



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM: Cliff Lippard *Cliff*
Executive Director

DATE: 3 May 2018

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 issues submitted to it by the General Assembly. In its second session, the 110th 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 passed seven pieces of legislation requiring studies by the Commission, and legislative committees requested three additional Commission studies.

Legislative Action on Issues Studied by the Commission

Broadband Internet—Senate Bill 2504 by Ketron and House Bill 2279 by Lamberth

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 debated this session. In 2018, the General Assembly passed Senate Bill 2504 by Ketron and House Bill 2279 by Lamberth—which passed and has been signed by the governor but not yet chaptered—known as the “Competitive Wireless Broadband Investment, Deployment and Safety Act of 2018.” The bill's intended purpose is to maximize investment in wireless connectivity across the state by creating a uniform and predicable framework that limits local obstacles to the deployment of small wireless facilities (SWF) and to encourage shared use of public infrastructure and colocation in a manner that is the most technology neutral and nondiscriminatory. SWF are developed for the establishment of the next generation of

wireless technology, known as 5G, which was a topic touched upon in the 2017 report. The Act also directs the Commission to study and prepare a report, due January 1, 2021, on the effect of the Act.

Two other bills addressing broadband internet failed to pass:

- Senate Bill 1045 by Bowling and House Bill 1410 by Weaver would authorize municipal electric systems to provide broadband outside their electric service area, authorize electric cooperatives to provide broadband both inside and outside their electric service areas, remove territorial restrictions on joint ventures, and would allow municipal electric systems and electric cooperatives to partner in joint ventures without third party entities. Of the changes to state law proposed in this bill, the Commission only recommended authorizing electric cooperatives to provide broadband inside their electric service area. To the extent that the Commission recommended authorizing municipal electrics and electric cooperatives to partner in joint ventures, it recommended that municipal electrics not be authorized to use electric ratepayer revenue to provide broadband outside of its electric service area. The bill was introduced in 2017 and failed in the senate and house subcommittees in 2018.
- Senate Bill 1058 by Bowling and House Bill 970 by Howell would authorize municipal electric systems to provide cable service, two-way video transmission, video programming, and internet services outside its service area. The Commission's report discusses authorizing municipal electric systems to provide broadband outside their electric service areas but did not include this among its recommendations. The bill was taken off notice in both the senate and house subcommittees in 2018.

Annexation and Growth Planning

In its second session, the 110th General Assembly considered two bills related to topics addressed by the Commission's December 2013 report, *Municipal Boundary Changes and Growth Planning in Tennessee—An Interim Report on Public Chapter 441, Acts of 2013*, and by the Commission's January 2015 report, *Municipal Boundaries in Tennessee: Annexation and Growth Planning Policies after Public Chapter 707*.

- Senate Bill 2680 by Bailey and House Bill 2125 by Williams, which was passed by the General Assembly and sent to the governor for signature, reduces the number of owners required to consent to annexation without a referendum from all of the affected owners to a two-thirds majority of the property owners who own a majority of the territory proposed for annexation. This topic was discussed in the Commission's January 2015 report in noting that unlike the

referendum process, which requires only a simple majority to approve annexation, a petition process could be structured to require a higher threshold, affording more protection to those opposed to annexation, if the legislature so chose. The bill provides that a referendum is not required to effectuate annexation of a territory if the proposed annexation consists of nine or fewer parcels, two-thirds of the property owners within the territory proposed for annexation consent in writing, and the total land area of the property owned by the individuals petitioning for the annexation is more than one-half of the territory proposed for annexation, and repeals this provision on January 1, 2023.

- Senate Bill 641 by Watson and House Bill 943 by Carter addressed deannexation of an area annexed by a municipality, a topic discussed in the Commission's January 2015 and December 2013 reports. In the 2013 report, the Commission recommended further consideration of giving property owners the right to initiate deannexation provided that it does not create non-contiguity or unincorporated islands and that the city is compensated for its investment in municipal infrastructure other than those associated with rate-paid services. The bill as filed would permit voters residing within an area annexed by a municipality to petition the county election commission to hold an election to deannex such territory, specify that taxes may continue to be levied on a deannexed area, and prohibit the discontinuation of utility services outside municipal boundaries for reasons related to deannexation. The Senate version, which passed, had several amendments, including those requiring that the referendum for deannexation be held citywide and that cities that have already begun developing a deannexation plan of their own be exempted. The House version was sent to the Local Government Subcommittee and was taken off notice in March of 2018.

Payment in Lieu of Tax Agreements (“PILOT”)—Senate Bill 2622 by Norris and House Bill 2664 by Carter

Consistent with the Commission's recommendations in its January 2018 report, *Encouraging More Cooperation and Accountability in Payment in Lieu of Tax Agreements*, Senate Bill 2622 by Norris and House Bill 2664 by Carter, which was passed by the General Assembly and sent to the governor to be signed, helps to alleviate the problem of one local government abating the property taxes of another local government for long durations without agreement. This recently occurred in Sevier County when Pigeon Forge's industrial development board's PILOT agreement with a Publix grocery store abated not only the business's city property taxes but also its county property taxes for a 20-year period. Senate Bill 2622 by Norris and House Bill 2664 by Carter

helps to alleviate this issue by authorizing an industrial development corporation to negotiate a payment in lieu of tax agreement for less than the ad valorem taxes otherwise due for a retail business for a period longer than 10 years, plus a reasonable construction or installation period of not more than three years, if:

- The corporation is a joint industrial development corporation with representation of all separate taxing jurisdictions within the county;
- The corporation has entered into an interlocal agreement with other taxing jurisdictions to establish criteria for any payment in lieu of tax agreements that might affect shared tax bases;
- The corporation has received written approval from each affected local governmental entity. For purposes of this requirement, "affected local governmental entity" means a county or local special school district that will suffer an actual loss of tax revenue under a payment in lieu of tax agreement; or
- The corporation pays the other affected local governments the amount of ad valorem taxes those governments would otherwise receive for the affected property based on its assessed value after the initial ten years of the agreement.¹

Consistent with the Commission's 2018 report, the bill also requires industrial development corporations to hold a public meeting relating to the proposed agreement after notice is provided by the corporation or governing body at least five days prior to the date of the public hearing.

Blight—Senate Bill 2347 by Gardenhire and House Bill 2350 by Brooks and Public Chapter 779, Act of 2018

Senate Bill 2347 by Gardenhire and House Bill 2350 by Brooks, passed by the General Assembly and sent to the governor for signature, is consistent with the recommendation to extend existing land bank authority to other jurisdictions in the Commission's 2012 report, *Dealing with Blight: Strategies for Tennessee's Communities*. The bill authorizes the city of Cleveland and Hardeman County to participate in the Tennessee local land bank program. The General Assembly also addressed another program discussed in the 2012 blight report, the Neighborhood Preservation Act, which

¹ Note that Subsection I of Senate Bill 2622 by Norris and House Bill 2664 by Carter does not apply to Shelby County, which already has agreements in place to prevent such issues. In Shelby County, local governments are required to form a joint IDB or enter an interlocal agreement in lieu of receiving written approval from the county mayor and the county legislative body for their IDBs' PILOT agreements.

allows any neighbor or interested party to sue the owner of a property not maintained to community standards, and applied only to Davidson, Shelby, and Madison counties. Public Chapter 779, Acts of 2018, extends the application of the Neighborhood Preservation Act to include any county or municipality that has formed a land bank, and also makes several changes to the Act to improve and expedite the legal process.

Court Fees and Taxes

The 110th General Assembly considered Senate Bill 1084 by Lundberg and House Bill 880 by Daniel—consistent with a recommendation in the Commission’s January 2017 report *Tennessee’s Court Fees and Taxes: Funding the Courts Fairly*—which would create 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 past the Senate Judiciary Committee and was taken off notice in the House Finance, Ways and Means Subcommittee.

Elections

The General Assembly considered, but did not pass, two bills consistent with recommendations in the Commission’s 2007 report, *Trust but Verify: Increasing Voter Confidence in Election Results*. Senate Bill 2090 by Yarbro and House Bill 2300 by Alexander would require each voting precinct using direct recording electronic voting systems to have the capability to create a voter-verifiable paper audit trail for each ballot cast. Senate Bill 2438 by Yarbro and House Bill 2567 by Stewart would require each county election commission to utilize precinct-based optical scanners.

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 three bills discussed in the second session of the 110th General Assembly, all of which failed to pass.

- Senate Bill 205 by Bowling and House Bill 1034 by VanHuss would eliminate the professional privilege tax for the tax year ending on May 31, 2018, and subsequent tax years.
- Senate Bill 132 by Bowling and House Bill 41 by VanHuss would phase out the professional privilege tax over a five year period. The report studied alternatives for eliminating or phasing out the professional privilege tax.

- Senate Bill 306 by Kyle and House Bill 46 by Clemmons would exempt individuals from the professional privilege tax for the first year in which they are licensed or registered in a taxable profession.

Legislative Requests for Further Studies by the Commission

The General Assembly passed seven pieces of legislation requiring new Commission studies. Committees and subcommittees of the legislature also requested Commission studies on three additional bills.

Studies Directed by Legislation

In 2018, the General Assembly passed seven pieces of legislation requiring new commission studies:

I. Nontax-Producing Properties

Public Chapter 693, Acts of 2018, directs the Commission to determine the amounts of nontax-producing property held by state and local governments in Tennessee and provide recommendations as to the highest and best uses of the properties and ways for making the properties productive. The bill requires the Commission to report its findings and recommendations by March 1, 2019.

II. Small Cell Wireless Facilities

Senate Bill 2504 by Ketrone and House Bill 2279 by Lamberth, which passed and has been signed by the governor but not yet chaptered, known as the “Competitive Wireless Broadband Investment, Deployment and Safety Act of 2018” makes changes to the laws governing the deployment of facilities for providing wireless telecommunications and broadband internet services in Tennessee. The Act also directs the Commission to study and submit a report by January 2021 on

- the Act’s effect on the deployment of broadband and the Act’s fiscal effect on local governments;
- best practices both from the perspective of stakeholders and from a review of other states;
- opportunities to advance other policy goals supported by the deployment of facilities for providing wireless broadband, specifically opportunities to advance the quality of transportation in Tennessee by utilizing technological applications, sometimes referred to as “smart transportation applications”; and

- recommendations for any changes to the law based on the findings of the Commission’s study.

III. Criminal Statute of Limitations

Senate Bill 2538 by Ketron and House Bill 2536 by Sparks, which was passed by the General Assembly and sent to the governor for signature, direct the Commission to study the effectiveness of Tennessee’s statutes of limitation on the prosecution of criminal offenses. It must include, but not be limited to, information on the effectiveness of statutes of limitation on the prosecution of sexual offenses. The Act requires the Commission to report its findings and recommendations, including any proposed legislation, by January 15, 2019.

IV. GPS Monitoring as a Condition of Bail for Domestic Abuse Offenders

Senate Bill 1133 by Kyle and House Bill 849 by Hardaway, which passed and has been signed by the governor but not yet chaptered, directs the Commission to study the implementation and effects of GPS monitoring as a condition of bail for defendants accused of stalking, aggravated stalking, especially aggravated stalking, domestic abuse, sexual assault, or a violation of an order of protection. The Act requires the Commission to report its findings and recommendations by January 1, 2020.

V. Creation of Food Desert Relief Enterprises Fund

Public Chapter 795, Acts of 2018, directs the Commission to study the potential, overall effects of creating a grant and loan program administered by the department of economic and community development to encourage the financing and development of food desert relief enterprises that sell fresh food in low-income, underserved areas of the state. The Act requires the study to include the benefits and costs of creating a special reserve fund in the state treasury to be known as the “Fresh Food Financing Fund” into which the revenue generated from 0.0625 percent of the rate of tax imposed by Tennessee Code Annotated, Section 67-6-228(a), on retail sales of sugar-sweetened beverages is deposited for the sole use of funding grants and loans to encourage the financing and development of food desert relief enterprises—also known as affordable healthy food retail stores. The Act requires the Commission to submit its report by February 1, 2019.

VI. Credit to Shipper’s Franchise and Excise Tax Liability (Shelby County)

Senate Bill 1277 by Norris and House Bill 1345 by Camper, which was passed by the General Assembly and sent to the governor for signature, directs the Commission to

perform a study of the potential, overall effects of creating a franchise and excise tax credit for shippers with pickups or deliveries originating in, or destined to Shelby County. The bill establishes criteria to be considered by the Commission in conducting the study and requires the Commission to submit a report disclosing the findings of the study and recommendations, including any proposed legislation or interim reports, to the General Assembly by February 1, 2020.

VII. Multi-school system Counties

Senate Joint Resolution 593, which was passed by the General Assembly and signed by the governor, directs the Commission to study the overall effects on public education of the laws and regulations related to the sharing of resources among school districts located in the same county and the operation within a county of municipal or special school districts in addition to the county school system. No due date was listed in the resolution.

Studies Requested by Committees and Subcommittees

Three additional Commission studies were requested by legislative committees and subcommittees:

I. Consolidation of Municipal Elections

House Bill 2265 by Sexton and Senate Bill 2146 by Gardenhire, as amended, would require all municipal elections to coincide with the August or November general elections beginning in 2022. To match the terms of elected officials with the new election dates, the bill would have allowed municipalities to extend terms up to two years beyond their regular expiration dates. During the House Local Government Subcommittee discussion on the bill, Representative Wirgau made a motion, which passed, to request that the Commission study the bill. Its companion, Senate Bill 2146, was deferred to summer study in Senate State and Local Government Committee, but the chair has indicated that they intend for the Commission to conduct the study.

II. State-shared Taxes and Local Services

House Bill 971 by Sargent and Senate Bill 1075 by Watson, as amended by the House Finance Subcommittee, would revise the distribution of local government revenue generation by the 2.25 percent local sales tax imposed on the sales price on the sales made in this state by dealers with no location in Tennessee. During discussion of the bill in the House Finance, Ways and Means Committee, Representative Carter made a motion, which passed, to send the bill to the Commission for further study.

III. Tobacco Master Settlement Agreement - Cigarette Sales

Senate Bill 1989 by Stevens and House Bill 2154 by Hawk as drafted would reduce the number of reasons for which a non-participating manufacturer (NPM) would be excluded from the Tobacco Product Manufacturing Directory for failure to pay an escrow payment governed by the Tobacco Master Settlement Agreement.

Representative Hawk made a motion, which passed, in the House Finance, Ways and Means Committee to send the bill to the Commission for additional study with a requested due date of 2020. The Senate Finance, Ways and Means Committee later amended the bill to provide guidelines for a Commission study. The amendment specifies that the Commission shall perform a study of the department of revenue's use of Tennessee Code Annotated, Title 67, Chapter 4, Part 26, to exclude or remove an escrow-compliant nonparticipating manufacturer (NPM) or brand family, or both, owned by the NPM from the directory of approved tobacco product manufacturers in Tennessee based on the failure of an unrelated, third-party NPM to make required escrow payments on prior sales of the brand family by the unrelated NPM in Tennessee, and to determine the necessity for any such enforcement action by the department of revenue either under the provisions of the tobacco master settlement agreement or for the purpose of limiting an adverse impact to state revenues, if any. The amendment, which was passed by the Senate Finance, Ways and Means Committee but remains in the Senate Calendar Committee, lists a due date of March 1, 2019.