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MINUTES OF THE
TENNESSEE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS

June 15, 2022

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in House Hearing Room I of the Cordell Hull Building at 1:04 p.m., Chairman Ken Yager presiding.

Present 22	Absent 2
Mayor Rogers Anderson	Senator Jon Lundberg
Mayor Tom Bickers	Senator Bo Watson
Mayor Buddy Bradshaw	
Mayor Kevin Brooks	
Senator Heidi Campbell	
Councilman Chase Carlisle	
Mr. Calvin Clifton	
Representative John Crawford	
Mayor Terry Frank	
County Clerk Mary Gaither	
Representative Patsy Hazlewood	
Mayor Jill Holland	
County Executive Jeff Huffman	
Representative Harold Love Jr.	
Comptroller Jason Mumpower ¹	
Representative Antonio Parkinson	
Mr. Jeff Peach	
Deputy Commissioner Deniece Thomas	
Mayor Larry Waters	
Representative Ryan Williams	
Senator Ken Yager	
Senator Jeff Yarbro	

¹ Dana Spoonmore represented Jason Mumpower.

1. Call to Order and Approval of the Minutes

Chairman Ken YAGER called the meeting to order at 1:04 p.m. Chairman YAGER then requested and received approval of the January 2022 meeting minutes.

2. Commission and Staff Update

Executive Director Cliff LIPPARD presented to the members several small, technical changes to the bylaws to bring them into compliance with changes made over the years to our enabling statute as well as several other minor changes to recognize the increased use of email and the emergence of remote conference technology. Responding to a concern from Representative Patsy HAZLEWOOD that the proposed new section, Article III, Section 18, was too vague concerning the authorization for remote meetings, Chairman Ken YAGER suggested the members vote on the amended bylaws other than Article III, Section 18, with the understanding that an amended version of that section would be presented for a vote the next morning. The members approved the amended bylaws on a voice vote. [On the recommendation of Dr. LIPPARD, it was decided the next morning that the proposed new section was not necessary.]

Next, the Commission bid a fond farewell to two long term TACIR members, Mayor Keith McDonald and Deputy Commissioner Paula Davis. Mayor McDonald, who was present for the meeting, offered remarks thanking the staff and his fellow members following the reading of a Senate Joint Resolution recognizing his service. [Deputy Commissioner Davis was unable to attend the meeting; a framed copy of her Senate Joint Resolution was presented to her by staff].

Dr. LIPPARD next asked the members to welcome three new members to the Commission, all appointed in February 2022. They included Senator Heidi Campbell, Deputy Commissioner Deniece Thomas of the Department of Labor and Workforce Development, and Councilman Chase Carlisle of the City of Memphis.

Turning to staff updates, Dr. LIPPARD told the Commission of several staff achievements, including Senior Research Director Leah Eldridge completing the Tennessee Government Executive Institute, Web Development and Publications Manager Teresa Gibson achieving 30 years of state service in February, and Research Manager Michael Mount hitting 10 years in March. He also said that in January, Research Manager Jennifer Barrie became the second staff member so far to complete the rigorous TACIR Learning Pyramid. And he said that Senior Research Associate Kevin Vanzant would be leaving the Commission in August to return to teaching.

Finally, Dr. LIPPARD introduced two interns from the University of Tennessee serving with the Commission for the summer. Lukas Gonzalez is in the Master of Public Policy and Administration program with an expected graduation date of next January. Jack Duncan is a rising junior majoring in economics and philosophy, with an emphasis on politics and the law.

3. Fiscal Year 2021-2022 Accomplishments

Senior Research Director Leah ELDRIDGE summarized the Commission's major accomplishments for the past fiscal year, which will be incorporated into the Commission's biennial report for fiscal years 2020-21 and 2021-22.

4. Legislative Updates

Research Associate Michael STRICKLAND presented the legislative update for 2022, with a review of bills that were either considered or passed in the second part of the 112th General Assembly that related to the Commission's work.

Dr. STRICKLAND recounted bills related to broadband internet, court fees and criminal law, education, election security, land use and right-of-way, littering, local government conflicts of interest, precious metal sales, the professional privilege tax, and state contracting, making note of those that reflected recommendations the Commission had made in past reports on these topics. He presented seven distinct bills that had been put forward to the Commission requesting a total of six possible new studies. Three of these were passed as public chapters, and direct the Commission to study passenger rail service in Tennessee and utility-scale solar energy development. Another three bills passed in the Senate, but did not pass the House of Representatives, and were presented to the Commission as requests; these concerned reference-based pricing in healthcare, emergency communications on college campuses, and "liquor-by-the-drink" taxes. A fourth bill did not pass either chamber of the General Assembly and requested a study on the use of criminal fines for funding ambulance services.

5. Work Program Amendment And New Research Plans

Executive Director Cliff LIPPARD presented five amendments to the fiscal year work program for the Commission's consideration. Amendments one through four were adopted, with the Commission voting not to add amendment five to the work program. The first amendment adds two studies requested in bills passed by both chambers of the General Assembly. Public Chapter 1114 and 1124, Acts of 2022 direct a study of the potential for passenger rail service to link the major cities of each grand division of the state. Public Chapter 1043, Acts of 2022 requires a study related to the overall effects of utility-scale solar energy development in Tennessee. Amendments two, three, and four add studies requested in bills that passed the Senate but were either referred for summer study or taken off notice in the House. Senate Bill 2330 by Hensley and House Bill 2456 by Sparks, which passed the Senate but was referred to summer study by the House, directs a study related to the effects of health insurance prices when referenced-based pricing is used. Senate Bill 2827 by Hensley and House Bill 2729 Ogles, which passed the Senate but was referred to summer study by the House Finance, Ways and Means Committee, requests a study related to the routing and storage of emergency communications on colleges and universities in the state. Senate Bill 2262 Briggs and House Bill 2419 by Mannis, which passed the Senate but was taken off notice in the House requests a study related to restaurants licensed or permitted or both, under title 57 chapter 4 or 5.

Mayor FRANK asked whether the rail study could examine existing rail infrastructure in Tennessee and review tourism issues, like scenic railways or other potential for economic

development that use the existing rail structure. Representative PARKINSON said that, as a bill sponsor, it was his intent that the bill and research study the effects on tourism and the economic effect of a rail system. Dr. LIPPARD said that the guidance in the bills sent to the Commission requires a review of freight rail lines because of capacity issues, and staff would want to make certain any recommendations made didn't disrupt the essential flow of freight rail in Tennessee.

In response to Mayor WATERS' question as to why the House Finance, Ways and Means Subcommittee referred Senate Bill 2827 by Hensley and House Bill 2729 by Ogles to summer study instead of TACIR, Chairwoman Hazlewood said the House has a limited number of studies that it can request from TACIR and the requests are prioritized. This study did not make the priority list and referring the request to summer study was the alternative. Representative WILLIAMS said he had talked with the bill sponsor and explained that a TACIR study could be advocated for if TACIR had available capacity to add the study to the work program. He also said that, because the House has 2/3 more members than the Senate, to not overwhelm TACIR with studies, and to make certain TACIR could meet its purpose and not become an ad hoc committee of the House and Senate, the House decided to limit the number of study requests sent to TACIR each year.

Mayor BROOKS asked that it be noted that for bills taken off notice, or never even calendared then these studies don't rise to the level of a directive by the General Assembly to send the study to TACIR, nor does it indicate there was an interest in one or the other chamber for the study to move forward. He said this should be considered with the large amount of work the Commission has already and have asked the staff to accomplish.

Chairman YAGER asked Dr. LIPPARD whether there is precedent related to the Commission accepting a study from only one chamber of the General Assembly. Dr. LIPPARD said the decision is entirely at the discretion of the Commission. He said if there is indication that there is interest from both chambers, the Commission has added the study to the work program as capacity allows. There is also a precedent from the Commission of adding studies to the work program when the study has been referred by only one chamber.

Deputy Commissioner Deniece THOMAS asked how studies are prioritized when there is no due date on the study. Dr. LIPPARD said studies without due dates are preferred as it gives the Commission flexibility to work them into the work program. Staff can focus on the studies that the General Assembly has shown to be a priority and can push the studies with no due date to a later time. He said that, for studies not referred by both chambers, staff prefers not to have a due date or a due date that is further out.

Senator Heidi CAMPBELL asked about the process for deciding a study hasn't been requested by both chambers and how the project is prioritized. Dr. LIPPARD said that if a bill passes both chambers and becomes a public chapter, the Commission is required to complete the study as it is a law—there is no instance where the Commission has not completed a study that was requested by law. He also said he is not aware of an instance when a study was requested by both chambers that the Commission did not conduct the study. Dr. LIPPARD said that when a study has been requested by a committee of one chamber, the Commission has nearly always

added those studies to the work program. This issue is less clear when the study is only requested by a subcommittee or has clear opposition from one chamber. The only time the Commission hasn't accepted a study was when it was referred by a subcommittee or by a member and there was no indication of support from the other chamber.

In response to Senator CAMPBELL'S question about the process of adopting studies to the work program and the overall workload of staff, Dr. LIPPARD responded that, though the Commission is considering the five amendments to add studies to the work program, the Commission already has a docket of studies that staff is continuing to work on, some of which are multi-year projects that won't be completed until next year, and any new studies added to the work program will have to work around the existing studies and the three statutorily required projects. He said that this consideration of the process and workload is why the House adopted its referral process to ensure that more studies than the staff can handle aren't being sent to the commission.

Councilman Chase CARLISLE asked if the docket is getting full of projects with no specified due date, have studies ever been amended or removed from the work program. Dr. LIPPARD said he is not aware of a study being removed from the work program though studies with no specified due date have been moved further down the list.

6. House Bill 366/Senate Bill 1604 (Right Of Way Dedications)—Final Report For Approval

Research Manager Michael MOUNT presented the final report on Senate Bill 1604 by Senator Bailey and House Bill 366 by Representative Williams for review and comment. The Lieutenant Governor and House Speaker sent a letter to the Commission requesting that it study the bill, which would prohibit a local government from requiring dedications of land along existing roads; dedications are conveyances of land to a government for public use.

Mr. MOUNT said that because courts have found dedications that meet the *Nollan/Dolan* test are a constitutional means for governments to regulate land use, because new developments can and often do add to a community's infrastructure needs and costs, because dedications can help offset those costs so that they don't fall solely on the entire community's taxpayers, and because of Tennessee's long-standing tradition of local control regarding land use regulation, the final report does not recommend the proposed legislation.

Mr. MOUNT said that five states—Arizona, Colorado, Florida, Minnesota, and Utah—have incorporated the language of the *Nollan/Dolan* test into state statute, which provides guidance to local governments to help ensure that the dedications they require meet the *Nollan/Dolan* test. He said that, based on the actions taken by these other states to protect property owners' rights while maintaining local authority to require dedications and to provide guidance to local governments, the draft version of this report that was presented to the Commission at its January 2022 meeting recommended that the General Assembly should codify in state law the *Nollan/Dolan* test, the constitutionally-based standard that has been established and applied by the US Supreme Court for dedications. Mr. MOUNT added that this year, in response to the draft recommendation, Senator Bailey and Representative Williams introduced and the General

Assembly passed Public Chapter 1128 to incorporate language from the Nollan/Dolan test into Tennessee's statutes.

In response to Chairman YAGER's request to summarize the report recommendations, Mr. MOUNT said that the final report was updated to reflect that Public Chapter 1128 had passed. Representative WILLIAMS said that Public Chapter 1128 was a good compromise and that more work needed to be done on this subject.

Sentaor YARBRO moved approval of the report with Mayor BROOKS seconding the motion. The report was approved unanimously.

7. Post Award And Implementation Process For State Grants—Panel

Director of Policy Matthew OWEN introduced panelists representing state agencies to discuss issues of concern for grants management, including compliance with state and federal requirements, as well as best practices and a new grants management system that the state has procured and is in the early stages of making available to some agencies. Panelists included

- Brooxie Carlton, assistant commissioner of community and rural development, Tennessee Department of Economic and Community Development (ECD);
- Bryan Chriske, legislative procurement compliance manager, Office of Management Services, Tennessee Comptroller of the Treasury;
- Kimery Grant, transportation manager, Local Programs Development Office, Tennessee Department of Transportation (TDOT);
- Anne B. Marshall, director, Recreation Resources Division, Tennessee Department of Environment and Conservation (TDEC); and
- Clyde Phillips, enterprise resource planning project director, Tennessee Department of Finance and Administration.

Assistant Commissioner CARLTON described the array of grant programs ECD oversees and said one concern is the effect of federal requirements. She used ECD's broadband grant program as an example, saying that it had been state-funded for several years and has been very easy to manage. However, because it will now be federally funded, grantees will have to do environmental reviews, they will have to comply with the federal Davis-Bacon Act's wage requirements, and several other compliance areas that they've never had to do before for this program. She said this will slow down the timeline for executing grants, and it's going to make them more expensive. Moreover, she said every federal agency has slightly different requirements, citing the US Department of Transportation's refusal to reimburse grantees for the cost of environmental reviews. She said the state may not be able to fully address issues stemming from federal requirements, but it's important to help grantees manage them.

Assistant Commissioner CARLTON said two other issues are a statewide grants management system (GMS) and state capacity. She said a statewide GMS is needed. And she said given the amount of grant funding that state agencies are dealing with, the state needs to keep talking

about how it can keep up with the federal money that it's getting, or it will end up putting communities at risk of non-compliance.

Assistant Commissioner CARLTON said ECD's advisory board for its Community Development Block Grant program is a best practice. She said the board includes grant administrators, engineers, and local officials, who provide advice and help guide changes for improving the program, for example changing project scoring during the application process to encourage communities to apply for projects that they need rather than applying for larger, unneeded projects that simply score well. She said it also builds goodwill to have advice and suggestions from the communities coming in.

Mr. CHRISKE said the Office of Management Services, within the Comptroller's Office, is responsible for conducting compliance reviews of procurements and contracts that require approval by the Comptroller pursuant to Tennessee Code Annotated, Section 4-52-108, specifically grant contracts in excess of \$5 million. These grants are reviewed for compliance with procurement statutes as well as central procurement office rules, policies, and procedures. He said the Comptroller's Office is also responsible for the audit of state agencies, colleges and universities, and local governments, and it participates in the general financial and administrative management and oversight of the state as it relates to the post-award phase of grants through the audit process. He said grant policies vary by agency, and they can also vary within various divisions within the same agency, though he did not suggest this should be changed.

Mr. CHRISKE said Public Chapter 733, Acts of 2022, requires the state's Chief Procurement Officer to establish and maintain a central database of information regarding grant recipients and subrecipients for monitoring purposes by March 31, 2023. It also requires that all state agencies use that database and keep it updated. He said this will aid state agencies with grant monitoring, as well as assist the Comptroller's Office with audits.

Ms. GRANT said TDOT's Local Programs Office helps administer locally managed grant projects, of which there are approximately 600 local projects currently active. She said some of these projects are state-funded, but most have at least some federal funding, and once any federal funds are involved, then federal process must be followed for the entire project, not just the federally funded portion of it. She said TDOT's grant projects have six phases: eligibility determination, National Environmental Policy Act (NEPA) environmental review, design review, right-of-way review and acquisition, construction, and closeout. Combined, these six phases have 206 steps. She said because most of TDOT's grants are federally funded, these processes have been adopted to ensure that local governments do not lose federal funding for their entire project or for specific phases of their project. She later acknowledged that TDOT's process is complicated, and TDOT hasn't worked with other agencies on joint solutions because of that. She said TDOT's grant programs are routinely audited by the Federal Highway Administration and the state. [Note: Several members later asked for an enlarged copy of the flowchart presented by Ms. Grant. Staff will include a copy in the final report.]

Ms. GRANT described several issues that can delay projects. Some of these delays, such as the amount of time needed to perform environmental studies, the 50 days that reviewing agencies

have to review NEPA documents, the 120 days that Native American groups have to respond under the NEPA process, and delays related to relocating utilities, are out of grantees' control. In particular, she said federal authorizations take time, and she later acknowledged some delays may be related to staffing turnover at the state, saying it takes at least a year to train new staff on TDOT's process. Other delays can result from submitting incomplete documents, delays in hiring consultants, delays related to justifying changes to projects, and lack of local funds to meet matching requirements. She said her advice to local governments is to become familiar with TDOT's processes, hire knowledgeable staff to oversee projects and consultants, submit invoices regularly [Note: She said TDOT requires invoices to be submitted at least quarterly but no more than monthly], and above all else communicate early and often with TDOT. She later said TDOT meets with metropolitan planning organizations to identify projects that aren't moving forward. In response to Vice Chairman BROOKS' question about whether local officials could attend these meetings or schedule separate meetings with TDOT, Ms. GRANT said she would encourage them to do both of those things.

Director MARSHALL said TDEC's Recreation Resources Division provides planning, technical assistance and grant services to local governments and state parks. She said their grant programs include those that are state and federally funded. Examples include the Local Parks and Recreation Fund, which is a state program funded through the real estate transfer tax, the Recreational Trails Program, which is a federal program for trails and greenway development, and the Land and Water Conservation Fund, which is also federally funded. She said that the state and federal requirements placed on these grant programs are part of TDEC's commitment to steward public dollars in the most responsible way. She said this is in part why they require local governments and state parks to have comprehensive masterplans, because as grant recipients, they are also stewards of these dollars, and TDEC wants to make sure that funds are going towards the priorities that are set forth in that community. It also includes making sure that all projects are compliant with the Americans with Disabilities Act (ADA), playgrounds are designed and installed in a safe way, and projects are built according to correct specifications. She acknowledged that complying with some requirements, in particular the environmental clearance process, can be quite lengthy. In response to Mayor HOLLAND's question about whether the requirement for planning is a state or federal mandate, Director MARSHALL said it is a federal requirement for the state to produce a Statewide Comprehensive Outdoor Recreation Plan.

Director MARSHALL said TDEC's Recreation Resources Division began using a GMS for its grants in 2018. She said there's a learning curve with the GMS, and some people like it, while others don't. But TDEC has found it beneficial because it keeps all the information for a grant project together in one place. She said it's very easy for grantees to submit everything from the application to the environmental clearance documents to Title VI certification (certifying compliance with Title VI of the federal Civil Rights Act). It's a matter of uploading and checking a box, and then TDEC staff can review those documents and communicate back and forth with the grantee. Mayor HOLLAND agreed that there is a learning curve for TDEC's GMS, especially if you're not using it every day.

Director MARSHALL said that to help TDEC do a better job making requirements and process easier for local governments they are reestablishing a grant review committee, similar to ECD's

advisory board, that last met in 2008. She said the grant review committee is a very good way to get diverse input from across the state from every type of entity involved in TDEC grants, whether that's development districts, consultants, or local officials.

Director PHILLIPS said that in 2020, the Office of Customer Focused Government recommended that the state adopt a single, statewide GMS. He said potential benefits of a statewide GMS include having a single landing page for grantees to search for grant opportunities as well as a single system for grantees to use when managing grants from different agencies, making it easier to track applications and reimbursements. Having a single GMS rather than each agency having its own would reduce costs and reduce training time. By having the GMS interface with Edison and federal systems, it would also reduce the need for manual data entry, reducing the risk of errors. He said potential risks are that the system needs to be flexible enough to handle different grant requirements for different programs. When first implementing the GMS with a new agency, decisions also have to be made about whether to convert old data to the new system, and staff have to buy in to help with the transition.

Director PHILLIPS said so far, the Department of Labor and Workforce Development is the first agency to have adopted the new state GMS, and they went live on the platform in May 2022. Other agencies that have expressed interest include the Department of Finance and Administration, the Department of Agriculture, the Commission on Children and Youth, TDEC, which would upgrade to the state GMS from its current system, and ECD. He said the system currently interfaces with Edison for things like grantee or vendor information as well as for payments, and it can verify an entities nonprofit status, and they are continuing to add additional functions. Vice Chairman BROOKS said he would insist on the state having a statewide GMS if he were in the legislature. Councilman CARLISLE said he is interested in a statewide GMS, provided that it is user-friendly, and he asked why the current rollout is voluntary for agencies and not mandatory. Director PHILLIPS responded that at least initially the state is working with agencies that have volunteered to use the GMS. He said agencies have different processes, some have more requirements than others, and eventually the state will add more bells and whistles to the GMS to hopefully encourage more agencies to volunteer. He said it may be required in the future, but the state isn't there yet. He said some agencies, like TDOT, may have processes that are too complicated for the GMS to handle.

Vice Chairman BROOKS said streamlining grant processes is something that needs to be talked about, because things like trails, greenways, and sidewalks are quality of life issues for communities, and he described how the city of Cleveland recently had to give back a \$898,000 grant from TDOT because the NEPA process took too long, which he said is not a unique experience. He said it is confusing that state funding for private-sector economic development projects can be fast-tracked, but it still takes five years to build a sidewalk. Ms. GRANT said the grant that Cleveland had to return was part of the Transportation Alternatives Program, which is federally funded, and the federal government requires those projects to be construction-ready within three years or funding will be given to other projects.

Mayor HOLLAND said some grant programs are easier to work with than others in part because they are state funded rather than federally funded. She described several grants that the city of McKenzie has received that have been delayed, saying that the back and forth with

state agencies can be frustrating, especially when you submit documents for review and don't get responses for a month. She said whatever can be done to streamline state grants would be beneficial, though she acknowledged the state may not have the same leeway with federally funded grants. Mayor ANDERSON later expressed similar frustration with federal requirements and the need to address concerns with grant processes, saying that the federal government is going to continue to send more grant money to state and local governments in the coming years. Deputy Commissioner THOMAS agreed and said that the more requirements and restrictions the federal government places on federally funded grants, the more difficult things will be for state and local governments. She said disparate requirements could make it difficult to have a statewide GMS and already are making it more difficult to train grant management staff at the state. Even if someone has worked on grants at one agency, it isn't translating to grants management at other agencies anymore. She said there has to be some pushback on federal requirements.

In response to Mayor HOLLAND's question about whether there is an expected turnaround time for submissions especially for the NEPA process and whether there's a checklist that could help grantees, Ms. GRANT said environmental reviews are coordinated by TDOT's Environmental Division and some of the entities reviewing environmental documents have mandated timeframes for reviewing them and some don't [Note: Some of the entities reviewing these documents are federal agencies or other non-state entities]. Mayor WATERS asked whether approval for environmental clearance under NEPA for transportation grants comes from TDOT or the federal government. Ms. GRANT responded that some types of reviews can be approved by TDOT, but others require approval from the Federal Highway Administration. Mayor WATERS said the post-award process can be very frustrating.

In response to Mayor HOLLAND's question whether it's necessary for each state agency to have its own training for grantees to certify compliance with Title VI of the federal Civil Rights Act or whether the state could simply have one training that all agencies accept, Assistant Commissioner CARLTON said the state does allow agencies to accept Title VI certification from other agencies' training. Mayor HOLLAND said in small towns, mayors are directly involved in a lot of their grant projects, and as a result, duplicative grant processes can be burdensome, because they take time away from other things. Mayor BICKERS said smaller cities likely don't have fulltime employees for finding, applying for, and managing grants, and as a result they don't have equal access to funding opportunities. He said with grants spread throughout the different agencies, with different application processes, different monitoring processes, and different reporting systems, officials from small cities don't have the time and the resources to go through all of it. He asked staff to look at whether there is a bureaucratic barrier to funding for smaller cities and said it is important to ensure processes are equitable. Assistant Commissioner CARLTON said ECD's grants allow funding to be used for grant administration, and the application scoring process awards extra points to distressed communities.

Senator CAMPBELL asked what authority the state has regarding federally funded grants and whether there are federal programs the state is not an intermediary for. Director MARSHALL responded there are other federal programs and other private funding sources that cities can apply directly to that aren't managed by the state. She said for state-managed, federally funded grants—such as the Land and Water Conservation Fund—states are managing those programs

on behalf of the federal government. As a result, states must follow federal guidelines and requirements, which does add some steps and can add a lot of time. She said a statewide GMS that interfaces with federal systems could be helpful by eliminating the need to fill out separate forms, for example an application form the grantee submits to TDEC that TDEC staff then use to fill out a separate form to send to the federal government.

In response to Mayor FRANK's question about whether there are opportunities for the state to use federal funding for state needs so that more grants to local governments would be state funded and not subject to federal requirements, Director MARSHALL said that for TDEC, most of the federally funded Land and Water Conservation Fund grants go to state parks, whereas they use the state-funded Local Parks and Recreation Fund to provide grants to local governments. Because this fund is state-funded, TDEC has been able to make a lot of process improvements to it, including shortening the environmental review process.

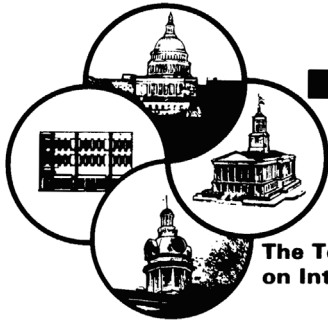
Mayor FRANK said there appear to be a lot of federal requirements that the state doesn't fully control and asked whether the state is working with its federal partners to assess whether some of those requirements are too cumbersome. Ms. GRANT responded that TDOT has worked with the Federal Highway Administration to develop an accelerated process for local projects, but she said only two local governments had used it because it didn't speed up projects significantly, and it placed more of the risk for non-compliance on the local governments. She said any changes to program requirements would need federal approval. Assistant Commissioner CARLTON said some of the federal American Rescue Plan funding had fewer requirements and could be tracked to see whether it worked and could be an alternative.

In response to Mr. CLIFTON's question about differences between state and federal requirements and whether agencies have adopted federal requirements for some state-funded programs, Ms. GRANT said for TDOT the processes aren't that different from federally funded to state-funded grants, and the state requirements tend to mimic the federal requirements. Mr. CLIFTON asked why road resurfacing projects require NEPA clearance and right-of-way review. Ms. GRANT responded and said they are both federal requirements and said they shouldn't take as long for resurfacing projects but said you could lose funding on an entire project if the requirements aren't met.

Councilman CARLISLE said workforce development needs to be considered with grant projects, saying that Memphis puts millions of dollars a year into paving projects but has difficulty finding people to do it. Assistant Commissioner CARLTON said with the huge amount of broadband funding the state is receiving it will be able to train people not only how to use broadband but also how to install fiber optic cable to deploy broadband.

Chairman YAGER said with federal requirements state and local governments are working under someone else's rules. He said we need to find ways to simplify grant processes.

Chairman YAGER adjourned the meeting at 4:05 p.m.



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June 16, 2022

Meeting Called to Order

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Present 20	Absent 4
Mayor Tom Bickers	Mayor Rogers Anderson
Mayor Buddy Bradshaw	Senator Jon Lundberg
Mayor Kevin Brooks	Senator Bo Watson
Senator Heidi Campbell	Representative Ryan Williams
Councilman Chase Carlisle	
Mr. Calvin Clifton	
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Deputy Commissioner Deniece Thomas	
Mayor Larry Waters	
Senator Ken Yager	
Senator Jeff Yarbro	

¹ Dana Spoonmore represented Jason Mumpower.

8. Tangible Personal Property Tax—Panel

Research Manager Michael MOUNT introduced panelists with knowledge of the personal property tax in Tennessee. Panelists included:

- Jim Brown, state director, National Federation of Independent Businesses (NFIB);
- Will Denami, executive director, Tennessee Association of Assessing Officers;
- Kelsie Jones, attorney, Jones Law Office PLLC;
- Kevin McAdams, certified public accountant, Elliot Davis;
- Karen Paris, trustee, Williamson County; and
- Daniel Sohn, vice president of finance and operations, Vireo Systems.

Mr. Jim BROWN said that TACIR was asked to study personal property taxes because of the complexity of the issue. He said that the smallest businesses have hundreds of dollars in compliance costs to pay a tax that can amount to between \$10 and \$25, and midsized and larger companies spend even more time and money to comply. He added that a group that gathered last summer was interested in exempting smaller businesses from paying the tax, but there were some constitutional issues with that, and an exemption would likely be challenged by a lawsuit. Mr. BROWN said that other states have already enacted various exemptions, and Wisconsin's legislature voted to eliminate their personal property tax, but the governor vetoed it. [Note: West Virginia enacted House Joint Resolution 3 in 2021 setting a referendum for November 2022 on whether to amend the state constitution to authorize the Legislature to exempt certain tangible personal property from property tax.] Mr. BROWN said that many NFIB members consider personal property tax to be a double tax because they have already paid sales tax on the property. Councilman Chase CARLISLE said that it's a triple tax for businesses that pay franchise tax.

Mr. Will DENAMI said the personal property tax is complex, and it is required by Tennessee's constitution. He said that Tennessee has a good system for administering personal property taxes, but it can be improved. He added that assessors want to treat everybody fairly, so the system needs to reflect fair market value. Mr. DENAMI referenced a 1996 lawsuit by a group of airlines seeking more favorable personal property tax treatment [Northwest Airlines et al. v. Tennessee State Board of Equalization]. He indicated that the 15% discount placed on the airlines' personal property in the settlement amounted to an admission that current depreciation schedules [adopted in 1990] undervalue personal property.

Mr. Kelsie JONES gave some of the historical background of the property tax in Tennessee. He said that there once was a state property tax but it was replaced by the sales tax in 1947, and now property tax is a local tax. He said that the personal property tax is more difficult to administer than the real property tax but that the state's reappraisal cycle, and the program of professionalization of local assessor officers, brought Tennessee to the top tier in property tax administration, and that is still true today. Mr. JONES said that federal law requires that states reasonably apportion the multi-state operations of railroads, power companies,

telecommunications, and transportation companies like motor carriers and barge lines, and that is why they are centrally-assessed by the state.

Mr. Kevin MCADAMS said the cost of compliance to a company is often more than the annual tax that they pay. He said that companies pay personnel costs and outside professional fees to comply with personal property taxes, and they have to maintain data that is not needed for anything else, for example, the Internal Revenue Service does not require businesses to itemize and depreciate personal property below \$2,500. Mr. MCADAMS added that the inevitable personal property tax audits are an additional cost and the results are often disputed. He said that, when there is a dispute, it is often cheaper for the taxpayer to walk away.

Ms. Karen PARIS said trustees are uniformly in the corner of our business community, are elected to serve our citizens, and are on the front lines of collecting personal property taxes. She said that the personal property tax is challenging and frustrating for businesses that may be assessed for years after they have closed, and that may end up in the court system. She shared figures demonstrating that the 7,090 smallest personal property accounts in Williamson County generate just \$210,000 to \$294,000 but added that the total personal property tax revenue of \$10.8 million is important to the county. She said that if the small accounts did not need to be administered, the assessor's and trustee's offices could save costs by reducing personnel.

Chairman YAGER said that the figures reaffirm that we need to look at other states to see whether there are any best practices to give some relief to people who are spending hours to pay a tax that is less than \$100, or in some instances, less than \$10. Deputy Commissioner Deniece THOMAS suggested that we need to go beyond what was enacted in other states and look at the potential loss of revenue for local governments and how to ease that burden. [Note: Because businesses in Tennessee may claim a credit against their business tax for personal property taxes paid, a decrease in personal property taxes could increase state business tax revenue and vice versa. See, for example, the fiscal note for Senate Bill 2877 and House Bill 2726 (100th General Assembly).]

Mr. Daniel SOHN said that complying with Tennessee's personal property tax is extremely burdensome to medium sized companies like Vireo Systems and would appreciate any state efforts that would help them reduce the red tape that inhibits their ability to grow and add new jobs. He described the process of complying as time-consuming and costing far more than the taxes that would be collected. Mr. SOHN gave an example of his facilities manager running around trying to find a stapler. Mr. CARLISLE agreed that that isn't the best use of time. Mr. SOHN estimated that it took his facility manager and his assistant three days to identify and locate every single item on that list. He estimated that they spent over \$2,000 to complete their personal property tax inventory and review. He recommended that the state reduce the burden or repeal the tax completely.

County Executive Jeff HUFFMAN said that it bothers him that compliance expenses can be more than the tax and that companies have difficulty figuring out how to pay this complex tax. He said that assessors and state employees try to be fair but that it's difficult. Councilman CARLISLE said that, for the assessor's office and the trustee's office, property tax administration is almost an overwhelming task for them. Councilman CARLISLE said that

large businesses can hire help with complying with personal property taxes, but most small businesses cannot.

County Executive HUFFMAN said that the study should show how much personal property tax revenue each county receives, and that the study looks at how other states are handling the issue. Chairman Ken YAGER said that it's very important that we look at what the personal property tax generates on a county by county basis and statewide. Mr. MOUNT said that, according to preliminary calculations, personal property taxes generate \$400 million to \$500 million statewide, and the percentage of property tax assessments that are personal property tax assessments varies widely across local governments in the state.

Mayor Tom BICKERS said the state could simply eliminate personal property tax but would need to figure out how to replace the revenue, for example, by offsetting the revenue with taxes that businesses already pay. He asked whether NFIB members would be amenable to that. Mr. BROWN said they would have to engage the membership to see what they're good with. Mr. MCADAMS suggested the franchise tax could be apportioned to local governments, Mr. BROWN noted that the Chamber of Commerce is talking about some franchise and excise tax updates. Mayor Jill HOLLAND asked whether the legislature would look again at the state-shared sales tax and the single item tax as a way to make up the revenue. She asked whether there is any reason why we can't go ahead and implement changes to the personal property tax. Mr. BROWN said he didn't think there is, but it's a matter of getting the interested parties together to talk about it. Mr. JONES said there are ways to change personal property taxes while holding local governments harmless, but the changes may require a constitutional amendment.

Mayor Terry FRANK said that a constitutional amendment is not too difficult and asked for recommendations regarding personal property taxes. Mr. DENAMI noted that the personal property tax is required by Tennessee's constitution but that a constitutional amendment (creating Article 2, Section 28) is how we got here. Mr. BROWN said that they haven't decided on a solution but suggested they would favor a repeal of the personal property tax while recognizing the need to make local governments whole. Ms. PARIS said that she is not advocating eliminating the personal property tax. She said we should consider how to make the process easier and more streamlined and suggested that businesses meeting a small business classification pay some minimum amount that is still personal property tax but that makes reporting easier. Mr. BROWN noted that there is an ease of filing option for accounts with \$1,000 or less in personal property but wasn't sure whether it's constitutional. Councilman CARLISLE said that blighted properties plague Memphis but restoring the properties to the tax rolls can make up for lost revenue, something to consider as we think through alternative revenue streams.

Mayor FRANK asked whether the 7,090 small accounts in Williamson County are ever audited. Mr. DENAMI said there are desk audits and specialty firms that go out and look at individual properties and occasionally find a property that wasn't self-reported. Ms. PARIS added that Williamson County audits accounts with tax bills as small as \$10. She said that personal property taxes are more delinquent than real property taxes, and half the accounts that are \$10

or less are delinquent today. County Mayor Buddy BRADSHAW said that for some large industries, they have found millions of dollars of improvements that were never reported.

County Mayor Larry WATERS said that forced assessments can result in higher personal property tax bills, but the bills cannot be reduced until the following year. Mr. DENAMI said that forced assessments happen when a business does not file. He said that if you file on time you get a sales ratio discount that can be up to 40%. He added that you pay a 25% overage in the year that you didn't file timely, and then you can correct it the next year. Mr. JONES added that businesses with forced assessments lose the right to amend their personal property tax schedule. Mr. BROWN said that businesses want to file but are not aware of the requirement. He suggested that new businesses get an email detailing the taxes they will pay. Councilman CARLISLE said that there aren't many resources for small business owners to get that kind of advice on the front end. Chairman YAGER asked whether there is any authority to send out a notice to the business owner that their personal property taxes are due. Ms. PARIS said that there is. Mr. DENAMI added that 67-5-903(a) and State Board of Equalization rule 600-05-041 requires the personal property schedule to be mailed to the business owner by February 1. He said that more needs to be done to make filing easier such as E-filing that would auto populate the previous years' items.

County Executive HUFFMAN asked whether other states are doing something like Tennessee's payment-in-lieu-of-tax (PILOT) agreements. Mr. JONES said that every state provides incentives, and PILOT agreements are one of many types of incentives. Councilman CARLISLE said that large businesses in Shelby County use PILOTs, which are the main part of the county's economic incentive packages. He said that he is curious about the overall economic effect of exemptions.

9. Fiscal Capacity For Fiscal Year 2022-23

Research Associate Presley POWERS presented the annual update on TACIR's fiscal capacity index and background information about the index and education funding in Tennessee. She provided an update of Tennessee's 95 counties' 15-year fiscal capacity trends. Mrs. POWERS explained the visible and emerging effects of the COVID-19 pandemic. She explained that the effects of the COVID-19 pandemic would likely become more evident as more years of data from that time become available. Mrs. POWERS explained that the Basic Education Program (BEP) will be replaced by Tennessee Investment in Student Achievement (TISA) in the 2023-24 school year, but the TACIR model will continued to be used.

10. Comprehensive Litter Review— Update

Research Manager Jennifer BARRIE presented a brief update on the comprehensive litter review including county-level litter grant data and results from the county and municipal surveys that staff conducted. Staff will present the draft report at the fall 2022 meeting and the final report in January 2023.

In response to a question from Mayor HOLLAND about whether staff has any data showing where the tire fee money has been going and why counties don't have tire shredding machines,

Ms. BARRIE said staff has been looking at the tire fee data and will include it and information about the tire shredders in the draft report.

Chairman YAGER asked whether the 60% survey response rate is common or low, and Mayor BROOKS said he doesn't think 59 survey responses out of 95 counties is good enough to show the big picture. Ms. BARRIE said that is a high response rate for a survey, and Director LIPPARD added that it depends on the survey and the audience, but 60% is a high response for a TACIR survey of local governments. Mayor BROOKS said it is important that we have a very comprehensive look at the old [visible] litter studies, and a comprehensive study in the state is very important. He asked whether we will discuss glass, plastics, and other materials; explain the corporate role; and include best practices and experiences from other states in the study. Ms. BARRIE responded that the study will include those topics while keeping within the scope.

Mayor FRANK commented that only 21% of counties responded in the survey that they would spend extra funds on enforcement, and this might be because someone else does enforcement. She asked whether there is a way to track that survey answer for the report or another way to measure the need for enforcement that we might look at.

Chairman YAGER asked whether salaries that are funded through the litter grant are tied directly to litter abatement. Mayor BICKERS asked whether counties can use litter grant funds for inmate litter crews and whether staff has data on how much counties are spending on different activities. He said that it would be helpful to see exactly how counties are spending the dollars today because the Commission has been tasked with identifying ways to improve the system, and perhaps the money spent on litter pickup could be spent in another way. Ms. BARRIE said she will work with TDOT beautification office staff to get more detail on how counties are spending their funds, and that counties can spend their funding on inmate pickup, and a lot of them do.

Senator CAMPBELL asked whether there are any parameters for the education requirement. Ms. BARRIE said yes, and she read the clarifying language in the litter grant manual. Senator CAMPBELL is concerned that the concept of recycling is not solving any problems and said encouraging reduction is an important idea to cover in education in addition to recycling.

Mr. PEACH asked whether there is a TDOT litter grant program for municipalities and whether there could be a recommendation for distributing money to cities. Ms. BARRIE responded that the litter grant funding goes directly to counties, not cities, but that does not mean that counties are not working with cities on litter and illegal dumping. She added that staff can look at a potential recommendation and that cities can apply for competitive special litter grants. Councilman CARLISLE said that it is critically important to look at cities, and he is very interested in looking at how to provide direct funding for municipalities in specific instances.

Following a decision to poll the members on the next meeting date, Chairman YAGER adjourned the meeting at 10:30 a.m.