolution was moved and then passed unanimously.

6. Tennessee Valley Authority Payments in Lieu of Taxes—Annual Report for Review

Policy Coordinator Dr. Matthew OWEN presented the annual update on Tennessee Valley Authority (TVA) payments in lieu of taxes (PILOT) for approval. He said that the amount Tennessee receives from TVA is estimated to increase for the second straight year. Dr. OWEN reviewed TVA's strategies for meeting energy demand while rebalancing its power network, saying that they could affect the PILOT in future years.

In response to Representative CARTER's question about whether TVA's plan to move its power operations center from an existing facility in Hamilton County to a new facility in Meigs County would affect the PILOT distribution to Hamilton County, Dr. OWEN said that as of fall 2018, TVA had not yet calculated the move's potential effect on payments to Hamilton County, according to news reports. Representative CARTER asked that staff follow up with TVA regarding the move's effect on Hamilton County. [Note: TVA staff interviewed said that the move should not affect TVA's direct payments to Hamilton County.]

In response to Senator YAGER's question about whether the report supports TVA's decision to consider retiring the lone coal-fired unit at its Bull Run plant in Anderson County, Dr. OWEN said that the update on Bull Run is included in the report for informational purposes only. Senator YAGER said that he does not support the retirement of the coal-fired unit at TVA's Bull Run facility and would not support a report that recommended its retirement.

County Executive HUFFMAN moved approval of the report, Mayor GREER seconded the motion, and it was approved unanimously.

7. Annual Report on Tennessee's Public Infrastructure Needs—Final Report for Approval

Senior Research Associate David KEISER presented the final report *Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs*, 2019 for approval.

Mayor Keith MCDONALD asked why the cost per student for new schools needed in Wilson County was so much greater than the other school systems' figures. Mr. KEISER said that Wilson County had introduced some high-dollar schools to the inventory, including one high school estimated to cost $180 million. [Note: Staff talked with representatives from the Greater Nashville Regional Council (GNRC) regarding the high-cost estimates for school needs in Wilson County. Representatives from the Wilson County School System shared their 2017 Education Facility Improvement Study with GNRC. Assumptions about future costs per square foot for new school construction and future land costs were higher than the cost figures used by other school systems. They also included the cost of furnishing the school, which most school estimates in TACIR's Public Infrastructure Needs Inventory do not. They believe land and construction costs are increasing rapidly in Wilson County, and GRNC's calculations show a 11% inflation rate based on historical construction costs and projected costs for new schools. This is compared to 4.5% in Nashville and even lower rates in the surrounding area. Lastly, the costs per student used in the Infrastructure Report are different from cost per square foot where you would see economies of scale. Wilson County is planning to build very large schools in preparation for increased population and a cost per student rate is based on the students they currently have.]

Dr. LIPPARD shared a press release about the recent Volcker Alliance's report on *Truth and Integrity in State Budgeting*. Tennessee's grade improved from a B to an A because the Public Infrastructure Needs Inventory gives a full reporting of highway and bridge deferred maintenance costs.

Regional Director Iliff McMAHAN moved for approval of the report, and Mayor Brent GREER seconded. The report was unanimously approved.

8. House Bill 971/Senate Bill 1075 (Local Revenue and Services—Interim Report For Review, Comment and Approval

Senior Research Associate Michael MOUNT gave an overview of local option sales tax and state-shared sales tax in Tennessee and then presented the interim report on internet sales tax for the Commission's review, comment, and approval. He explained that the interim report was prepared in response to a request by the House Finance, Ways, and Means Committee in April of 2018. Local members of the Commission suggested the study initially focus on internet sales tax collection and distribution in light of the *Wayfair versus South Dakota* case and on provisions of Tennessee law, set to become effective July 1, 2019, relating to the Streamlined Sales and Use Tax Agreement (SSUTA)—a multistate effort that has the effect of reducing the burden of sales and use tax collection on retailers.

In response to Mayor MCDONALD's question about the number of states that are already at the $100,000 threshold, Mr. MOUNT said about 20. Mayor HUFFMANS questioned why Tennessee set $500,000 as its threshold, what are the ramifications of lowering the threshold, and why Tennessee hasn't added the number of transactions as part of the criteria as some of the other states have done, Commissioner of Revenue David GERREGANO said the $500,000 threshold was chosen in 2016 when Rule 129 was promulgated because it was consistent with previous legislation for the franchise and excise and business taxes. He said other states have adopted a $100,000 subsequent to the *Wayfair* case. Regarding the report's recommendation that out-of-state sellers with more than $500,000 in sales in Tennessee be required to collect and remit sales tax, Mayor BROOKS moved, and Representative Mike CARTER seconded, that the report be amended to add a sentence that says, "Further, the state should consider lowering this threshold at some time in the future." Mayor BROOKS moved approval of the amendment, and Representative CARTER seconded the motion, which passed unanimously.

Mayor MCDONALD asked whether there was a case in Tennessee regarding the physical presence rule and whether or not the case was settled. Commissioner GERREGANO said there was a case challenging Tennessee's Rule 129 pending in Chancery Court when Wayfair was decided, and it has been subsequently dismissed—November 5, 2018. Mayor Tom BICKERS, seeking clarification, asked whether there is any pending litigation that should cause the legislature to pause in allowing the Department of Revenue to enforce Rule 129. Commissioner GERREGANO said he was not aware of anything in another state or in the federal court system that currently would fall into that category.

Senator YAGER asked to hear from representatives of city and county governments, and David CONNER, Executive Director of Tennessee County Services Association, and Margaret MAHERY, Executive Director of the Tennessee Municipal League, came forward to speak. Mr. CONNER said that in the late 1980s, only six counties had a rate higher than 2.25%, and now 2.75%—the maximum—is the most common rate. Ms. MAHERY suggested there should be two motions, one to delete language in the report recommending a population-based distribution and one addressing the uniform rate. Mayor BICKERS said that having a uniform rate of 2.25% and a local rate of 2.75% gives an advantage over brick-and-mortar stores, and asked whether SSUTA requires Tennessee to have the uniform rate. Mr. MOUNT said no but it does require Tennessee to eliminate the uniform rate, however, if Tennessee does not intend to become a full member in SSUTA, the state would have the flexibility of retaining the uniform rate. Representative LOVE asked what it would take to become full members of SSUTA. Mr. MOUNT said, along with other minor changes listed in the report, the uniform 2.25% rate option would need to be eliminated and the single article cap would need to be limited to motor vehicles, aircraft, watercraft, modular homes, manufactured homes, and mobile homes. Executive Director LIPPARD clarified that full membership in SSUTA is no longer the threshold, and becoming full members would be overly problematic for Tennessee and is not required to meet the *Wayfair* criteria. Commissioner GERREGANO said whether increasing the uniform rate to 2.75% is problematic is a questions for the Attorney General. Representative CARTER said maybe the Attorney General could rule on whether we can delegate to a corporation the right to set a tax rate. Mayor MCDONALD said the state already allows corporations to set the tax rate at either the local rate or the uniform rate, and some jurisdictions already have rates lower than uniform 2.25% rate option.

Representative LOVE suggested changing the uniform rate option so that, if the local option is not chosen, then the uniform rate of 2.25% applies unless the local rate is higher than 2.25%, in which case, the uniform rate will be equal to the local rate. Executive Director LIPPARD said the additional complexity for vendors could increase their burden and lead to a legal challenge. Senator YARBRO asked whether increasing the uniform rate from 2.25% to 2.75% would encourage out-of-state sellers to collect at the locally determined rate. Commissioner GERREGANO said he was not sure whether it would and said they will probably choose what works for them administratively and it would probably be based on what they are already doing in other states, which is why the trend in Tennessee is that more sellers are collecting at the locally determined rate. Vice-Mayor Kay SENTER moved, and Mayor BICKERS seconded, that the report be amended to add a sentence that says, "Additionally the state may increase the uniform rate to the maximum." The amendment passed.

Vice-Mayor Kay SENTER moved, and Mayor BICKERS seconded, that the report be amended to delete the sentence that reads, "Alternately, another distribution formula basis, such as population, could be used." The amendment passed.

Mayor Keith MCDONALD moved approval of the report, and Mayor Kevin BROOKS seconded the motion, which passed with two members voting no.

Executive Director LIPPARD said that at the Local Members Working Group meeting on January 31, the local members suggested that part two of the interim report should take a deeper look at BEP funding. Mr. Iliff MCMAHAN moved, and Mayor MCDONALD seconded, to amend the work plan as suggested, which passed.

9. Public Chapter 952, Acts of 2018 (Credit to Shippers' Franchise and Excise Tax Liability—Panel

Senior Research Associate Tyler CARPENTER introduced a panel of speakers knowledgeable about issues related to shipping and motor carrier services:

- Brandon Musso, director of business development, project44
- Michael A. Symonanis, director, North America Logistics / Global Container Logistics Group, Louis Dreyfus Company LLC
- Elaine Singleton, vice president of supply chain, Technicolor
- Dave Huneryager, president and chief executive officer, Tennessee Trucking Association
- Scott Schumpert, treasurer, Tennessee Trucking Association

Brandon MUSSO said that there is a real problem with driver shortages and equipment capacity in Tennessee and nationally and that if a truck isn't moving it isn't making money, and neither is the driver. He explained that anything the state can do to incentivize the turning of freight quickly is important. He said that when he approached Representative Camper about this issue, the idea was to apply an incentive statewide, but instead a PILOT was proposed to test the idea out.

Michael SYMONANIS said that trucks are an essential part of daily cotton flow and summarized how cotton moves by truck, either from a gin somewhere in the interior of Tennessee to a warehouse in Memphis and then again to the customer, or directly to domestic mills. He emphasized that warehouse efficiency is critical to the industry. He listed three areas where the driver shortage has hurt the industry—1) compliance, safety, and accountability scores that reduce the number of available drivers that shippers are willing to work with; (2) the implementation of electronic logging devices (ELDs) to support the hours of service (HOS) rules, which further reduced the capacity of the overall trucking industry; and (3) the demographic decline of available drivers in the country.

Mr. SYMONANIS said that in the last year, supply chain issues brought about by the ELD mandate and driver demand have tarnished the image of the cotton industry. He said that loading and unloading delays at other facilities has an effect on his company, even though his company has improved its efficiency. He said that a big conversation over the last 18 months is how to become a shipper of choice. He said to do so you treat the driver with respect and you get them in and out as quickly as possible. His warehouse had drivers waiting three and four hours, leading to trucking companies and individual drivers refusing to go to that warehouse. His management team looked at the check-in process and the yard management process to figure out how to get that time down. He reviewed several other potential solutions, including improving different types of collaboration, improving chassis availability and location issues, and looking at technology that will allow for better communication between warehouse, shipper, and driver.

Elaine SINGLETON presented an overview of what Technicolor does and how that relates to the supply chain. She said that the company manufactures and distributes products for Hollywood companies to retail outlets. Technicolor has five locations in Memphis and two in Nashville. It is critical that products make it from their manufacturing plants to the distribution centers; that it is packaged, labeled, and distributed properly to every retail outlet. Technicolor ships to over 10,000 retail locations each week. She said the shelf life of a movie is two weeks, so if a delivery is missed the product will sell for less than half the price. She said that Technicolor brings raw materials into Memphis and depends on trucks picking up and delivering given the pace of the industry. She said that over a one-week period around Black Friday, Technicolor shipped over 2,000 trucks. She concluded by emphasizing the issue of congestion in Memphis. She said it can take 45 minutes to get just a couple of miles in Memphis. She considers it a safety and security issue.

Dave HUNERYAGER explained that the driver shortage is a serious issue for the industry. There are times when freight cannot move because there are no available drivers. He said the industry is around 50,000 drivers short and that number is expected to grow. He explained that the average age of a truck driver is climbing. Drivers are older and nearing retirement. He also explained the new ELD mandate that went into effect in December of 2018, which he said makes it easier to track HOS. A driver's hours are limited to 11 hours of driving per a 14 hour day. Once the engine starts, the clock starts and doesn't stop until the end of the 14 hours. After 14 hours, the driver is mandated to rest for ten hours. There is a mandated 30 minute break as well. There are over 10,000 motor carriers based in the state of Tennessee; most have five trucks or less. He stressed that anything doable to reduce delay at pickup or at the delivery site is worth doing because it adds to the bottom line. He added that Tennessee has nine of the top 80 freight bottlenecks in the country, according to a study by the American Trucking Associations.

Scott SCHUMPERT said that he is the treasurer of the Tennessee Trucking Association and is the partner-in-charge at the Carr, Ingram, and Riggs CPA firm. His firm prepares several thousand franchise and excise tax returns on an annual basis and he is very aware of how the tax works and could work in the proposed legislation. He hears from his clients daily that the driver shortage is and has been the critical issue that the trucking industry is dealing with.

Representative PARKINSON asked how many drivers Tennessee needs and why. Mr. HUNERYAGER explained that they don't break it down to a state level but member carriers report anywhere from 5% to 9% of trailers are lacking a driver to haul the product. Mr. SYMONANIS said that turnover is an issue. Mr. HUNERYAGER said that for the full truckload part of the industry, the turnover rate of drivers is around 90%. Mr. HUNERYAGER said aging is the reason. Federal regulations say you have to be 21 years old before you can hold a commercial driver's license. There is movement at the federal level to move to a graduated commercial driver's license (CDL) for 18 to 21 year olds. Those 18 through 20 years old can drive intrastate in 48 states but not interstate. Representative PARKINSON asked whether there is a push to train and recruit kids out of high school to drive intrastate. Mr. HUNERYAGER said he would love to see that. Representative PARKINSON said he would be willing to make a push for that.

Representative PARKINSON asked how drivers get paid. Mr. HUNERYAGER said there are several ways, which include by the hour, by the trip, or by the mile with additional pay for wait time. Representative PARKINSON asked where the divide is between shippers and motor carriers. Mr. SYMONANIS said there is no difference. His firm has intentionally made improvements in their turn times. He said he didn't want to oversimplify it but his company fails or succeeds based on what's going on with the trucks. Elaine SINGLETON added that as a shipper, the distribution and trucking aspect is not a core competency. When you're creating a product that you're shipping, companies have outsourced anything that's not a core competency and they rely on motor carriers.

Senator YARBRO asked whether any other states have done something similar that we should be mindful of. Mr. MUSSO said to his knowledge, no other state has tried something like this before. Mr. HUNERYAGER added that Memphis is a transportation hub with all four transportation modes existing in the city. He said that if you could make this work there it could be replicated elsewhere. Ms. SINGLETON agreed, adding that the reach you get through Memphis is one thing that makes it appealing—you can access 80% of the country in two days. Senator YARBRO asked which was preferred, speed and efficiency or predictability. Mr. SYMONANIS said that if a driver knows it's going to take an hour to unload at a location, they may be willing to come there. There would be a willingness to commit more capacity or more drivers because they are assured that the loading and unloading will occur in the agreed upon time frame.

Vice Mayor Kay SENTER asked whether there are any other reasons for the shortage besides the 21 year old age requirement for interstate travel and the aging out of many in the workforce. Mr. HUNERYAGER said driving a truck is not for everybody. The industry is doing what they can to get people home at night and weekends in an effort to compete with the construction industry, which pays a comparable amount. Vice Mayor SENTER asked whether there are female drivers. Mr. HUNERYAGER said more and more women are entering the industry, where female drivers make up between 9% or 10%. In the 1970s, it was less than 1%.

Vice Mayor SENTER asked whether confusion over who is supposed to unload a truck is a problem. Mr. SYMONANIS said you don't see that often in the cotton industry but it could depend on the industry or the location. Some warehouses may have a small number of loaders or have loaders scattered between two physical locations. Vice Mayor SENTER asked whether the clock is ticking the entire time and whether the engine has to be turned off during the 10 hour rest. Mr. SYMONANIS said as soon as they turn their engine on the clock does not stop until the end of the 14 hour day. The engine must be turned off for the 10 hour rest. Mr. HUNERYAGER added that you can see the effects of this at rest stops and on highway ramps. Truckers are there because they have to be there. If they do not stop they are subject to fines.

Vice Mayor SENTER asked whether the trucking industry still uses team drivers. Mr. HUNGERYAGER responded that a lot of their carriers do team driving, usually a husband and wife. Mr. SYMONANIS said it depends on the length of drive, usually on the longer haul. Vice Mayor SENTER asked whether a second driver of a team would take over after the first driver's time is up. Mr. HUNERYAGER said yes. The first driver would also get into the sleeper berth when the other driver takes over.

Mayor Kevin BROOKS asked whether the Inland Port on the Georgia-Tennessee border is going to even further increase the need for drivers. Mr. HUNERYAGER said that it will eventually mean more truck traffic. Mr. SYMONANIS added that he believes the Georgia Port is targeting volume coming into Tennessee. Unlike Memphis, which has NS, UP, CN, CSX, and BNSF, Nashville has one rail service coming in. So if a delivery is coming in internationally, it is coming in a truck because of the connectivity of rail from the US East Coast to the US West Coast. It is going to increase the traffic flow.

Other Business

Mayor WATERS adjourned the meeting at 12:18 p.m., noting that Commission members would be polled to schedule the next meeting.