



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM: Cliff Lippard
Executive Director

DATE: 29 May 2019

SUBJECT: Legislative Update

Each year at this time, the Commission reviews legislative action on issues related to past studies and amends its work program to add new studies submitted to it by the General Assembly. In its first session, the 111th General Assembly passed or considered legislation on several issues related to the Commission's work, some dealing directly with findings and recommendations from Commission reports. The General Assembly also requested four additional Commission studies.

Legislative Action on Issues Studied by the Commission

Criminal Statutes of Limitations

Criminal statutes of limitations—the focus of the Commission's December 2018 report, *Refining Tennessee's Criminal Statutes of Limitations*—was the subject of several bills debated this session, including two bills that became law. In 2019, the 111th General Assembly passed Senate Bill 1252 by Gresham and House Bill 565 by Dunn, which takes action similar to one of the recommendations from the Commission's report and incorporates two others. Specifically, the bill eliminates the criminal statutes of limitations for all felony child sex crimes committed against victims less than 13 years of age. The Commission had recommended eliminating the statute of limitation for all Class A and B felony child sexual abuse crimes and considering extending or eliminating the statute of limitation for other child sexual abuse crimes. For felony child sex crimes committed against victims between the ages of 13 to 17 years of age, the new law eliminates the statute of limitation if the victim reports the crime to another person prior to the victim attaining 23 years old. For those victims between the ages of

13 to 17 years old, if the aforementioned reporting requirement is not met, for prosecution to be brought more than 25 years after the victim reaches 18 years of age, the prosecution must offer admissible and credible evidence corroborating the allegations or similar acts by the defendant. As the Commission's report recommends, the new law also corrects the drafting error in state statute that had the unintentional effect of shortening the statute of limitation for child rape and aggravated child rape offenses if the victim did not report the crime within three years of the offense.

Following another one of the recommendations from the Commission's report, the General Assembly also passed Senate Bill 593 by Reeves and House Bill 113 by Sparks, which extends the statute of limitation for prosecution of second degree murder from 15 years from the offense to at any time after the offense is committed.

Several other bills addressing criminal statutes of limitations were also considered but did not advance:

- Senate Bill 368 by Massey and House Bill 286 by Coley,
- Senate Bill 169 by Robinson and House Bill 309 by Thompson,
- Senate Bill 545 by Robinson and House Bill 660 by Thompson,
- Senate Bill 592 by Reeves and House Bill 112 by Sparks,
- Senate Bill 1131 by Swann and House Bill 140 by Powell.

Internet Sales Tax

Internet sales tax collection and distribution, the issue discussed in the Commission's February 2019 interim report, *Leveling the Playing Field: Internet Sales Tax in Tennessee*, was the subject of three bills passed by the General Assembly. Senate Bill 325 by Gardenhire and House Bill 326 by Hicks is similar in effect to the Commission's recommendations. The bill eliminates the uniform statewide local option sales tax rate of 2.25% for out-of-state sellers with no physical presence in the state, bases the distribution of local revenue received by the Department of Revenue from such out-of-state sellers on the destination of sales, and provides for an alternative distribution method if the department is unable to determine the proper distribution. Note that the Commission did not explicitly recommend the elimination of the uniform rate; the Commission recommended that the state could continue to offer sellers the option of paying the destination rate or the uniform rate, but in either case, distribution of the revenue should be based on the destination of the sales. The bill also follows the Commission's recommendation to retain origin-based sourcing for intrastate sales when

the state's streamlined sales tax provisions of Public Chapter 602, Acts of 2007, become effective.

The General Assembly passed two additional bills related to the Commission's report on internet sales tax. Consistent with the Commission's recommendation to retain the single article sales tax cap, the General Assembly passed Public Chapter 157, Acts of 2019, to delay until July 1, 2021, the implementation of the streamlined sales tax provisions of Public Chapter 602, Acts of 2007, including a provision that would have eliminated the single article sales tax cap. Following the Commission's recommendation, the General Assembly also passed Senate Bill 165 by Roberts and House Bill 667 by Daniel to enable the Department of Revenue to enforce Rule 129, which requires out-of-state sellers with no physical presence in the state with sales of more than \$500,000 in Tennessee to collect and remit sales tax.

Professional Privilege Tax

The professional privilege tax in Tennessee—the issue discussed in the Commission's December 2016 report, *Professional Privilege Tax in Tennessee: Taxing Professionals Fairly*—was the subject of several bills, including one that became law. Senate Bill 398 by Kelsey and House Bill 1262 by Holt was passed by the 111th General Assembly and, effective May 2020, will eliminate the \$400 professional privilege tax for 15 of the 22 professions currently required to pay the tax. The 15 exempted professions include the following: accountants, architects, athlete agents, audiologists, chiropractors, dentists, engineers, landscape architects, optometrists, pharmacists, podiatrists, psychologists, real estate brokers, speech pathologists, and veterinarians. The new law is estimated to cut taxes by over \$22 million and will exempt approximately 56,373 individuals from paying this tax. While the Commission's report did not make a specific recommendation on eliminating the privilege tax, it did note that eliminating the tax entirely would cost the state an estimated \$88 million per year. It also noted that over the years, legislators and representatives of various professions have argued that Tennessee's professional privilege tax is not equitable, saying that some professions that are not taxed have greater incomes than those that are taxed, that incomes of professionals vary significantly within the taxed professions, and that those in professions earning lower salaries have to pay the same amount as those earning more. The report found that salary data supports these arguments.

The General Assembly considered, but did not pass, four other bills addressing the professional privilege tax:

- Senate Bill 253 by Kyle and House Bill 246 by Clemmons,

- Senate Bill 315 by Watson and House Bill 338 by Reedy,
- Senate Bill 492 by Bowling and House Bill 40 by Van Huss, and
- Senate Bill 1290 by Pody and House Bill 1053 by Hall.

Healthy Workplace Act

In 2014, Tennessee adopted an anti-bullying statute known as the Healthy Workplace Act, which directed TACIR to create a model policy for the use of public employers. The Act says that employers that adopt an anti-bullying policy that conforms to the law will be immune from lawsuits alleging negligent or intentional infliction of mental anguish caused by the abusive conduct of employees. Commission staff convened a working group with other agencies and drafted a model policy that included the required components outlined in the law, but the Commission chose not to adopt that or any other model policy. Public Chapter 214, Acts of 2019, sponsored by Senator Akbari and Representative Parkinson, extends the definition of “employer” in the Act to include private employers. The new law makes it clear that it does not create a cause of action that can be taken against an employer for not adopting a policy.

Broadband Internet

Broadband internet access—the issue discussed in the Commission’s January 2017 report, *Broadband Internet Deployment, Availability, and Adoption in Tennessee*—was the subject of a number of bills filed this session. The General Assembly passed Senate Bill 1458 by Bailey and House Bill 605 by Tillis, which exempts from state and local sales and use tax fiber-optic cable after it has been attached to a utility pole, building, or other structure or installed underground. The bill also deletes the current credit against franchise and excise tax liability equal to six percent of the purchase price of qualified broadband internet access equipment. Other bills relating to the Commission’s report were considered but not passed by the legislature:

- Senate Bill 79 by Kurita and House Bill 130 by Reedy would have authorized municipal electric plants to provide internet and other services outside its service area.
- Senate Bill 489 by Bowling and House Bill 821 by Rudder would have authorized municipal electric plants, rural electric cooperatives, and telephone cooperatives to provide broadband and other services outside their service area.
- Senate Bill 494 by Bowling and House Bill 819 by Rudder would have required a municipal electric system to obtain the written consent of each electric

cooperative, municipal electric system, or telephone cooperative in whose territory the system will provide broadband, internet, and related services.

Annexation and Land Use

The General Assembly considered bills related to topics addressed by the Commission's January 2015 report, *Municipal Boundaries in Tennessee: Annexation and Growth Planning Policies after Public Chapter 707* and by the Commission's October 2015 report, *Community-based Land-use Decisions: Public Participation in the Rezoning Process*.

- Senate Bill 557 by Johnson and House Bill 1089 by Whitson, which passed, specifies that those "who reside in or own property in the territory proposed for annexation" rather than just residents of a territory proposed for annexation may vote in the annexation referendum.
- Senate Bill 715 by Watson and House Bill 853 by Carter, which did not pass, would have required the consent of a county before a municipality may annex territory that is not contiguous to the municipality's boundary.

Senate Bill 521 by Niceley and House Bill 418 by Marsh, which did not pass, would have required a property owner's written consent to amendments to a county or city zoning ordinance that affects the property owner's property. The subject of this legislation was the focus of the Commission's 2015 report, *Community-based Land-use Decisions: Public Participation in the Rezoning Process*.

Court Fees Advisory Council

The 111th General Assembly considered Senate Bill 586 by Lundberg and House Bill 670 by Daniel, which was consistent with a recommendation in the Commission's January 2017 report *Tennessee's Court Fees and Taxes: Funding the Courts Fairly*. The bill would have created a court fee and advisory council that would make recommendations concerning pending legislation proposing any new litigation tax or fee on civil or criminal cases to the members of the general assembly. The bill failed to advance.

Legislative Requests for Further Studies by the Commission

In 2019, the General Assembly requested four new TACIR studies. One of the studies is directed by a public chapter, two studies are requested by legislative committees, and one study is requested by a letter from Senator Dickerson.

Tennessee Right to Shop Act

The 111th General Assembly passed Senate Bill 510 by Roberts and House Bill 419 by Smith, known as the Tennessee Right to Shop Act. The new law requires insurers to provide information that enables the insured to shop around for the best price on medical services, and authorizes insurers to offer incentive programs to reward the insured for choosing lower cost services. The type of program authorized by the bill, one where carriers offer health plans that include incentives to enrollees for shopping for healthcare services at lower costs, are commonly referred to as “Right to Shop” programs. Right to Shop programs are meant to address rising health care costs by encouraging the insured to switch to lower cost service providers.

The new law also directs TACIR “to perform a study of any cost savings realized by enrollees with health plans, including private health plans and state funded health plans, in states that have adopted legislation or programs that require carriers offering health plans in those states to offer incentive programs to enrollees for shopping for healthcare services at lower costs, commonly referred to as “Right to Shop” legislation or programs. The study shall include, at a minimum, an examination of savings realized by such programs in Maine, New Hampshire, Florida, Arizona, and Kentucky.” The law requires TACIR to report its findings to the General Assembly no later than December 2020.

Community Resilience

Senate Bill 1114 by Senator Yarbro and House Bill 1120 by Representative Freeman would have created a state government task force on extreme weather, natural catastrophes, and community resilience. The proposed 24 member task force would have largely been comprised of representatives of government agencies that are in some way related to community resilience. As amended, the bill would have required the proposed task force to submit a report of its finding and recommendations to the Tennessee General Assembly by July 1, 2020.

However, during discussion on the bill in the Tennessee General Assembly’s House State Committee, Representative Hicks suggested that in lieu of creating a 24 member task force to produce a report and recommendations, it would be more efficient to have TACIR study the issue, meet with the relevant government agencies and stakeholders, and produce a report with recommendations. Later, Representative Hawk made a motion, which passed, directing the Commission to study the issues in House Bill 1120. Senator Yarbro made a motion, which passed, in the Senate State and Local

Government Committee directing the Commission to study the issues of Senate Bill 1114.

Online Bidding and Local Governments

Under current law, local governments may receive bids, proposals, and other offers electronically. Senate Bill 600 by Jackson and House Bill 635 by Travis would have required local governments to provide a secure electronic interactive system as an additional option to satisfy any requirement for mailing invitations to bid, requests for proposals, and other offers electronically. The bill would have also required local governments to provide the option for vendors to submit bids, proposals, and other offers electronically. The bill, which did not pass, would have exempted local governments that are currently without access to high-speed internet or a computer from these requirements until such time that access to high-speed internet or a computer becomes available. In the House Local Government Committee, Representative Travis made a motion, which passed, to send the bill to TACIR for a study.

Illegal Tire Dumping in Tennessee

Senator Dickerson introduced Senate Joint Resolution 344, directing TACIR to study problems stemming from illegal waste tire dumps in Tennessee. The legislation was referred to the Senate Energy, Agriculture, and Natural Resources Committee, but the 111th General Assembly adjourned without taking up the bill. Senator Dickerson, with support from Senate Energy, Agriculture, and Natural Resources Committee Chairman Steve Southerland, sent a letter on May 5th to formally request that TACIR take up the study.

The letter from Senator Dickerson requests that the study focus on the following topics:

- the health risks of illegal waste tire dumps,
- dangers of the igniting and burning of illegal waste tire dumps,
- current recycling methods for waste tires,
- new recycling alternatives for waste tires,
- new preventative strategies for the practice of illegal waste tire dumping, and
- incentives for recycling through state and local programs.