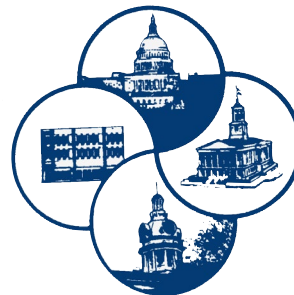




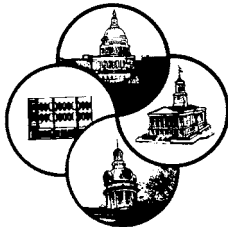
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Intergovernmental Challenges and Achievements



Biennial Report

Fiscal Years 2016-17 and 2017-18



TACIR Publication Policy

Reports approved by vote of the Tennessee Advisory Commission on Intergovernmental Relations are labeled such on their covers with the following banner at the top: *Report of the Tennessee Advisory Commission on Intergovernmental Relations*. All other reports by Commission staff are prepared to inform members of the Commission and the public and do not necessarily reflect the views of the Commission. They are labeled *Staff Report to Members of the Tennessee Advisory Commission on Intergovernmental Relations* on their covers. *TACIR Fast Facts* are short publications prepared by Commission staff to inform members and the public.



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Tennessee Advisory Commission on Intergovernmental Relations
226 Anne Dallas Dudley Boulevard, Suite 508
Nashville, TN 37243



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Cliff Lippard, Executive Director

September 6, 2018

The Honorable Randy McNally
Lt. Governor and Speaker of the Senate

The Honorable Beth Harwell
Speaker of the House of Representatives

Members of the General Assembly

State Capitol
Nashville, TN 37243

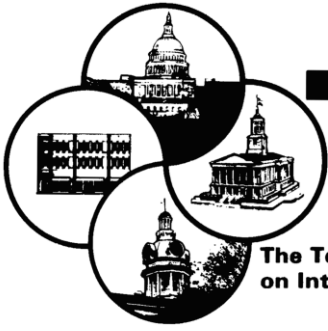
Ladies and Gentlemen:

Transmitted herewith is the biennial report for fiscal years 2016-17 and 2017-18 pursuant to Tennessee Code Annotated, Section 4-10-108. This report was approved by the Tennessee Advisory Commission on Intergovernmental Relations on September 6, 2018, and is hereby submitted for your consideration. It outlines the significant contribution of the Commission in aiding local governments, the General Assembly, and the State of Tennessee.

Respectfully yours,


Senator Mark Norris
Chairman


Cliff Lippard
Executive Director



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM: Cliff Lippard *Cliff*
Executive Director

DATE: 6 September 2018

SUBJECT: Biennial Report for Fiscal Years 2016-17 and 2017-18—Final Report for
Approval

The biennial report on the Commission's work for fiscal years 2016-17 and 2017-18 is submitted for your approval. The report, required by the Tennessee General Assembly, follows the general framework established in previous reports and provides an overview of several of the important program areas—broadband internet access and adoption, payments in lieu of ad valorem taxes (PILOT), state prisoners in county jails, professional privilege taxes, court fees, 911 functionality and funding, boat titling, and infrastructure—addressed over the two-year period. The full scope of the Commission's work is evidenced in the lists of publications, presentations, relevant legislation, and meeting summaries included in the appendixes.

Intergovernmental Challenges and Achievements

Biennial Report

Fiscal Years 2016-17 and 2017-18

Senator Mark Norris
Chairman



Mayor Larry Waters
Vice Chairman



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Tennessee Advisory Commission on Intergovernmental Relations.
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Message from the Chairman and Executive Director

This Biennial Report of the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) describes the accomplishments and primary activities of the Commission during fiscal years 2016-17 and 2017-18. The Commission takes its mandate to provide a future-oriented perspective to public policy and intergovernmental relations seriously, focusing the efforts of its research and support staff on exhaustive, deliberative efforts to ensure that its recommendations and observations to the state's elected leaders and officials are both well informed and solidly grounded. The expertise and hard work of the talented individuals who serve on the Commission and shape the reports developed by its staff are essential to TACIR's success. Commission members for fiscal years 2016-17 and 2017-18 are listed in appendix A.

The report describes the work of the Commission in aiding local governments, the General Assembly, and the State of Tennessee and offers a focused overview of key issues the Commission addressed during the period covered, including broadband internet access and adoption, payments in lieu of ad valorem taxes (PILOT), state prisoners in county jails, professional privilege taxes, legislative compensation, court fees, 911 functionality and funding, boat titling, and infrastructure. The broader scope of the Commission's work can be seen in the lists of publications, presentations, relevant legislation, and meeting participation included in the appendixes.



Senator Mark Norris
Chairman, TACIR



Cliff Lippard
Executive Director, TACIR

Focus Issues

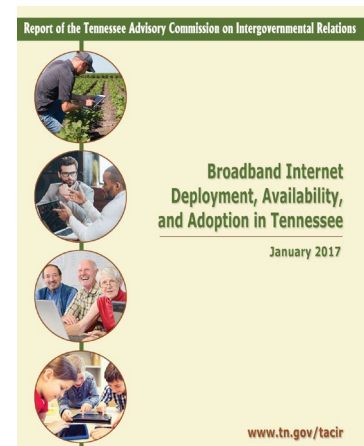
The Commission and its staff addressed a variety of issues during fiscal years 2016-17 and 2017-18. Highlights include broadband internet access and adoption, payments in lieu of ad valorem taxes (PILOT), state prisoners in county jails, professional privilege taxes, court fees, 911 functionality and funding, boat titling, and infrastructure. These issues demonstrate the wide range of topics that fall within the purview of the Commission's mission to

serve as a forum for the discussion and resolution of intergovernmental problems; provide high quality research support to state and local government officials to improve the overall quality of government in Tennessee; and to improve the effectiveness of the intergovernmental system to better serve the citizens of Tennessee.

Broadband Internet Deployment, Availability, and Adoption

The absence of high-speed internet access in some of Tennessee's rural areas has been an important topic of policy discussion in recent years. Essential for economic development in the 21st century, high-speed internet, also known as broadband, gives users the ability to send and receive data at volumes and speeds necessary to support numerous applications including telemedicine, distance learning, entertainment, telework, ecommerce, and public safety. Because the economics of building and maintaining broadband networks favor densely populated communities, an urban-rural broadband coverage-divide exists, leaving many in rural areas without access to broadband internet. While only 2% of Tennessee's urban citizens lack access, 34% of rural residents are without coverage at recognized minimum standards due to low population density and challenging geography. Because of this, at TACIR's June 2015 meeting, the Commission, at the request of Chairman Mark Norris, initiated the state's study on ways to improve broadband internet availability and adoption in Tennessee. Throughout 2015 and 2016, the Commission extensively studied the issue, hearing from numerous experts and stakeholders along the way. At the January 2017 Commission meeting, members approved the report *Broadband Internet Deployment, Availability, and Adoption in Tennessee*.

Public Chapter 228, Acts of 2017, known as the Tennessee Broadband Accessibility Act, drew heavily on the research and recommendations in the Commission's report. Consistent



with several recommendations in the report, the Act focuses on supporting and coordinating existing initiatives and on addressing any remaining coverage and adoption gaps by working with the private sector—both for-profit and non-profit—to fill remaining gaps in the manner least costly to taxpayers without expanding the role of government. As recommended in the report, the Act creates a state grant program for encouraging the deployment of broadband internet access services in unserved and underserved areas by providing competitive grants to broadband providers; establishes a credit against franchise and excise taxes for providers that expand coverage in unserved and underserved areas to further encourage deployment of broadband; establishes a program to designate communities that adopt a checklist of permitting and zoning procedures as “broadband ready communities” to signal providers that they have removed regulatory barriers to broadband investment; authorizes electric cooperatives to provide broadband service inside their electric service areas so long as electric ratepayer revenue is not used to subsidize the cost of service; and encourages broadband adoption by authorizing the state’s new grant program to provide libraries with grants for digital literacy training and other services for increasing rates of broadband adoption. The Act also directs the Commission to study and prepare a report updating its January 2017 broadband report by January 2021.

Further Action by the General Assembly related to Broadband

Two other pieces of legislation related to topics covered in the broadband report were passed by the 110th General Assembly. Public Chapter 490, Acts of 2017, changes the classification of property of certain local exchange telephone companies and telephone cooperatives from public utility to industrial and commercial property and thus reduces the rate of tax on this form of provider. The report discussed this but did not recommend it for multiple reasons, including a concern that it did not target unserved or underserved areas. Also, local governments would lose money if not held harmless. The legislation addresses this latter concern by requiring local governments to be held harmless. Public Chapter 570, Acts of 2018, was passed to complement the changes enacted by the Tennessee Broadband Accessibility Act of 2017, which authorized electric cooperatives to provide broadband service. Public Chapter 570, Acts of 2018, simply authorizes electric cooperatives to utilize easements and property already held by the cooperative in order to install infrastructure needed for the delivery of broadband service.

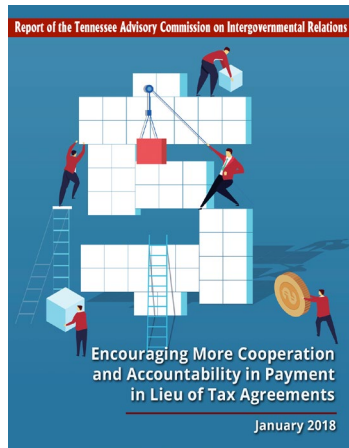
Other legislation addressing broadband was introduced in the 110th General Assembly but did not pass:

- Senate Bill 126 by Green and House Bill 930 by Rudd would create a rural broadband grant expansion program to be administered by the Tennessee Regulatory Authority.
- Senate Bill 528 by Southerland and House Bill 194 by Forgety would create the Commission on Technology to coordinate the development of broadband technologies.
- Senate Bill 301 by Haile and House Bill 950 by Williams would permit electric cooperatives to provide broadband internet access and related services without any limitations that are not otherwise placed on other private providers of telecommunication services.
- 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.
- 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 electrics to provide broadband outside their electric service areas but did not include this among its recommendations.

In 2018, the General Assembly enacted the Public Chapter 819, known as the "Competitive Wireless Broadband Investment, Deployment and Safety Act of 2018" 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 require 10 to 100 times the number of antenna locations currently utilized for 3G and 4G networks. The Act also directs the Commission to study and prepare a report, due January 1, 2021, on the effect of the Act, including:

- the effect on deployment of broadband;
- the fiscal effect on authorities resulting from the administrative process required by this act;
- best practices from the perspective of applicants and authorities;
- best practices in other states and identify opportunities to advance the quality of transportation in this state by utilizing technological applications, sometimes referred to as “smart transportation applications,” that are supported by small wireless facilities; and
- recommendations for changes to this act based on the study’s findings.



Payments in Lieu of Tax

Public Chapter 431, Acts of 2017, directed the Commission to study and provide recommendations regarding local governments’ use of tax incentives to encourage economic development. While the use of tax incentives by local governments to encourage economic development is widely supported in Tennessee, conflicts have surfaced between some local governments over the details of individual agreements and the process for negotiating them. Consistent with Tennessee’s Constitutional prohibition of direct abatement of property taxes, local governments indirectly abate property taxes by leasing tax-exempt properties held by local industrial development boards (IDBs) to businesses and accepting payments in lieu of taxes (PILOTs) from those businesses that are less than the taxes that would otherwise be owed if the businesses owned the properties outright.

One such local government conflict regarding tax incentives occurred in Pigeon Forge and Sevier County in 2015, when the city’s IDB negotiated a PILOT agreement with a Publix grocery store, abating not only the business’s city property taxes but also its county property taxes for a 20-year period. Sevier County’s mayor expressed concern that PILOT agreements like this one could reduce local governments’ ability to fund public education and other services that are supported by property tax revenues and that the terms of the abatements in some PILOT agreements are too

long. But like IDBs for other local governments in Tennessee that levy their own property taxes, Pigeon Forge's IDB was not required to seek the county's approval before agreeing to the PILOT. These concerns led to a bill that was amended to direct this study.

The Commission addressed these issues in its January 2018 report *Encouraging More Cooperation and Accountability in Payment in Lieu of Tax Agreements*, which makes several recommendations for encouraging cooperation, accountability, and transparency in PILOT agreements. The Commission's research found that Tennessee businesses made PILOTs totaling \$75.7 million in 2016 for tax exempt properties they lease IDBs. Although businesses can negotiate PILOT agreements with IDBs equal to the taxes they would otherwise owe if they owned the properties themselves, in practice the payments can be for less and vary by agreement—total payments in 2016 were equal to approximately 47% of the taxes that would have otherwise been owed based on the 2016 assessed value of the property, including any improvements made by the businesses.

The Commission's report recommended that the state should encourage local governments to pursue one of the following cooperative approaches—which are already available under state law—before entering into ad valorem PILOT agreements with private businesses:

- forming a joint IDB with representation of all separate taxing jurisdictions within the county, to include special school districts, which have taxing authority;
- entering into interlocal agreements with other taxing jurisdictions to establish criteria for any PILOTs that might affect shared tax bases; or
- receiving written approval from the city or county mayor, the city or county legislative body, and local special school districts before approval of PILOT agreements.

When entering into PILOT agreements for retail development, local governments should be required to take one of these three cooperative approaches for agreements longer than 10 years. Either they or their IDBs should be required to make annual payments after the initial 10 years to the other affected local governments equal to the amount of property taxes those governments would otherwise receive for the affected property based on its assessed value. Further, the state may consider requiring that local governments receive PILOT payments for retail development at least equal to the portion of the revenue that would have otherwise gone to schools.

This requirement would not apply to PILOT agreements affecting only the jurisdiction making the agreement.

The report also discusses the need for greater accountability to ensure that the economic benefits businesses promise to communities in exchange for receiving PILOT agreements are being achieved. As a first step toward improving accountability, a representative for Accountability for Taxpayer Money (ATM) has argued for including the general public in a more transparent approval process. To improve transparency in the PILOT approval process without undermining the confidentiality needed to negotiate agreements, the report recommends that IDBs should specifically be required to provide public notice prior to their meetings, similar to what is already required for tax increment financing (TIF) hearings. Notice requirements should allow IDBs flexibility regarding both the information provided and the time between posting and when a meeting is held to ensure they remain workable within business recruitment processes that are highly competitive. The report also recommends that lessees with PILOT agreements should be required to include information about total investments made, number of jobs created, and taxes abated in their annual PILOT report to the Comptroller of the Treasury. To allow for greater accountability and transparency, the Comptroller's Office has recently compiled a master list of all agreements and in the future plans to send a copy of the annual reports they receive from each company to the local property assessor's office from that county so they can compare their reports.

The report discusses how PILOT agreements can affect the distribution of state funding of K-12 education through their effect on property tax assessments, which are one of the factors used to calculate each county's fiscal capacity. Fiscal capacity is used in the state's Basic Education Program (BEP) funding formula to equalize state funding for education and to determine each county's responsibility for the local share of the cost of the BEP. Under the current model used by TACIR, local decisions regarding PILOT agreements have the potential to shift some of the responsibility to pay the local share of the BEP from one county onto the other 94 counties, which violates a basic principle of fiscal capacity models that they not be affected by local decisions. The report recommends that TACIR's fiscal capacity calculation should be updated to include current IDB assessment amounts rather than the 1993-1995 PILOT payments data currently used. This would require a change in state law or a recommendation by the BEP Review Committee and approval by the General Assembly.

Based on the Commission's recommendation, the General Assembly passed Public Chapter 1064, Acts of 2018, which attempts to alleviate the aforementioned Sevier County problem by authorizing industrial corporations to negotiate payments in lieu of tax agreements for less than the ad valorem taxes due for a retail business for up to 10 years if one of the following occurs:

- the IDB is a joint industrial development corporation with representation of all affected taxing jurisdictions within the county;
- the IDB 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 IDB has received written approval from each affected local governmental entity; or
- the IDB 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 (10) years of the agreement.¹

Consistent with the Commission's 2018 report, the Public Chapter 1064 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.

State Prisoners in County Jails

At the Commission's May 2016 meeting, the Commission chose to revisit its 2007 report—*Beyond Capacity: Issues and Challenges Facing County Jails*—and directed staff to determine whether the state, by housing convicted state prisoners in county jails for extended periods as part of the effort to reduce overcrowding in state prisons, is placing an undue burden on county governments. The report notes that Tennessee's correctional system is split between state prisons and local jails. Tennessee's prisons are reserved for those convicted of felonies, while local jails house those convicted of misdemeanors and those awaiting trial, sentencing, or hearings for probation and parole violations. However, Tennessee's prisons have long lacked the space needed to house all convicted felons. Instead of expanding state prison capacity to ease overcrowding, Tennessee has, as a cheaper alternative, relied on its local county



¹ Note that Public Chapter 1064, Acts of 2018, specifically exempts Shelby County, which already has similar agreements in place.

jails to house the excess state prisoner population. As the felon population has increased, more and more felons are remaining in local jails, which often lack the beneficial services and programs available at state prisons.

The 2007 Commission report assessed whether counties should be reimbursed for housing prisoners awaiting probation revocation hearings and whether state reimbursements for housing sentenced felons—then ranging from \$18 to \$46.23 per prisoner per day from the date of sentencing—were enough. At the time, about 27% of Tennessee’s state prisoners were held in county jails, a percentage that had been unchanged for several years and that has generally remained unchanged since. The 2007 report included two Commission recommendations: The state should (1) reimburse county jails for the daily costs of housing state prisoners who are awaiting probation revocation hearings and (2) set \$35 as the flat daily reimbursement rate for local jails not already receiving more to house state prisoners and simplify the reimbursement reporting process.

The recommendations from the 2007 report were not implemented, and many county representatives have continued to say that the reimbursements counties receive are too small. For this reason, and because sheriffs and other county representatives have also expressed concern that the process for determining which prisoners remain in county jails is opaque, members at TACIR’s May 2016 meeting requested the Commission update its 2007 report to examine the current state of jails in Tennessee, how housing state prisoners in county jails affects county governments, and whether any changes are warranted in the way counties are reimbursed.

In its 2017 report *Housing Tennessee’s Convicted Felons: Improving Outcomes while Balancing State and County Needs*, the Commission found that Tennessee houses approximately 27% of its state prisoners—approximately 8,000 inmates—in county jails. About 45% of those are “locally sentenced” felons with shorter sentences, intended to serve their time in county jails, while the other 55% are “backup” prisoners sentenced to state prison facilities but left in county jails until space is made available. While not the only state to use county jails for this purpose, Tennessee does rely on them more than most. In 2015, the latest year with comparable numbers for other states, Tennessee ranked third for its percentage of state prisoners held in local jails (30%)—behind only Louisiana (49%) and Kentucky (45%)—and fourth in total number (8,416)—behind Louisiana (17,930), Texas (11,093), and Kentucky (9,738).

The Commission's report explains that nearly all county representatives say that their reimbursements don't cover the daily costs of caring for state prisoners or provide money for facility improvements needed to house them—and TDOC representatives agree—though counties can use state prisoners for labor both in their jails and in their communities, reducing the need to hire additional jail staff or other government employees. County representatives attribute part of the shortfall to the fact that counties are not reimbursed for housing individuals incarcerated while awaiting trial on felony charges, convicted felons awaiting sentencing, and convicted felons awaiting probation violation hearings. As of April 2017, Tennessee's 120 local jails statewide were 87% full, and 49 jails were each at 100% capacity or above.

Addressing the first of these concerns—that reimbursement rates are inadequate—the state increased the amount it pays to counties on July 1, 2017, setting the rate cap for noncontract counties at \$39 per prisoner per day. Nevertheless, many local officials are concerned that \$39 per prisoner per day is still inadequate. While statewide data is unavailable, the average cost to counties for housing state prisoners is \$43 to \$45 per prisoner per day according to estimates provided by TDOC's chief financial officer at the Commission's December 2016 meeting. Over the years, legislation has also been introduced to reimburse counties for housing felons prior to sentencing, which would address local officials' second concern. But this has been considered too costly to gain support.

The Commission found that simply increasing reimbursement rates to counties or reimbursing them for more days won't necessarily improve outcomes for communities and prisoners. While the state is saving money by keeping felons in county jails rather than state prisons, most jails are not able to provide the same level of programming for mental health, substance abuse, and education, among other services available in prisons. TDOC studies have shown that recidivism is higher among state prisoners released from jails rather than prisons. Furthermore, the state is keeping hundreds of state inmates in jails that fail to meet the state's minimum standards as established by the Tennessee Corrections Institute (TCI).

The state could work to improve prisoner outcomes while reducing the burden on local governments by supporting existing state programs and creating financial incentives for counties to provide prisoners with the same or similar services that they would receive in state prisons. The Commission's report recommends that to improve access to the behavioral health services already provided

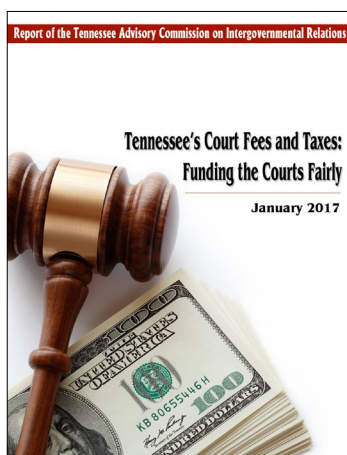
by the Department of Mental Health and Substance Abuse Services' criminal justice liaison program, the state should provide funding to expand the program statewide. According to its director, the program has been successful at diverting nearly 9,000 individuals from jail since 2014 and developing more than 1,200 long-term release plans to help keep those who have been in jail from returning. Outreach efforts across the state have reached more than 84,000 individuals to assist them in staying out of the criminal justice system. County sheriffs interviewed have also expressed strong support for the program. However, only 32 counties are currently part of a criminal justice liaison's coverage area. Expanding these services statewide would increase program costs by an estimated \$1.6 million annually.

The report recommended, in addition to existing initiatives, if the state's policy is to continue to rely on county jails to house large numbers of state prisoners, the state should establish an incentive program to encourage counties to add needed services, rather than simply relying on increases to per diem reimbursements. Tennessee, as has been done in Kentucky, could offer funding assistance beyond the daily reimbursement rate to help counties implement programs proven to reduce recidivism and improve outcomes for prisoners and communities.

Adequate oversight of local jails is necessary for the state to balance its need for fiscally responsible management of the felon population with its responsibility for maximizing public safety and achieving the best possible prisoner outcomes. However, neither TCI nor TDOC has clear legal authority to require local correctional facilities to comply with the minimum standards promulgated by TCI. Although TCI inspects all jails annually and certifies those that meet its standards, it lacks the authority to enforce compliance. The Commission recommended that to clarify the framework for the oversight of county jails, state law should be amended to give the Tennessee Corrections Institute clear legal authority to require local correctional facilities to comply with set standards, including authority for its Board of Control to recommend that the Tennessee Department of Correction remove state prisoners from noncertified jails when conditions warrant.

Court Fees and Taxes

As requested by Senator Lundberg, the former chair of the House Civil Justice Committee, the Commission addressed the issue of recurrent increases in court fees in its January 2017 report *Tennessee's Court Fees and Taxes: Funding the Courts Fairly*. The Tennessee court



system provides a safe avenue for people to resolve conflicts and a place to fairly prosecute criminals. This critical service is in part funded by hundreds of fees and taxes ranging from 50 cents to \$3,000. While the courts depend on these fees and taxes to cover expenses, it is difficult to determine how much of this revenue is used to fund courts. Some legislators, court clerks, and other stakeholders have expressed concern that if the combined amount is too high it could potentially limit access to justice in civil cases and create uncollectable court debt.

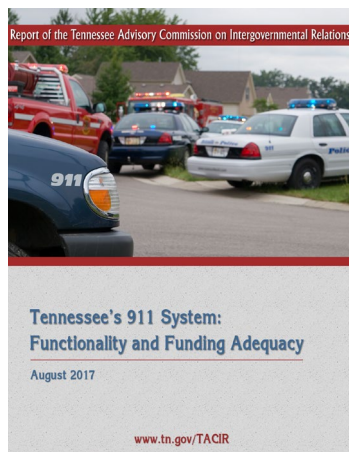
Since 2005, the General Assembly has passed 46 bills that increased or added new court fees and taxes or authorized local governments to impose them. In response to continued concerns about court fees and taxes, Senator Jon Lundberg, former Chair of the House Civil Justice Committee, in April 2015, requested the Commission study court fees. The committee specifically asked the Commission to review all bills passed in the last 10 years that increased any type of court fee, describe the fees and how they are being used, and make recommendations.

The Commission's report recommend that Tennessee could, as is done in Louisiana, provide more thorough analysis of court costs, how they accumulate, and related earmarks through the use of a judicial committee that reviews and makes recommendations on bills proposing to add or increase court costs. Louisiana requires sponsors to submit such bills to a committee of the state Supreme Court to determine if it is reasonably related to the operation of the courts or court system. The Tennessee committee could also look at the existing statewide fees and taxes scattered throughout other statutes and not in Tennessee Code Annotated, Section 8-21-401, to determine if any changes should be made to those taxes and fees, to include changes to their earmarks. The committee could also examine the effect required driver's license revocations have on the ability of people to pay these taxes and fees.

The Commission's report explained that collecting fees and taxes can be problematic, especially in criminal cases. However, there is little collections data available to help determine the scope of the issue. The Commission's report also recommended that the Administrative Office of the Courts (AOC) be required to send an annual report of uncollected criminal case assessments from each county to the Fiscal Review Committee. The AOC could use the data to examine the relationship between increasing costs and collection rates.

Consistent with a recommendation in the Commission's report, the 110th General Assembly considered, but did not pass, Senate Bill 1084 by Lundberg and House Bill 880 by Daniel, which 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.

911 Functionality and Funding



To help emergency communications districts (ECDs) upgrade to an internet-based system and address concerns about the changes, the Tennessee General Assembly enacted Public Chapter 795, known as the “911 Funding and Modernization and IP Transition Act of 2014.” The Act replaced the old 911 funding system, which relied on a combination of state and local fees, with a flat statewide fee of \$1.16 on all types of telecommunications services that connect to 911 and established a new method for distributing funds. The Act also directed the Commission to study and report its conclusions by September 2017 regarding nine questions addressing consolidation, Tennessee Emergency Communications Board (TECB) membership, providers’ registration and service interruption reporting requirements, and funding. The Commission addressed these issues in its August 2017 report, *Tennessee’s 911 System: Functionality and Funding Adequacy*, which includes information and responses to each of the nine questions.

The Commission’s report includes two recommendations—one relating to service interruption reporting requirements for providers and one relating to funding distribution. The first one addresses service interruption reporting requirements for telecommunications service providers. Telecommunications service providers are currently required to report service disruptions to the Federal Communications Commission but not to the state. Because the TECB would be able to better assist emergency communications districts when interruptions occur if they knew about them sooner, telecommunications service providers should be required to notify the TECB when there are service disruptions. The second suggested recommendation relates to funding distribution. Building on a recommendation from the Commission’s 2006 E-911 report, the TECB could tie the distribution of any additional revenue generated by rate increases to a standard set of cost components. This idea is similar to the state’s Basic Education Program (BEP) funding formula consisting of cost components that serve as the basis for calculating the level of funding for each school system but does not prescribe specific levels of expenditures for individual components.

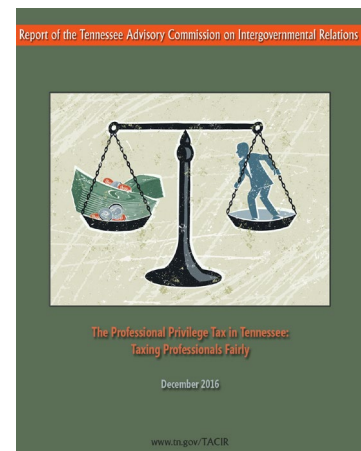
The cost components for providing a minimum standard of 911 services could be developed with input from the existing TECB operations and technical committees using minimum technical operating standards and should be reviewed regularly. The method would determine and distribute funding to ECDs, but they would have flexibility with spending as long as they meet the minimum technical operating standards. This distribution method would only apply to excess revenue above the base amount generated by a rate increase.

Professional Privilege Tax

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 concerns with the professional privilege tax prompted legislation in 2015, Senate Bill 556 by Bowling, House Bill 678 by Van Huss, which would have phased out the tax over five years. The bill was amended in 2016 and became Public Chapter 1024, which instead directed the Commission to study the professional privilege tax in this state, including alternatives for eliminating or phasing out the professional privilege tax.

Tennessee's professional privilege tax—which was enacted in 1992 as a part of a \$276 million tax increase—taxes individuals in 22 professions at a rate of \$400 per year. The tax was passed to help provide revenue to restore spending that was cut in the wake of the 1990-91 recession and to begin the phase-in of the Basic Education Program, the state's education funding formula. It is difficult to determine objectively where to draw the line on which professions should be taxed and which shouldn't; the original decision on which professions to tax was driven largely by the amount of revenue each would raise and on whether the profession had large average salaries. The decision was also driven by the fact that the professions chosen were required to be licensed in Tennessee (making them easily identifiable), the knowledge that a large percentage of the tax would be paid by nonresidents, and most importantly the need for the tax to generate approximately \$20 million in additional revenue.

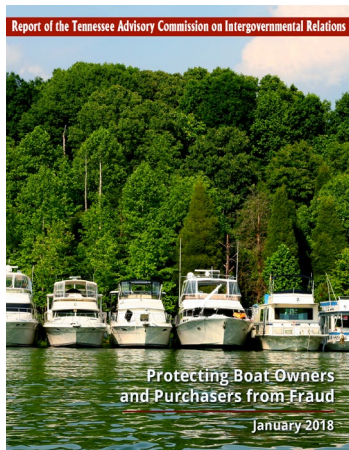
Only five other states—Alabama, Connecticut, Delaware, Montana, and North Carolina—have a professional privilege tax. Alabama's



and Delaware's privilege tax rates vary by profession, while the other three states have a flat rate like Tennessee. Montana's and North Carolina's rates are lower, \$25 and \$50, while Connecticut's is much higher at \$565.

Texas used to levy a privilege tax but eliminated it in 2015, in part in response to similar concerns to those in Tennessee about double taxation. If Tennessee were to eliminate its tax all at once as Texas did, it would cost the state an estimated \$88 million a year in revenue. If instead the tax were phased out over five years as it would have been by the original version of Senate Bill 556, House Bill 678, state revenue would decrease by \$17.6 million in the first year and by \$264 million over five years. This is \$176 million less over the five years than the total decrease from eliminating the tax all at once; extending the phase-out period over a longer time would reduce the cumulative loss in revenue further. Of the \$264 million in reduced revenue, only about a third (\$95 million) would be to the benefit of Tennessee professionals. The other \$169 million would be from revenue raised by the tax on professionals who live outside Tennessee.

Boat Titling—Protecting Boat Owners and Purchasers from Fraud



In 2017, the General Assembly passed Public Chapter 179 directing the Commission to study the creation and implementation of a boat titling system in Tennessee. This study was prompted by a Hardin County boat dealer's scheme to defraud boat owners and buyers, which made headlines after it was uncovered in 2015. The dealer lured victims by offering free storage for recently purchased boats. Then, without the owner's permission, she would sell the boats to unsuspecting buyers, repeating the same scam with the same boats multiple times.

While the overall effect of theft and fraud on boating in Tennessee appears small, the victims in these cases can suffer sizable financial harm. For example, the aforementioned scam in Hardin County resulted in more than \$660,000 in total property loss for the 14 reported victims. Some of those defrauded have argued that the scam could have been prevented if boats were issued titles similar to those issued for motor vehicles in Tennessee, which is one of only 13 states that do not currently offer state-issued boat titles. In its January 2018 report, *Protecting Boat Owners and Purchasers from Fraud*, the Commission explains that while titling boats would not be a cure-all, it would benefit boat owners and buyers and provide some protections, which could be supplemented by requiring

boat dealers to meet minimum licensing requirements, similar to those already required of all motor vehicle and recreational vehicle dealers in Tennessee.

The Commission's report notes that the protections and benefits of titling boats are the same as those of titling motor vehicles. In general, a title is beneficial for personal property that is expensive, mobile, relatively common, and subject to theft and fraudulent sale. Certificates of title provide potential buyers with evidence of ownership and note information about any unpaid liens. Having access to this information makes it easier for buyers to confirm whether an individual rightfully owns property he is selling, thereby reducing the likelihood that buyers unknowingly purchase stolen property. Access to a title also makes it easier for buyers to confirm that any preexisting liens have been satisfied prior to transfer of ownership. In addition to these benefits, if Tennessee were to implement boat titling, it could marginally reduce the cost of financing for buyers who take out loans to purchase their boats. Savings would depend on the size of the loan and would generally be greater for larger loans.

Based on the benefits of boat titling for owners and buyers, the titling laws in other states, and the concerns raised by stakeholders, the Commission's report recommended that Tennessee should implement a boat titling system for motorized and sail-powered boats that are either larger or likely to be more powerful. Similar to Michigan, Tennessee could consider limiting titling both to boats that have a permanently attached engine and to boats that are at least 20 feet long, excluding human-powered watercraft. To avoid the significant administrative burdens that would occur if titling requirements were applied retroactively to all existing boats, the report also recommended that Tennessee should consider phasing in any new titling system by limiting it either to boats manufactured at least one year after the law's effective date or to boats sold or transferred at least one year after the law's effective date.

Tennessee could administer a boat titling system in several ways, using existing government agencies. Past legislation in Tennessee has considered housing boat titling in either the Tennessee Wildlife Resources Agency (TWRA), which already administers boat registration, or the same agency that handles motor vehicle titling, which is currently the Department of Revenue. Of the 37 states that have boat titling systems, approximately half administer them through their TWRA equivalent, while the rest administer boat titling through the same agency that handles motor vehicle titling. In light of the lack of consensus regarding how a potential boat

titling system should be administered in Tennessee, the TWRA, the county clerks, and the Department of Revenue should work together to determine an effective and agreed upon way to administer boat titling in the state. The Commission's report requested that the three parties report back to the Commission in December 2018.

The Commission's report also recommended that the state consider taking additional steps to protect consumers from frauds perpetrated by unscrupulous boat dealers and prevent those individuals from becoming dealers by requiring boat dealers to meet minimum licensing requirements similar to those already required of motor vehicle and recreational vehicle dealers, including criminal background checks and surety bonds.

Tennessee's Infrastructure Needs

During fiscal years 2016-17 and 2017-18, the Commission released the fifteenth and sixteenth reports in the series on Tennessee's infrastructure needs, *Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs*. Public Chapter 817, Acts of 1996 requires the Commission to compile and maintain an inventory of public infrastructure needed in Tennessee and present these needs and associated costs to the General Assembly during its regular legislative session. The inventory, by law, is designed to support development by state and local officials of goals, strategies, and programs to

- improve the quality of life of all Tennesseans,
- support livable communities, and
- enhance and encourage the overall economic development of the state through the provision of adequate and essential public infrastructure.

The reports consistently show that, in general, the more people a county has and the more its population grows, the more infrastructure it will need and, fortunately, the more wealth it will likely have to pay for those needs. As has been the case throughout the history of the inventory, relationships among these factors are strong and well demonstrated by the variation reported for each Tennessee county, although they are not perfectly aligned in any county. Some counties are able to meet their infrastructure needs more easily than others, some continue to report the same needs year after year, and even fast growing counties can find it difficult to meet their needs. And, relative to county population, counties with small populations need and complete just as much or more infrastructure than counties with large populations.

The reports also show that the government that owns infrastructure typically funds the bulk of its cost, and a variety of revenue sources are tapped. For example, the state collects taxes and appropriates those funds to their own projects and provides grants to the local level through programs at various agencies. Cities and counties fund most of their infrastructure improvements with revenue from property and sales taxes, while utility districts have a dedicated revenue source in the form of user fees. The federal government owns very little of the infrastructure in the inventory but provides substantial funding for transportation infrastructure.

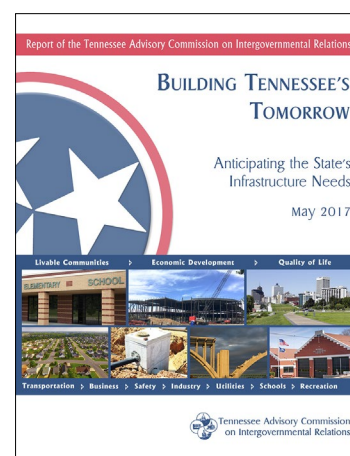
May 2017

According to the fifteenth report in the series, Tennessee needed at least \$43.4 billion of public infrastructure improvements during the five-year period of July 2015 to June 2020. The need for public infrastructure improvements as reported by state and local officials is up \$3 billion (7.4%) compared with the year before. Improvements needed for Transportation and Utilities, Education, and Health, Safety, and Welfare types of infrastructure continue to account for most of the inventory, with Education and Health, Safety, and Welfare infrastructure needs responsible for most of the reported increase this year. As in last year's inventory, nearly two-thirds of the estimated cost of needed infrastructure improvements reported in this year's inventory is not funded.

Costs for current infrastructure needs fall into six general categories:

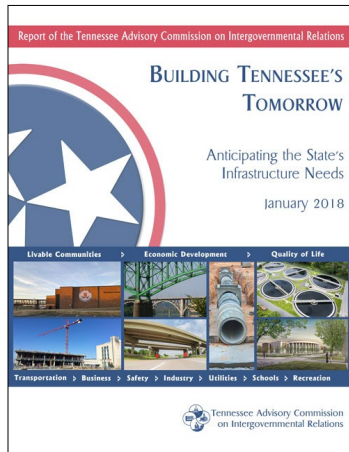
- Transportation and Utilities: \$24.8 billion
- Education: \$9.6 billion
- Health, Safety, and Welfare: \$6.2 billion
- Recreation and Culture: \$1.8 billion
- General Government: \$722 million
- Economic Development: \$417 million

Starting with the 2017 report, the report features a new format. A single statewide overview chapter provides information by type of infrastructure, the condition and needs of our public school facilities, the availability of funding to meet reported needs, and a comparison of county-area needs. Following that section, one-page summaries for each county-area lists the estimated cost for all types of infrastructure by stage of development. The summaries also highlight the top three types of infrastructure improvements needed in each county based on total estimated cost and provide comparisons of the infrastructure needed at public school systems to student enrollment. Further detailed county-area information



about each type of infrastructure in the inventory, along with relevant legislation, inventory forms, and a glossary of terms, can be found in the appendixes to the report

May 2018



The Commission's sixteenth infrastructure report in the series estimated that Tennessee needs at least \$45 billion of public infrastructure improvements during the five-year period of July 2016 to June 2021—a \$2 billion (4.7%) increase from the year before. Improvements needed for Transportation and Utilities, Education, and Health, Safety, and Welfare infrastructure continue to account for most of the inventory, with Education and Health, Safety, and Welfare infrastructure needs responsible for most of the reported increase this year. More than two-thirds of the estimated cost of needed infrastructure improvements included in this year's report is not funded, a slight increase from last year.

Costs for current infrastructure needs fall into six general categories:

- Transportation and Utilities: \$24.8 billion
- Education: \$10.4 billion
- Health, Safety, and Welfare: \$6.9 billion
- Recreation and Culture: \$1.8 billion
- General Government: \$767 million
- Economic Development: \$360 million

Appendix A: Commission Members

Fiscal Year 2016-17 through Fiscal Year 2017-18

Legislative

- Senator Thelma Harper
- Senator Mark Norris
- Senator Jim Tracy*
- Senator Ken Yager
- Senator Jeff Yarbrow
- Representative Mike Carter
- Representative Harold Love Jr.
- Representative Antonio Parkinson
- Representative Tim Wirgau

Statutory

- Senator Bo Watson, Chair, Senate Finance, Ways & Means
- Representative Charles Sargent, Chair, House Finance, Ways & Means
- Justin Wilson, Comptroller of the Treasury

Executive Branch

- Paula Davis, Assistant Commissioner of Administration, Department of Economic & Community Development
- Iliff McMahan, Jr., Regional Director, Department of Economic & Community Development

County

- Ernest Burgess, Mayor, Rutherford County*
- Jeff Huffman, County Executive, Tipton County
- Kenny McBride, Mayor, Carroll County*
- Larry Waters, Mayor, Sevier County

Municipal

- Tom Bickers, Mayor, City of Louisville
- Betsy Crossley, City Commissioner, City of Brentwood
- Keith McDonald, Mayor of Bartlett
- Tom Rowland*, Mayor, City of Cleveland
- Kay Senter, Vice Mayor/Council Member, City of Morristown

Other Local Government

- Charlie Cardwell, Metropolitan Trustee, County Officials Association of Tennessee
- Brent Greer, Mayor, Henry County, Tennessee Development District Association

Private Citizens

- Christi Gibbs, Nashville
- Kenneth Young, Franklin

**Now a former Commission member.*

Appendix B: TACIR Accomplishments by Research Area

Fiscal Years 2016-17 and 2017-18

Fiscal Year 2016-17

Fiscal and Tax Policy Research:

- Completed a Commission report on the professional privilege tax, pursuant to Public Chapter 1024, Acts of 2016.
- Completed a Commission report on legislative compensation, pursuant to Senate Joint Resolution 463 of 2016.
- Completed a report on Tennessee's court fees and tax.
- Continued to monitor and published a report on the Tennessee Valley Authority's payments in lieu of taxes and the effect of the Electric Generation and Transmission Cooperative Act of 2009 as amended in 2010 (Public Chapter 1035, Acts of 2010).

Education Finance:

- Completed the fiscal year 2017-18 fiscal capacity model.
- Executive Director served on the Basic Education Program Review Committee.

Land Use, Transportation, and Growth Policy:

- Completed a staff report on how rural or urban Tennessee's counties are.
- Published a report provided by grant contract on the economic impact of open space on residential property values in Tennessee.
- Continued to monitor implementation of Public Chapter 1101, Acts of 1998, Tennessee's growth policy law.

Infrastructure:

- Continued the annual public infrastructure needs inventory. Collected information from 136 school systems, 95 counties, 347 municipalities, and 255 other entities.
- Completed annual report to the legislature on Tennessee's public infrastructure needs pursuant to Public Chapter 817, Acts of 1996.

Other Research:

- Completed a report on broadband internet deployment, availability, and adoption in Tennessee.
- Monitored intergovernmental tax, fiscal, and education legislation.

Using Technology for Public Information:

- Disseminated all reports electronically and maintained detailed focus sections about continuing research on TACIR's web page (<https://www.tn.gov/tacir/tacir-publications.html>).
- Further disseminated information from the public infrastructure needs inventory through a partnership with the University of Tennessee to include the data on their state data explorer website (<http://ctasdata.utk.tennessee.edu/statedashboard2/>).

- Continued to update and enhance the profiles of Tennessee's counties, providing easy public access to detailed demographic, financial, and other information for each (<https://www.tn.gov/tacir/tennessee-county-profiles-redirect.html>).
- Published timely information Tracking Tennessee's Economy in partnership with Middle Tennessee State University (<http://capone.mtsu.edu/berc/tacir/tacir.html>).
- Published county growth plans required by Public Chapter 1101, Acts of 1998, on TACIR's website (<https://www.tn.gov/tacir/tennessee-county-growth-plans.html>).
- Posted timely information to the agency's Facebook page notifying the public of new reports, elaborating on topics of interest, and pointing out relevant research by other organizations (<https://www.facebook.com/TN.ACIR>).
- Increased functionality of the agency's website (<http://www.tn.gov/tacir>).

Fiscal Year 2017-18

Fiscal and Tax Policy Research

- Completed a report on local government's use of payments in lieu of tax agreements to encourage economic development, pursuant to Public Chapter 431, Acts of 2017.
- Continued to monitor and published a report on the Tennessee Valley Authority's payments in lieu of taxes and the effect of the Electric Generation and Transmission Cooperative Act of 2009 as amended in 2010 (Public Chapter 1035, Acts of 2010).
- Completed a staff report reflecting the updates to the state's growth planning and annexation laws caused by the passage of Public Chapter 707 in 2014.

Education Finance:

- Completed the fiscal year 2018-19 fiscal capacity model.
- Executive Director served on the Basic Education Program Review Committee.

Land Use, Transportation, and Growth Policy:

- Continued to monitor implementation of Public Chapter 1101, Acts of 1998, Tennessee's growth policy law.
- Updated the document "Growth Policy, Annexation, and Incorporation Under PC 1101 of 1998: A Guide for Community Leaders" in response to the significant changes to the state's growth planning and annexation laws caused by Public Chapter 707, Acts of 2014.

Infrastructure:

- Continued the annual public infrastructure needs inventory. Collected information from 142 school systems, 95 counties, 347 municipalities, and 255 other entities.
- Completed Commission's annual report to the legislature on Tennessee's public infrastructure needs pursuant to Public Chapter 817, Acts of 1996.

Other Research:

- Completed a report on Tennessee's 911 system's functionality and funding, pursuant to Public Chapter 795, Acts of 2014.
- Completed a report on the financial burden on county governments from housing state prisoners in county jails.

- Completed a report on boat titling, pursuant to Public Chapter 179, Acts of 2017.
- Provided information and panel discussion on water supply management issues in Tennessee.
- Monitored intergovernmental tax, fiscal, and education legislation.

Using Technology for Public Information

- Disseminated all reports electronically and maintained detailed focus sections about continuing research on TACIR's web page (<https://www.tn.gov/tacir/tacir-publications.html>).
- Further disseminated information from the annual public infrastructure needs inventory through a partnership with the University of Tennessee to include the data on their state data explorer website (<http://ctasdata.utk.tennessee.edu/statedashboard2/>).
- Began adding GPS coordinates to the infrastructure inventory
- Continued to update and enhance the profiles of Tennessee's counties, providing easy public access to detailed demographic, financial, and other information for each (<https://www.tn.gov/tacir/tennessee-county-profiles-redirect.html>).
- Published timely information *Tracking Tennessee's Economy* in partnership with Middle Tennessee State University (<http://capone.mtsu.edu/berc/tacir/tacir.html>).
- Posted timely information to the agency's Facebook page notifying the public of new reports, elaborating on topics of interest, and pointing out relevant research by other organizations (<https://www.facebook.com/TN.ACIR>).
- Added fiscal federalism information page for the TACIR website (<https://www.tn.gov/tacir/fiscal-federalism.html>).
- Added Tennessee Valley Authority Payments in Lieu of Taxes pages for the TACIR website (<https://www.tn.gov/tacir/tva-pilots.html>).
- Transitioned to the new state's website in December 2017 (<https://www.tn.gov/tacir/>).
- Increased functionality of the agency's website with addition of tableau maps and data tables for fiscal capacity, infrastructure, and county profile features (<http://www.tn.gov/tacir/>).

Appendix C: TACIR Publications

Fiscal Year 2016-17 and Fiscal Year 2017-18

Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs—Commission Report, August 2016

Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs—Commission Report, August 2016

Just How Rural or Urban are Tennessee's 95 Counties?—Staff Report, August 2016

Legislative Compensation: Comparing Tennessee to Contiguous and Peer States—Commission Report, December 2016

Professional Privilege Tax in Tennessee: Taxing Professionals Fairly—Commission Report, December 2016

The Economic Impact of Open Space on Residential Property Values in Tennessee—Prepared for TACIR by the University of Tennessee Howard H. Baker Jr. Center for Public Policy, September 2016

Intergovernmental Challenges and Achievements—Biennial Report Fiscal Years 2014-15 and 2015-16, August 2016

Growth Policy, Annexation, and Incorporation Under PC 1101 of 1998: A Guide for Community Leaders—Staff Report, December 2017

Housing Tennessee's Convicted Felons: Improving Outcomes while Balancing State and County Needs—Commission Report, August 2017

Tennessee's 911 System: Functionality and Funding Adequacy—Commission Report, August 2017

Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs—Commission Report, May 2017

Broadband Internet Deployment, Availability, and Adoption in Tennessee—Commission Report, January 2017

Tennessee Valley Authority's Payments in Lieu of Taxes - Annual Report to the General Assembly—Commission Report, January 2017

Tennessee's Court Fees and Taxes: Funding the Courts Fairly—Commission Report, January 2017

Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs—Commission Report, January 2018

Protecting Boat Owners and Purchasers from Fraud—Commission Report, January 2018

Encouraging More Cooperation and Accountability in Payment in Lieu of Tax Agreements—Commission Report, January 2018

Tennessee Valley Authority's Payments in Lieu of Taxes: Annual Report to the General Assembly—Commission Report, January 2018

Appendix D: Staff Presentations

Fiscal Year 2016-17 and Fiscal Year 2017-18

“Building Tennessee Tomorrow: Anticipating the State’s Infrastructure Needs” to the Tennessee County Services Association (October 13, 2016)

“Research meets reality: Studying interjurisdictional collaboration in partnership with intergovernmental institutions and local officials” to the American Society of Public Administration (March 17, 2017)

“Building Tennessee Tomorrow: Anticipating the State’s Infrastructure Needs” to the Tennessee Development District Association Training Conference (March 21, 2017)

“Broadband Deployment, Availability, and Adoption” to Dickson County Chamber of Commerce (April 27, 2017)

“Federalism through the lens of finance: Dynamics between cities, states, and the federal government” at Governing Magazine’s Summit on Financial Leadership (September 13, 2017)

“Tennessee Advisory Commission on Intergovernmental Relations and Tennessee Joint Economic Community Development Boards” to the US Department of Housing and Urban Development’s Annual Tennessee Directors’ Meeting (September 7, 2017)

“Broadband Internet Expansion” as part of the Organization, Presentation, Evaluation, Navigation event series for the Cheatham County Democratic Party, panelist (February 8, 2018)

“The Shifting Dynamics of State-Local Relations” to the American Society of Public Administration’s National Conference, panelist (March 9, 2018)

TACIR Presentation to Speaker’s Task Force on Intergovernmental Affairs, U.S. House of Representatives (May 17, 2018)

Appendix E: Conference and Meeting Attendance

Fiscal Year 2016-17 through Fiscal Year 2017-18

American Society for Public Administration, Southeast Regional Conference

American Society for Public Administration, National Conference

Association of Tennessee Valley Governments January Meeting

Broadband Adoption Working Group, as part of the Tennessee Economic and Community Development's Rural Task Force

Council of State Governments National Conference

Cumberland Region Tomorrow Power of Ten Summit

ESRI ArcGIS User Seminar

Governor's Conference on Economic Development

Governing Magazine's Summit on Financial Leadership

Middle Tennessee State University Economic Outlook Conference

Southern Political Science Association

Tennessee American Planning Association Annual Conference

Tennessee American Planning Association Winter Retreat

Tennessee County Services Association Annual Fall Conference

Tennessee County Services Association Post Legislative Conference

Tennessee Development District Association Annual Meeting

Tennessee Development District Association Spring Conference and Meeting

Tennessee Digital Government Summit

Tennessee Government Leadership Annual Conference

Tennessee's H2O: Technical Working Group; Legal Framework Working Group

Tennessee Municipal League Annual Conference

Tennessee Municipal Attorneys Association Summer Seminar

Tennessee Municipal Attorneys Association Winter Seminar

US Department of Housing and Urban Development's Annual Tennessee Director's Meeting

USDA Rural Development, TVA and Tennessee Department of Economic and Community Development's Rural Development Conference

Appendix F: TACIR Organization, Mission, and Goals

Organization

Consisting of public officials from state and local government and private citizen members, the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) “serves as a forum for the discussion and resolution of intergovernmental problems.”

The 25 members of the Commission capture the richness and diversity of perspectives of private citizens and officials representing different branches and levels of government. Of the 25 member commission, 22 members are appointed to four-year terms, while three are statutory members who hold membership by virtue of their positions. Statutory members include the chairs of the House and Senate Finance, Ways and Means Committees and the Comptroller of the Treasury.

Responsibility for the appointment of four state senators and four state representatives rests with the speaker of each respective chamber of the Tennessee General Assembly. Other appointments to the Commission include four elected county officials, one official nominated by the County Officials Association of Tennessee, four elected city officials, one elected development district nominee, two private citizens, and two executive branch officials. In total, ten members have local government as their primary affiliation, eleven represent the legislature, two are drawn from the executive branch, and two are private citizens.

Mission

In the late 1970’s, legislative findings indicated the need for a permanent intergovernmental body to study and take action on questions of organizational patterns, powers, functions, and relationships among federal, state, and local governments. In pursuit of this goal, TACIR was created in 1978 (Tennessee Code Annotated § 4-10-101). TACIR’s enabling act established what has remained the Commission’s enduring mission (Tennessee Code Annotated § 4-10-104), to

serve as a forum for the discussion and resolution of intergovernmental problems; provide high quality research support to state and local government officials to improve the overall quality of government in Tennessee; and to improve the effectiveness of the intergovernmental system to better serve the citizens of Tennessee.

Goals

Many specific duties and functions are required of the Commission by its enabling act, and additional duties are often assigned by the General Assembly. From its broad set of statutory obligations and special charges, the purpose for TACIR’s existence can be summarized in four concise yet encompassing goals. The Commission strives to

1. advance discussion and deliberation of critical and sensitive intergovernmental policy matters;
2. promote action to resolve intergovernmental problems and improve the quality of government;

3. forge common ground between competing but equally legitimate values, goals, and interests; and
4. provide members of the General Assembly and other policymakers with accurate and timely information and analysis to facilitate reasoned decision-making.

Appendix G: What Does TACIR Do?

Objectives

TACIR provides a future-oriented perspective to public policy and intergovernmental relations, identifying and diagnosing policy problems that loom on the horizon. To facilitate the achievement of its mission and goals, TACIR is directed by statute to

- engage in activities, studies, and investigations necessary for the accomplishment of the Commission's mission and goals;
- consider, on its own initiative, ways of fostering better relations among local governments and state government;
- draft and disseminate legislative bills, constitutional amendments, and model ordinances necessary to implement the Commission's recommendations;
- encourage and, where appropriate, coordinate studies relating to intergovernmental relations conducted by universities, state, local, and federal agencies, and research and consulting organizations;
- review the recommendations of national commissions studying federal, state, and local governmental relations and problems and assess their possible application to Tennessee;
- study the fiscal relationships between the federal government and Tennessee's state and local governments; and
- study tax equivalent payments by municipally-owned electric operations to the various taxing jurisdictions within the state and study laws relating to the assessment and taxation of property (summarized from Tennessee Code Annotated § 4-10-104).

Additionally, the Commission is directed by statute to meet quarterly and report its research and findings. Commission meetings, with invited guests and experts, and lively and thoughtful debate, form the core around which virtually all commission activities are centered.

Given such broad tasks, the Commission adopts an annual work plan to guide its meetings and research. The work plan is designed to ensure the completion of objectives set forth in the Commission's enabling act, as well as the achievement of its mission and goals. From time to time throughout the year, the commissioners address problems that were not anticipated in the work plan. Generally such matters are addressed at the direction of the General Assembly.

Appendix H: Legislation Affecting TACIR

Fiscal Year 2016-17 and Fiscal Year 2017-18

Fiscal Year 2016-17

- Public Chapter 228, Acts of 2017, directs the Commission to prepare an update of its January 2017 report Broadband Internet Deployment, Availability, and Adoption in Tennessee by January 15, 2021.
- Public Chapter 431, Acts of 2017, directed the Commission to study the economic benefits to counties and municipalities from the use of payment in lieu of ad valorem tax agreements and leases by industrial development corporations organized by municipalities, examine whether any economic benefits are derived from limiting the length of term of a payment in lieu of ad valorem tax agreement or lease to five or less years absent county approval or an agreement by the corporation or municipality to pay, each year after the initial five years, to the county a sum equal to the amount of real property tax that would have been assessed to a property if the agreement or lease had not been executed, and study any additional issues that the Commission deems relevant to meet the objective of the study.
- Public Chapter 179, Acts of 2017, directed the Commission to perform a study on the creation and implementation of a boat titling system in Tennessee.
- Pursuant to Public Chapter 1101, Acts of 1998; Public Chapter 672, Acts of 2000; and Public Chapter 594, Acts of 2002, the Commission continued to monitor and report on implementation of the state's growth policy act.
- As directed by Public Chapter 817, Acts of 1996, the Commission completed the annual Public Infrastructure Needs Inventory and Report.
- The Commission completed a final report on the professional privilege tax pursuant to Public Chapter 1024, Acts of 2016.
- Completed a Commission report on legislative compensation, pursuant to Senate Joint Resolution 463 of 2016.

Fiscal Year 2017-18

- Public Chapter 827, Acts of 2018, 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.
- 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% 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.

- 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.
- Public Chapter 819, Acts of 2018 by Lamberth, 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.
- Senate Joint Resolutions 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.
- Public Chapter 849, Acts of 2018, 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.
- Public Chapter 952, Acts of 2018, 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.
- 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.

- 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% 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.
- 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 was passed by the Senate Finance, Ways and Means Committee but remains in the Senate Calendar Committee.
- Pursuant to Public Chapter 1101, Acts of 1998; Public Chapter 672, Acts of 2000; and Public Chapter 594, Acts of 2002, the Commission continued to monitor and report on implementation of the state's growth policy act.
- As directed by Public Chapter 817, Acts of 1996, the Commission completed the annual Public Infrastructure Needs Inventory and Report.

Appendix I: Summary of Commission Meeting Minutes

The following are summaries of the Commission's quarterly meetings. Full minutes and video for meetings are located on TACIR's website (<https://www.tn.gov/tacir/commission-meetings.html>).

Fiscal Year 2016-17 Scheduled Commission Meetings

August 30-31, 2016

Update on Tennessee's Lawsuit Challenging FCC Preemption

The Commission heard a presentation from Associate Attorney General Bill YOUNG as an update on the recent ruling by the US Court of Appeals for the Sixth Circuit in favor of Tennessee over the Federal Communications Commission (FCC). Providing background, he explained that Tennessee Code Annotated, Section 7-52-601 et seq., authorizes municipal utilities to provide broadband but only within their electric service areas. Mr. YOUNG said that the Electric Power Board of Chattanooga (EPB) petitioned the FCC to preempt Tennessee's territorial restriction on municipal providers in July 2014 and that the FCC granted EPB's petition in February 2015. He said that the Tennessee Attorney General's Office petitioned the Sixth Circuit to reverse the FCC's order in March 2015. The Sixth Circuit ruled in favor of Tennessee's challenge and reversed the FCC's order in August 2016.

Mr. YOUNG said that the Attorney General's Office did not take a position on whether municipal utilities should be authorized to provide broadband outside their electric service areas. The state only sued because the Tennessee General Assembly, not the FCC, should decide whether to lift the territorial restriction. He said the US Court of Appeals for the Sixth Circuit accepted the state's position that the Federal Telecommunications Act does not authorize the FCC to preempt state laws restricting the territories of municipal providers.

Biennial Report for Fiscal Years 2014-15 and 2015-16—Final Report for Approval

The Commission adopted its biennial report for fiscal years 2014-15 and 2015-16.

The Economic Impact of Open Space On Residential Property Values in Tennessee—Report to the Commission

Dr. Charles SIMS, of the University of Tennessee's Howard H. Baker Jr. Center for Public Policy, presented findings from a study co-authored with Dr. Matt Murray on the economic effect of open space on residential property values throughout Tennessee. The report, partially funded by TACIR, seeks to help local officials estimate the potential effect on the property tax base of alternative patterns of development and changes in land use. Dr. SIMS noted that over 93% of Tennessee's land area is some type of open space, with more than half being forest and over a third agricultural land. Only 4% of this open space is publicly owned (e.g. state and national parks), and very little of the privately owned open space is protected from development.

Dr. SIMS explained the methods used to determine value, and how things other than a home's size and construction—like open space and city services—translate into value, and how the report

isolates the value added (or reduced) by proximity to open space. He shared information from similar studies conducted mainly in East Tennessee and Knoxville, and explained how the report looks at those findings through a statewide analysis by comparing the median home value in each Census Block Group to the median value for the state.

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

The Commission approved the annual report on the public infrastructure needs inventory, *Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs*. The presentation included information about TDOT's Expedited Project Delivery program, variations in needed infrastructure improvements across the state, how improvements are funded, and needs at Tennessee's public schools. Commission discussion included the future of transportation funding, the \$6 billion transportation backlog, and a possible new report format for next year that would include a summary for each county.

Fiscal Capacity for Fiscal Year 2016-17

The Commission heard a presentation on the annual update on TACIR's fiscal capacity index and background information about the index and education funding in Tennessee. The presentation included an update of the counties' 15-year fiscal capacity trends and an update on the effect of the Tennessee Virtual Academy on the fiscal capacities of both Union County and the state's other 94 counties. Discussion centered on questions about Williamson County's fiscal capacity.

The Privilege Tax in Tennessee: Taxing Professionals Fairly —Draft Report for Review and Comment

A draft report on Tennessee's professional privilege tax was presented to the Commission for review and comment. As introduced, the legislation that became Public Chapter 1024 would have decreased the privilege tax annually by 20% over the next five years, eliminating it in 2019 and thereafter, and would have prohibited the tax from being applied more than once for a single person having multiple professions affected by the tax. It also would have prohibited any new tax upon the privilege of engaging in certain professions, businesses, and occupations. Public Chapter 1024 also requires the study to examine the history and intent of the professional privilege tax, other states' laws imposing a professional privilege tax or similar tax, and alternatives for eliminating or phasing it out. Some argue that the tax is not equitable for three main reasons: because some professions that aren't taxed have higher incomes than those that are taxed, because incomes of professionals vary significantly within the taxed professions, and because those in professions earning lower salaries have to pay the same amount as those earning more. Some advocates for groups of professionals also argue that professionals who pay the professional privilege tax and have to pay franchise and excise taxes are being double taxed. Mr. MOUNT concluded by describing five other states' laws that impose professional privilege taxes and presenting information on eliminating or phasing out Tennessee's tax.

Legislative Compensation: Comparing Tennessee to Contiguous and Peer States—Draft Report for Review and Comment

A draft report on legislative compensation was presented to the Commission for review and comment. The report responds to Senate Joint Resolution 463, requiring TACIR to compare Tennessee's legislative salary and other kinds of expense reimbursements to those of our contiguous states to determine whether Tennessee legislators are being adequately compensated and fully reimbursed. The report explains the role of state legislatures and the need for sufficient compensation. The report provides that Tennessee's legislative compensation is similar to that in its comparison states and falls in the middle.

Broadband Internet Deployment, Availability, and Adoption in Tennessee—Updates and Panel Discussion

A. Updates:

The Commission heard a presentation on the history of Connected Tennessee and its programs from its former director, Michael RAMAGE, currently the director of the Center for Telecommunications Systems Management at Murray State University. Mr. RAMAGE said that Connected Tennessee, a subsidiary of Connected Nation, was created in 2007 based on the recommendations of Tennessee's broadband taskforce. Initial funding came from the Tennessee Department of Economic and Community Development and was to last three years, but it was extended to seven years with additional funding from the American Reinvestment and Recovery Act. Connected Tennessee was tasked with producing a map showing broadband coverage throughout the state at the census block level, researching barriers to technology use, increasing broadband availability by working with private providers and the public sector, increasing adoption using grassroots programs, and providing devices to at-risk kids.

Mr. RAMAGE said that Connected Tennessee focused on improving access, adoption, and use. He said that in communities without broadband access, Connected Tennessee helped collect signatures of all residents who wanted service but could not get it.

Mr. RAMAGE said that Connected Tennessee's Computers4Kids program provided approximately 5,000 computers to at-risk teens, including almost 2,900 to teens in foster care, who were staying in school and getting good grades. Connected Tennessee partnered with private companies, such as AT&T, Ciber, and Microsoft, as well as community centers, libraries, and churches. Connected Tennessee also worked with all 76 Boys and Girls Clubs in the state as part of the program and that it provided 90,000 hours of training to kids and teens at these clubs.

Mr. MCMAHAN said that access isn't just about where broadband is technically available and that affordability is important especially in areas of the state where average incomes are no more than \$22,000 to \$24,000 per year. He said that competition among providers helps drive down costs. In response to Representative WIRGAU's question about whether affordability is always about cost, Mr. RAMAGE said that it can also be a value proposition and that some people who could afford service choose not to have it because they don't think it is worth the money. Maps comparing adoption with availability show that people are not always subscribing to the fastest available speeds.

The Commission next heard a presentation on the results of the Tennessee Department of Economic and Community Development's (ECD) broadband survey from Amanda MARTIN, special projects director for ECD. Ms. MARTIN said that broadband was a common topic in discussions with residents and local leaders during a tour of the state by ECD's commissioner, Randy Boyd. ECD decided to do its survey because of broadband's importance for economic development as well as general disagreement about the nature of the broadband problem and potential solutions.

Ms. MARTIN said that ECD's consultants surveyed residents and businesses throughout the state to help determine broadband access, adoption, and use in Tennessee. The survey received more than 23,000 responses, including 18,000 residents and 5,500 businesses.

Ms. MARTIN said that ECD's consultants defined broadband as having a minimum speed of 25 megabits per second download and 3 megabits per second upload because it is adequate to meet demand for the foreseeable future. Ms. MARTIN said that access to broadband doesn't necessarily imply adoption and use. She said that while 87% of Tennesseans have access to fixed broadband connections according to FCC data, only 31% of business respondents and 24% of residential respondents actually achieved those speeds in tests performed as part of ECD's survey. The reasons for this could be that respondents have not subscribed to the highest speeds available or that respondents may not have computers or other devices capable of supporting those speeds. She said that it was possible, though less likely, that they were not receiving the advertised speeds that they subscribed to.

Ms. MARTIN said it is important to increase adoption and use because doing so could improve the business case for expanding coverage. The most common barriers to increasing broadband use cited in ECD's survey differed between residential and business respondents. Speed and reliability were the most important barriers for residential respondents, whereas security and privacy concerns were most important for business respondents. Individual satisfaction with existing internet service correlated with download speed for residential users, but business users' satisfaction correlated with upload speeds of at least three or four megabits per second. She said that this was likely because business users are more likely to need to upload data to the web while most residential users are usually just pulling information.

Ms. MARTIN said that other states vary widely in the broadband programs and policies they have adopted. But ECD's consultants found that critical success factors include strong public leadership to support projects and goals, significant state capacity devoted to broadband either as part of a broadband office or across other agencies, the availability of grants or other funding sources, effective partnerships between the public and private sectors as well as within each sector individually, and transparency and planning. Ms. MARTIN said that although some states have decided to throw hundreds of millions of dollars at the issue, Tennessee should consider its fiscal constraints when determining which policies to adopt. Mayor BURGESS said that contrary to Mr. Ramage's assertion that Tennessee is comparable with others in the region, several southeastern states rank better than it according to ECD's consultants and that they rank Tennessee 39th in the nation. He said that it is evident the state has a ways to go.

Chairman NORRIS made a distinction between ECD's survey and the Commission's broader study and said there are many things to consider when developing broadband policy and there

are more than two sides to many of the issues involved. Noting that ECD is represented on the Commission, he said that ECD's survey, which was announced after the Commission had already begun its study, is one source of information among many that the Commission will consider when developing its recommendations for the state. He said the Haslam administration has not adopted the policy recommendations made in ECD's survey and that the survey's methodology affects the conclusions one can draw from the data collected. He thanked Ms. MARTIN for her presentation.

B. A panel discussion of Federal, State, and Local Regulatory Landscape included presentations by:

- Cliff Lloyd, Chief Information Officer, Tennessee Department of Education
- Charles A. Sherrill, Tennessee State Librarian and Archivist, Office of Secretary of State
- Larry Jones, Telehealth Coordinator for Rural Health Care Program, Tennessee Primary Care Association
- Dr. Jacob Weiss, Director, High-Wired Communities and High-Wired Lifeline
- Keith Durbin, Information Technology Services Director and Chief Information Officer, Metropolitan Government of Nashville and Davidson County

Mr. LLOYD said that Tennessee schools spend \$85 million per year on broadband service and the equipment necessary to support it, including wireless access points, routers, switches, and other devices. The federal government funds 86% of this figure through the E-Rate program administered by the FCC and the Universal Service Administrative Company. Mr. LLOYD said that one year ago the state was in trouble because the FCC had denied E-Rate funding to 50 school districts because of perceived problems in funding applications. There was very little competition among broadband providers and other equipment vendors in some districts and that FCC was concerned that some of the applications seemed to be provider or vendor led. Mr. LLOYD said that school districts also received an additional \$20 million this year from the FCC to fund purchases of equipment like wireless access points, routers, switches, and connections between buildings.

Mr. SHERRILL said that the Tennessee State Library and Archives (TSLA) has nine regional offices to support the state's non-metropolitan libraries. Staff in these regional offices work with local libraries—some of which are very small—to provide the public with broadband access and digital literacy training. Mr. SHERRILL said that TSLA had surveyed each of the libraries in the nine regions and found that 28% of them do not have access to 100 megabits per second connections, the minimum speed necessary for anchor institutions according to the FCC. In response to Chairman NORRIS question about whether any libraries lacked internet access altogether, Mr. SHERRILL said that every library in the state had a connection even if it didn't meet the 100 megabits per second standard. Chairman NORRIS said that libraries could be a resource for the 13% of Tennesseans who don't have access to broadband connections at home.

Mr. SHERRILL said that TSLA also found that of the 72% of libraries with access to 100 megabits per second connections only 30% of those actually subscribe to them. Cost is an issue for many of these libraries, and some don't subscribe to faster connections because they are currently receiving free service. Others have connections that are shared with local government agencies and can't unilaterally increase the speed of their subscriptions. Mr. SHERRILL said that libraries, like school districts, are eligible for federal E-Rate funding and that this funding can reimburse libraries for between 75% and 90% of the cost broadband service. But staff at some libraries are unaware of

the E-Rate program, and many small libraries have had their budgets frozen for decades and can't get extra money for faster connections even if they are reimbursed for most of the cost. TSLA staff are encouraging local librarians to take advantage of the E-Rate program and subscribe to faster connections, but it is also necessary to educate local library boards and government officials.

Mr. JONES said that broadband access is important for telehealth programs connecting patients in rural communities with specialists in urban areas. These programs reduce the need of patients to drive long distances to receive medical care. In addition to telehealth, hospitals and healthcare centers increasingly need broadband to manage electronic health records. Mr. JONES said that the federal government is strongly encouraging the use of these electronic records and that they have become a more important driver of the need for more broadband capacity than even telehealth. While a 1.5 megabit per second connections was sufficient for most telehealth programs, it is now common for healthcare centers to ask for 4, 10, and even 20 megabits per second connections.

Mr. JONES said that the disparity in broadband between urban and rural areas is both one of access and cost. Providers charge more in rural areas, and healthcare centers rely on federal funding to defray these costs. Mr. JONES said that initially, the FCC's Rural Healthcare pilot program funded 85% of the cost of broadband service for hospitals. The pilot program has been joined with the Healthcare Connect Fund, and the Universal Service Administrative Company has recently reduced the subsidy to 65%. He said that despite the reduced subsidy, hospitals and healthcare centers are still eager to participate in the program.

Dr. WEISS said that the FCC reimburses providers through the Lifeline program for offering discounted plans to low-income individuals. Similar to E-Rate, the funds are paid directly by the federal government to providers and are not managed or allocated by the state. He said that the Lifeline program was created during the Reagan administration and initially only offered discounts for landline telephone service. The program was expanded to include cellphone voice and text service in 2012, and the FCC just voted to allow the program to be used for both fixed and mobile broadband beginning in December.

In response to Mayor ROWLAND's question about whether Lifeline offers free cellphones, Dr. WEISS said that the program offers a \$9.25 discount per plan per month and that subscribers usually get a free cellphone from their providers as part of the plan. The change to make Lifeline available for cellphone plans in 2012 increased the program's usefulness to low-income residents who may not always have a permanent residence or who may move frequently. In response to Mayor SENTER's question about whether Lifeline would also offer subscribers free computers, Dr. WEISS said that he didn't think it would. He said now that Lifeline will be available for broadband it is likely that subscribers will receive smartphones from providers.

Dr. WEISS said that the biggest challenge for Lifeline is raising awareness about the program both among the low-income populations it serves and among social service organizations and other non-profits. Many state and local agencies that provide other social services in low-income communities are unaware of Lifeline or how to enroll people in it.

Mr. DURBIN said the Metropolitan Government of Nashville and Davidson County (Metro) began investigating ways to increase access and adoption after a 2012 survey found that 44% of

Metro's public school students—approximately 35,000 of 80,000 students—either didn't have access to a computer or internet service at home or didn't understand the benefits of having them. A 2015 Pew survey found that more than 53,000 families in Davidson County lack devices, service, or an understanding of how the internet might benefit them. Mr. DURBIN said that Metro wanted to develop a program that would be repeatable and scalable and that it found a model in Boston, Massachusetts' Tech Goes Home program. Boston's program was paid for by the city and implemented by Boston Public Schools. It focused on families rather than students alone by providing devices like desktops, laptops, and tablets, connecting families with free or reduced-price service plans, and providing training on broadband's relevance and usefulness both to students and their guardians.

December 5-6, 2016

Broadband Internet Deployment, Availability and Adoption in Tennessee—Draft Report for Review and Comment

A draft report on broadband internet deployment, availability, and adoption in Tennessee was presented to the Commission for review and comment. The report is in response to a request from Chairman NORRIS for a comprehensive study of broadband internet service in Tennessee. At the Commission's June 2015 meeting, he asked the Commission to study the status of broadband in the state, assess where there are gaps in coverage, evaluate best practices in other states for encouraging deployment and adoption, and recommend ways that Tennessee can increase broadband availability and adoption in the future. The draft report found that there are already several government and private initiatives to address both broadband access and broadband adoption, supporting the recommendation that Tennessee should focus its efforts on supporting and coordinating these existing initiatives and on addressing any remaining coverage and adoption gaps.

The report's other draft findings, including its finding that approximately 89% of Tennesseans live in census blocks where at least one provider reported offering wireline or fixed wireless service with a capacity of 25/3 according to data collected by the Federal Communications Commission (FCC). And more than 93% live in census blocks where at least one provider reported offering wireline or fixed wireless service with a capacity of 10/1. But rural areas are still less likely to have access than urban areas. Dr. OWEN said that this represents the maximum extent of wireline and fixed wireless broadband coverage as of December 2015, adding that the data do not say whether everyone in these census blocks has access to service at the reported capacities and that the data and the maps do not show expansions of coverage that have occurred in the last year. Overall, Tennessee ranked 29th in the nation for coverage of at least 25/3 and 5th among southeastern states including the eight states that border it and South Carolina, Louisiana, and Florida again according to the FCC's 2016 Broadband Progress Report.

The report found that rates of broadband adoption lag availability. Only 40% of households located in census blocks where providers reported offering at least 25/3 broadband subscribed to the service according to the FCC's 2016 Broadband Progress Report. Tennessee is tied for 19th out of 45 states for which the FCC reports adoption data but is second among the twelve southeastern states. The report describes existing resources and programs for encouraging more Tennesseans to adopt broadband service, including discount programs for broadband service that are available

from internet providers, the federal government's expansion of its telephone service discount program for low-income populations to include broadband, and programs in Tennessee's libraries and schools that provide access to training as well as service and devices for those who cannot afford their own.

Commission discussion centered on the draft report's recommendations and included various questions and answers about existing programs and resources to increase broadband adoption and coverage.

Court Fees and Taxes In Tennessee: Uses, Collections, and Legislation—Draft Report for Review and Comment

The draft report on court fees was presented to the Commission for review and comment. The report responds to a request from Senator Jon Lundberg, former Chairman of the House Civil Justice Committee to study court fees. She said that several legislators have questioned whether it is fair to fund agencies and programs, regardless of their worth, through the court system, or whether they should be funded through some other mechanism. The draft report says that Tennessee could, as is done in Louisiana, provide more thorough analysis of court costs and related earmarks through the use of a judicial committee that reviews and makes recommendations on bills proposing to add or increase court costs.

The draft report also says that many stakeholders and court clerks emphasized that collecting fees and taxes can be problematic, especially in criminal cases. However, there is little collections data available to help determine the scope of the issue. According to the most comprehensive and recent collections data available from the Administrative Office of the Courts (AOC), from 2012, the collection rate was 72% in civil courts and 30% in criminal courts. In 2008, the Tennessee Fiscal Review Committee surveyed court clerks about criminal collection rates as part of a study, but only 15 clerks responded. The Committee staff recommended that the AOC be required to send an annual report of uncollected criminal case assessments from each county to the Committee. The draft says that the Commission agrees with this recommendation. Members also expressed concern about the number of driver's license revocations and their effect on the public.

Legislative Compensation: Comparing Tennessee to Contiguous and Peer States—Final Report for Approval

The Commission approved the final report comparing legislative compensation in Tennessee to that of its contiguous and peer states. Changes to final report from the draft presented at the commission's August 2016 meeting, including the addition of more specific recommendations were discussed. The report addresses the possibility of paying legislators that live in geographically large districts more or the possibility of providing an intra-district travel expense. The report also says the capital city or county boundary could be used in determining travel reimbursement and that legislators could be allowed by law to decline all or part of their travel expense reimbursement. Also, the report says Tennessee could, as is done in several other states, create an independent legislative compensation commission tasked with recommending fair and appropriate compensation.

The Privilege Tax in Tennessee: Taxing Professionals Fairly—Final Report for Approval

The Commission approved the final report on Tennessee’s professional privilege tax. The report is in response to Public Chapter 1024, Acts of 2016, which directs the Commission to study the history and intent of the professional privilege tax, other states’ laws imposing a professional privilege tax or similar tax, and alternatives for eliminating or phasing it out.

The reports discusses that the arguments made in favor of the tax when it was enacted were that some professionals make higher than average incomes, so they should bear some of the burden of raising the required revenue, and legislators knew most of the tax burden would fall on professionals that live outside the state. Others argue that the tax is not equitable because some professions that aren’t taxed have higher incomes than those that are taxed, incomes vary within professions, but all have to pay the same \$400 tax, and with the extension of the franchise and excise taxes in 2000 to limited liability entities, some professionals are double taxed. Although no legislation has been introduced to specifically eliminate this concern, a common approach in such instances with other taxes is to provide a credit for one of the taxes against the other.

The report provides that if Tennessee were to eliminate its tax all at once as Texas did, it would cost the state an estimated \$88 million a year in revenue. If instead the tax were phased out over five years as it would have been by the original version of Senate Bill 556, House Bill 678, state revenue would decrease by \$17.6 million in the first year and by \$264 million over five years. This is \$176 million less over the five years than the total decrease from eliminating the tax all at once; extending the phase-out period over a longer time would reduce the cumulative loss in revenue further.

Emergency Communications Services Funding (Public Chapter 795, Acts of 2014)—Update and Panel Discussion

The Commission heard presentations from a panel regarding Public Chapter 795, Acts of 2014, which created a new funding mechanism for emergency communications services in Tennessee. The Act also required the Commission to study the funding, functionality, and other effects of the Act and report its conclusions to the joint committee on government operations by September 15, 2017. The panel was comprised of state and local government officials who work in the emergency communications field:

- Chuck Haston, director, Warren County Emergency Communications District;
- Jamison Peevyhouse, director, Weakley County 911 Communications Center 2nd vice president, National Emergency Number Association (NENA) and committee member, Tennessee Emergency Number Association (TENA);
- Randy Porter, county executive, Putnam County, former 911 director, former chair of the Tennessee Emergency Communications Board (TECB);
- John Stuermer, executive director, Hamilton County 911 Emergency Communications District, vice chairman, Tennessee 911 Association; and
- Curtis Sutton, executive director, Tennessee Emergency Communications Board (TECB).

Mr. SUTTON gave an overview and history of the TECB. He said that the 2014 law made it the sole receiver of 911 funds and guarantees that the emergency communications districts (ECDs) receive

a base amount plus at least 50% of excess revenue. At the most recent TECB meeting, it authorized distribution of 100% of last year's \$5.3 million excess revenue to the ECDs.

Mr. PEEVYHOUSE said it is important to consider the cost of services and equipment maintenance and improvements when analyzing what the \$1.16 911 surcharge rate covers and planning for future growth. He provided a handout showing the cost of equipment and services that are either required or allowed and said that in a recent survey conducted by the Tennessee Emergency Number Association (TENA), 2/3 of respondents reported that required equipment is at or beyond its end of life, which is typically 5-7 years. The ECDs need to set funds aside for upgrade and replacement of equipment.

He said Tennessee made the right decision 20 years ago, saving local tax payers' dollars by integrating public safety answering points (PSAPs) and 911 services into existing communications centers in local jurisdictions. The Federal Communication Commission's (FCC) 2016 report, Taskforce on Optimal PSAP Architecture, said that the consolidation of any current 911 districts or PSAPs into a 911-only PSAP model would result in increased costs, duplication of services, delayed response times, and decreased operational efficiencies. The National Emergency Number Association's (NENA) CEO, Brian Fontes, has said that cost savings from NG911 should come through the sharing of services, networks, data, training, common technology, and policies under a single form of governance, which is the current model in Tennessee under the TECB's policies and direction. The \$5.3 million excess revenue is based on the 2012 fiscal year \$112 million revenue total, representing a nominal growth rate of 4.6% in the last five years. 911 is the only public safety entity that collects payment, through the surcharge, before the service is received, rather than when the service is received like most other emergency services.

Mr. HASTON said that communications districts operate financially like quasi-utility structures—legally they are utilities, but the rate is written into statute and they can't adjust their rates like utilities can. Because the rate does not fully fund operations, city and county governments help fund 911 through property taxes. Local government funding is not guaranteed and can vary from year to year. ECDs need the same rate flexibility as other utilities. The 2014 law provides revenue stability. He said that the base funding amount is based on 2012 fiscal year revenue numbers and is not sufficient. Out of 100 districts, 31 saw negative net assets in the 2015 fiscal year. ECDs are at minimum staffing levels, and it is harder to attract qualified staff. Unification allows for a seamless response, while regional consolidation is not the answer. There is no substitute for local 911 call takers with local knowledge. Mr. HASTON said that the state needs a model that funds the unified systems that provide dispatch in addition to the ones that just take calls. He added that TECB is best suited to have authority to set the rate.

In response to a question from Mr. MCMAHAN about what are the best practices for operational models from other states, Mr. HASTON said that both NENA and the Association of Public-Safety Officials (APCO) provide guidelines and best practices. Mr. MCMAHAN said he is concerned about Tennessee's rural and challenged counties having quality operations, training, and technology. Mayor ROWLAND added that the state should consider that many 911 calls come from people who are not local and are passing through.

Mayor BURGESS said funding may not go as far in districts that don't have operations consolidated in one location and asked whether the panel could provide information on how they could do something different. Mr. HASTON acknowledged that ECDs use different models. Although there is a great advantage to having everything under one roof, this should be a local decision because it might not work everywhere. He said we need more study on the optimal model for 911 centers in Tennessee.

Mr. SUTTON said there are always issues about whether the ECD dispatches or whether another agency does it for them, about whether the ECD employees dispatch or another local government department's employees dispatch, and about how far the money can go. The legislature lets local governments decide how to operate their ECDs. He also clarified that the \$5.3 million in excess funds was in excess of TECB's budget, but does not translate to ECD budgets. The amount isn't a lot considering there are 100 districts, and the most populous districts get the bulk of it. It does not translate to a big benefit to the smaller, rural districts.

In response to Representative CARTER's question about what a quasi-utility is, Mr. HASTON responded that, financially speaking, ECDs are quasi-utilities because utilities set and adjust rates based on their operational need, but ECDs can't. Representative CARTER asked what the financial problem was with the ECDs. Mr. HASTON said that rates were capped in 1998 and didn't change until the 2014 law passed. The rates are written into the law. He said ECDs should have rate flexibility, and TECB should have the power to determine the rates.

Representative CARTER asked what the money from the surcharge can be used for. He had heard that state money can only be used for equipment and hardware. Mr. HASTON said the money can be used for expenses other than just equipment and hardware. Representative CARTER asked if the ECDs were given rate flexibility, would this reduce local government expenditures on 911. Mr. STUERMER answered that it depends on how 911 is conducted in that county. For example, in Hamilton County they provide all call taking and dispatching for all emergency services in the county. If fully funded by the state, the local government wouldn't have to help fund a unified service. Representative CARTER said he thought 911 should be self-supporting. Chairman NORRIS clarified that state funding must be used for equipment, but ECDs can also use other funding sources for equipment.

Mayor HUFFMAN asked what the state money can be used for, and said it is a murky area where there is confusion about funding rules and regulations. Many local governments provide funding for ECDs, and the push comes when an ECD asks a local government for additional funding, but the local government says why can't you use the money you've got. Mr. SUTTON said they have revenue standards that require the money to be used for equipment. If there is money left over, the money can be spent on other permissible uses, such as salaries. He said that under the new law, the TECB does not consider depreciation when determining whether an ECD is financially distressed. The TECB removes the ECD from distressed status if it is primarily because of depreciation. The law has a maintenance of effort provision, meaning that when the local government removes funding support, the state can also reduce the base amount by the same level, which will prevent an increase in 911 revenue from becoming an increase in local government operating revenue.

Mayor HUFFMAN asked about catastrophic emergency funding for things like wildfires. Mr. SUTTON said TECB would provide catastrophic funding if the equipment is insured and the state would be repaid. If the equipment is not insured, the policy does not apply.

Mayor HUFFMAN asked how many ECDs provide dispatch and medical advice. Mr. SUTTON said he doesn't think anyone on the panel has that information. He explained that every ECD, except one, does some form of direct call taking dispatch, but it varies.

Mr. YOUNG asked what is being done to ensure that the surcharges are being properly collected and remitted by providers. Mr. SUTTON answered that under a new law, beginning July 1, 2017, the Department of Revenue will collect the surcharge and will be able to audit providers. TECB will no longer collect any surcharges.

Mayor BICKERS asked about emergency public notification and who funds it. Mr. PORTER said this is a function and responsibility of emergency management, not 911, although 911 funding can help pay for it, and 911 centers can be involved. Mayor BICKERS said he hopes that they will look at ways to utilize 911 to communicate with people during emergencies.

Mayor PORTER said he thought Tennessee has a great 911 system and they should look carefully before changing laws that could jeopardize the current system. He said the thinks decision-making should be kept at the local level.

Mr. STUERMER said that there are concerns about the new rate because it is based on fiscal year 2012 numbers, and the rate does not meet current needs as shown by the 31% of PSAPs in a net negative position in 2015. This is unprecedented. After the law passed, revenue collections in Hamilton County were \$374,000 less compared to the first half of the fiscal year under the old rate. ECDs are teetering on the edge of being able to provide good service. Mismanagement of funds is not the problem with PSAPs who are net negative. We need to look at whether the 1984 definition of 911 still holds true, and we also need a uniform statewide standard for 911 first, then we can figure out the amount of funding. We need to clarify the role and standards of 911 and TECB's role. Depreciation and amortization of assets decrease the operational revenue, and operational reserves are used to replace assets or upgrade to new technologies. It is harder now for ECDs to use reserves for capital because they need emergency reserves to ensure they can operate. Most ECDs don't have sufficient reserves. ECDs need to be able to adjust rates like other utilities and TECB should be able to do it.

State Prisoners in County Jails—Update and Panel Discussion

The Commission heard from a panel of stakeholders regarding the Commission's study about state prisoners housed in county jails:

- Debbie Inglis, deputy commissioner and lead counsel, Tennessee Department of Correction
- Wes Landers, chief financial officer, Tennessee Department of Correction
- Ellen Abbott, director of criminal justice services, Tennessee Department of Mental Health and Substance Abuse Services
- Terry Ashe, executive director, Tennessee Sheriffs' Association
- Jeff Box, sheriff, Dyer County

- David Connor, executive director, Tennessee County Services Association
- Jim Hart, jail management consultant, University of Tennessee County Technical Assistance Service

Debbie INGLIS, deputy commissioner and lead counsel for the Tennessee Department of Correction (TDOC), and Wes LANDERS, TDOC chief financial officer, presented first. Mr. LANDERS said that reimbursement payments to counties would total \$173 million for fiscal year 2017, about 18% of the department's budget. He said the state reimburses counties for the two types of state prisoners: locally sentenced offenders and jail backup offenders. Locally sentenced offenders are felons ordered by the judge to serve their sentence at the local level—generally a one to three year sentence or one to six years in Shelby or Davidson counties. Jail backup offenders are convicted felons sentenced to TDOC custody but awaiting transfer to a TDOC institution. TDOC does not reimburse for pre-trial detainees, inmates held for federal or city ordinances, or convicted misdemeanants. Non-reimbursable prisoners make up two-thirds of the local jail population, with pre-trial detainees comprising half of that. In addition to payments for housing felons, the state also funds contract medical reimbursements for those offenders and approximately \$4 million in miscellaneous costs at the local level including jury sequestration, offender transport, and emergency hospitalization, etc. Mr. LANDERS said the local jail population peaked in July 2012, and has decreased by 18% since, leading to reductions in the locally sentenced and backup populations as well. The department has added about 2,500 beds since 2007. Since the peak in 2012, the number of locally sentenced state prisoners in jails has dropped 10% and the number in backup has dropped about 17%.

Mr. LANDERS explained why he believes the Public Safety Act of 2016 will help manage the local jail population. New graduated sanctions and incentives will target the large pre-trial detainee population. He said that about 40% of TDOC new admissions come from “technical” violations of conditions of probation or parole, or some sort of noncompliant behavior while under probation, parole, or community corrections—where no new crime has been committed. The Public Safety Act lets a supervising officer address these violations without automatically revoking the person's probation and sending them to jail to await a hearing before a judge—an often lengthy process. Reducing this portion of the jail population will save money at both the state and local level. Mr. LANDERS then discussed the reimbursement rate, currently \$37 per day per inmate, with three notable exceptions. Shelby and Davidson counties have contracts for the reimbursement of actual costs of housing locally sentenced felons, with Shelby capped at \$73 a day. Johnson City receives \$38.75 a day for housing female offenders. The general reimbursement rate is set by the General Assembly each year. The rate increased from \$32 to \$35 in 2006 and from \$35 to \$37 in 2013. Each dollar the rate is increased would cost the state about \$2.7 million annually. Mr. LANDERS added that, if the state were to reimburse counties for pre-trial detainees—using FY2016 numbers with an average pre-trial sentence credit of 136 days multiplied by the actual average jail cost of \$49.36 per inmate day—it would cost the state more than \$88 million. Mr. LANDERS then explained why the department pays a higher rate to house inmates in private prisons—Core Civic (formerly Corrections Corporation of America) facilities are contracted to provide the same level of services and standards as state-owned prisons, including medical services, mental health treatment, and other programming. The average daily cost at these facilities in FY2016 was \$56.61 per inmate day—lower than the TDOC average of \$74.80 per inmate day.

Mayor HUFFMAN asked for clarification about how treating parole and probation violations differently would save state and local governments money. Ms. INGLIS explained that, under current laws, violators are arrested and placed in jail to await a revocation hearing. The Public Safety Act of 2016 allows for other sanctions. Mayor HUFFMAN asked whether it was true that the state's liability for the cost of that jail time doesn't start until after the probation is revoked and that local jails are not reimbursed for time spent awaiting hearing. Ms. INGLIS agreed, adding that the new law will keep some violators from going back to jail. Some judges want TDOC to bring all issues of noncompliance back to court—under the new act TDOC will not always have to do so. Mayor HUFFMAN asked whether it would be different for parolees or probationers who commit a crime. Ms. INGLIS said yes, sanctions would not be available when the person commits a new crime. Mayor HUFFMAN recalled a study that said violators spent an average of 75 days in jail awaiting hearings. Working with judges to get violators into court faster, he said, along with these new sanctions, would save locals a lot of money. Mayor HUFFMAN and Ms. INGLIS clarified that the state does become financially responsible for parole violators immediately, as opposed to probation violators.

Vice Chairman ROWLAND asked how state compensation for housing prisoners compares to federal compensation to local governments. Mr. LANDERS said that the federal government's ICE (Immigration and Customs Enforcement) pays up to \$75 per day. He added that the state's rate of \$37 compares very favorably to other states.

Mayor BICKERS asked whether \$49.36 was the average daily cost for housing state prisoners; Mr. LANDERS said it is the average of what they reimburse the counties. Mayor BICKERS asked whether TDOC knows the actual cost for counties to house state prisoners, compared to the \$37 reimbursement rate. Mr. LANDERS said there is a gap, but they don't know what each county's expense is. In general, it is about \$43 to \$45 per day. Mayor BICKERS asked how the \$37 rate is determined by the legislature. Mr. LANDERS said his department doesn't make any recommendations but would advise the legislature if asked for information. Mayor BICKERS brought up pre-trial detainees indicted and being prosecuted for felonies; they are in jail because they were denied bail or could not afford it. He asked, and Mr. LANDERS affirmed, that it was an \$88 million burden on counties to pay for these detainees. Mayor BICKERS asked who bears the burden of medical care for these inmates, and Mr. LANDERS said that the state does not pay for it. Mayor BICKERS asked who decides whether the state or counties are responsible for these pre-trial felon medical costs. Ms. INGLIS said it is a legislative decision (meaning in statute). They agreed that changing this policy would require legislation.

Mayor BICKERS asked about medical costs for "backup" inmates. Mr. LANDERS answered that the state's responsibility depends on whether there is a contract with a county. The state pays for overnight emergency hospitalization of inmates in backup and for locally sentenced state inmates. Counties with TDOC contracts cover the first \$1,000 of any medical care for state inmates in their custody, and then the state pays beyond that. Mayor BICKERS asked whether TDOC has tried to determine the total medical cost that counties are paying for care of pretrial felons and backup prisoners. Mr. LANDERS answered "no." Mayor BICKERS then asked how the department decides which "backup" inmates are transferred first and which are kept locally. Ms. INGLIS said it is determined by the local jail administrators—TDOC lets counties know when space is available, and the locals decide which prisoners to send. She also explained the four "Roberts" counties that

are subject to a court ruling giving them priority for relieving overcrowding in their jails, and that TDOC communicates with the local jail administrators to prioritize transfer of backup prisoners. Mayor BICKERS asked who decides which prisoners stay in a jail at sentencing and which ones move to a state institution. Ms. INGLIS said that TDOC staff work with local officials to decide which ones to move. Mayor BICKERS asked about the use of state inmates for certain jobs, and explained that prisoners working in the Blount County Jail were taken away, with Blount County officials not given a choice about which ones were transferred—costing the county money to hire staff to replace the trustees moved to TDOC facilities. Ms. INGLIS reiterated that TDOC relies on local administrators to make those decisions.

Bob MCKEE, local jail resource coordinator for TDOC, was introduced to address this question. He said TDOC prioritizes taking in violent inmates and those with longer sentences. He also said that he was familiar with the situation in Blount County, and took responsibility for the department's attempt to relieve overcrowding resulting in too many useful inmates being removed. Mayor BICKERS commented, and Mr. McKee agreed, that it helps jails operate efficiently when they can keep certain inmates for jobs. Mayor BICKERS said he wants to make sure there is a better process to accommodate this need.

Representative CARTER emphasized the need to study the mental health aspect of jails housing the indigent mentally ill, saying that the state's reduction in the number of beds in state mental institutes lead to jail crowding as the jails were forced to accommodate those with mental health problems. Chairman NORRIS responded by introducing the next speaker, Ellen ABBOTT, Director of Criminal Justice Services for the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS), to discuss TDMHSAS programs and resources available to local jails. The Criminal Justice Liaison program provides liaison workers in jails and courts in 32 counties to help with diversion and release plans to keep some offenders out of jail and from going back after release, screening inmates to connect them with treatment and training where available. There are 18 Criminal Justice Liaisons and 12 Case Managers. She said that the liaisons have developed close to 1,200 long-term release plans, and since 2014 diverted (for at least six months) 8,779 offenders from going to jail. Outreach efforts across the state have reached more than 84,000 individuals in an attempt to prevent their return to the criminal justice system.

Terry ASHE, executive director of the Tennessee Sheriffs' Association, began his remarks by referring to the Commission's 2007 report and said several recommendations in the report should have been acted upon but were not. He discussed the daily challenges that face sheriffs operating jails across the state, noting first that in 2007 the corrections community did not foresee the rapid growth of the female inmate population. Until very recently, jails were not properly designed to accommodate this change. Design and specific population needs in jails force staffing decisions that lead to increased costs. Sheriff ASHE said that real-time tracking (ankle monitors) has gained acceptance since 2007 as an alternative to incarceration. He noted that, while corrections training has improved, turnover is high and morale is low. This can increase costs at the local level. From a county government perspective, Sheriff ASHE said that sometimes jails are not a county priority, but that they are a county's number one potential liability. Jails can often be neglected until there are problems. Another change since 2007, he added, has been PREA (the federal Prison Rape Elimination Act of 2003), which adds costs for the state and local jails to comply with changing rules and regulations. Regarding medical and health care, jails have outsourced it to professionals and

professional organizations, which has added costs for care but reduced costs by decreasing liability. Mr. ASHE also advised that the Commission consider the future of immigration laws and how they may affect counties. In spite of what some people may think, there is not money to be made in running county jails. He commended TDOC for giving local jails some flexibility to deal with their inmates, but encouraged more communication between state and local officials.

Jeff BOX, Dyer County Sheriff, presented information about his county's pre-release program to reduce recidivism. He said that housing a state inmate in his jail costs \$48.59 per day, while they are reimbursed just \$37. Basic state inmate programming costs \$53.69, and \$64.72 is the cost for a state inmate in the re-entry program. Sheriff BOX discussed how pre-trial time served is credited towards inmates' sentences, but counties are not reimbursed for that time. He believes if the state counted pre-trial time towards a sentence served, it should compensate the county for housing the inmate. The Sheriff said that in 2013 his non-program inmates had a 60% recidivism rate, while currently program inmates are at 20% recidivism and re-entry program inmates are at just 10%.

Chairman NORRIS noted that Sheriff BOX had presented before the Senate Criminal Justice Subcommittee, and that there was interest in using increased reimbursement funds to help counties implement these kinds of programs. Senator YARBRO added to that, asking whether the state's payments should be structured to incentivize and reward departments and facilities to reduce recidivism.

Sheriff BOX continued, noting he knew there are good re-entry programs in Rutherford, Franklin, and Shelby counties. He listed some of the organizations that partner with his department to provide mental health counseling and workforce development, including the local community college, along with his district attorney and circuit court judge, as well as churches and local businesses that provide opportunities for prisoners in the program to work. He said that there is high demand for workers from his program. Sheriff BOX gave some more details about the program and how inmates apply for it and are assessed. He listed some types of counseling and career training the inmates go through, and explained how his program had to work with the state parole board to coordinate the classes required of parolees.

David CONNOR, executive director of the Tennessee County Services Association, thanked Representative CARTER for calling attention to mental health, as that is the biggest issue that has changed since the 2007 Commission report. Mr. CONNOR recounted the history of when counties began housing state prisoners to relieve overcrowding in state prisons. Counties were initially reimbursed for actual costs documented, until the legislature instead imposed a flat cap. One of the recommendations from the 2007 Commission report that was implemented was to have the state simplify the county cost reporting process. As documented costs for most counties rose beyond \$35 per day, they felt it wasn't necessary to keep submitting detailed cost sheets if they were only getting back the flat amount. The drawback to this, according to Mr. CONNOR, is that current, detailed cost information is not available for many counties. He said that, based on the latest TDOC reports, 43 jails are at or above 100% capacity—some above 200%. Even when a jail is not at 100% capacity, appropriately segregating men, women, and special needs inmates can be difficult to manage. Mr. CONNOR said that the backup population awaiting transfer to TDOC facilities continues to grow, dipping when space becomes available but filling back up again after, agreeing with Mr. LANDERS that this is not a problem we can build our way out of. Right now, implementing programs to

reduce recidivism, like what Sheriff BOX has done in Dyer County, takes a lot of people in place to work together. Such cooperation is not always in place in every county. For example, 42 out of 95 county sheriffs were newly elected two years ago. Turnover is a challenge when it takes time to understand these programs and build support. Lack of coordination in general is a problem; there are sheriffs, county commissioners, county mayors, judges, district attorneys, public defenders, TDOC, etc. that all have to work together. Regardless of policies and jail capacity, when someone is arrested and brought to jail, the jail has to take them in and house them. The sheriff alone does not control who comes into and who can leave the jail. Regarding mental health, Mr. CONNOR said that there are criminals that also have mental health issues, but others simply have a mental episode and the only way to respond is to send law enforcement. As a result, the person ends up in the criminal justice system when they shouldn't.

Mr. CONNOR cited a report that said there are 6,188 inmates in the state prison system with diagnosed mental health issues, and he estimated there to be another 7,000-8,000 such people in county jails. However, the state has fewer than 600 psychiatric institution beds. Keeping the mentally ill and the nonviolent probation violators out of jails would be the most effective in reducing population. However, providing drug treatment and mental health facilities may not be something that each individual county needs to do; Mr. CONNOR suggested that programs could be coordinated on a regional level. He mentioned the 21st Century Cures Act currently moving through the US Congress [the bill had already passed the House and passed the Senate the day after his testimony, awaiting the President's signature] that includes initiatives for mental health treatment in correctional facilities. In conclusion, Mr. CONNOR summarized the issues he hears from counties: a need for higher reimbursements, not being paid for all the state inmates they house and related medical costs, and finally the drug addiction and mental health problems.

Jim HART, jail management consultant for the University of Tennessee County Technical Assistance Service, began his presentation with a discussion, echoing Mr. CONNOR, of the many layers involved in jail crowding: police officers making arrests, probation and parole officers reporting violations, courts and judges determining sentences, bonding companies, the legislature, and more. His experience from doing jail assessments around the state has shown him how some counties more effectively manage their jail populations. Issuing citations instead of arrests is one example for diverting misdemeanor offenders from custody. Some jails only set bail once a day, so people get held until the next day. Having prescreening up front for indigent inmates allows them to quickly get assigned a public defender who can begin to plea bargain if possible. According to Mr. HART, many jails don't document their process enough to be able to identify where people get held up in moving through the system. He mentioned the Tennessee Corrections Institute's County Corrections Partnership, which works with decertified county jails, and several counties that have established criminal justice coordinating committees, both of these being ways to bring different components of the justice system together. Sometimes, though, these initiatives struggle because of lack of resources and monitoring.

Continuing on the topic of mental health, Mr. HART spoke about jails becoming the convenient place to take citizens with mental health crises; it's an easier process for an officer to arrest them on a nuisance charge at their local jail than to try and get them to a mental health facility, often far across the state. However, most jails do not have mental health services to help those people; there are crisis response teams, but they are often overwhelmed. Without advocacy and assistance, inmates

with mental health issues spend more time in jail, often because of disruptive behavior related to their illness. Mr. HART spoke favorably of the mental health criminal justice liaison program described by Ms. ABBOTT. He also said the lack of adequate space in most jails to house inmates with mental health problems. Mr. HART discussed other medical care issues facing county jails. Because jails cannot refuse to take an arrestee, they are often brought in with serious injuries that become the jail's responsibility to get treated. A city police officer may bring an injured criminal to jail, rather than take them to a nearby hospital, in order to transfer responsibility and cost. Jails often do not have adequate space to house or treat injured inmates. Privatizing jail medical care has been positive, but it needs better monitoring to ensure best results. Mr. HART also discussed the growing female population. In addition, while classifying offenders into different risk and needs groups is a good thing, many jails aren't capable of housing different groups separately, especially among female inmates. He said that a jail, to be able to handle fluctuations in population, is already "crowded" when it is at 85-90% capacity. He also discussed problems with sentence computation, and the multiple statutes and rules that decide how to calculate sentences. Each county and judge can do it differently. He encouraged the Commission to revisit the recommendations in the 2007 report.

January 26-27, 2017

Broadband Internet Deployment, Availability and Adoption in Tennessee—Final Report for Approval

The Commission approved the final report on broadband internet deployment, availability, and adoption in Tennessee for approval. The final report includes revisions made since the draft was presented at the Commission's December 2016 meeting, including new tables showing how four federal Connect America Fund programs could reduce the remaining number of unserved housing units in Tennessee and leave a smaller gap for any state grant program to fill.

The report explains that simply expanding coverage to new locations would not guarantee that those who live or work there will adopt newly available broadband service and that cost per new subscriber is a better measure of how much it will cost to increase the number of Tennesseans who use broadband. The report also includes a new table that compares estimates of the cost per new subscriber for programs that simply expand coverage to estimates of the cost per new subscriber for adoption programs like Chattanooga's Tech Goes Home program. Based on this additional research, staff added the recommendation that Tennessee could use the broadband deployment fund to provide funding for programs and resources that encourage broadband adoption.

The Commission heard a presentation on the Haslam Administration's proposed Tennessee Broadband Accessibility Act from Stephen SMITH, senior advisor to Governor Haslam. Mr. SMITH said that the administration used the Commission's research to develop its proposal, which reflects many of the recommendations in the Commission's report. The proposal focuses on improving broadband access and adoption through investment, deregulation, and education.

Mr. SMITH said that the proposal includes a request for \$30 million over three years to fund a state grant program for expanding coverage in unserved areas. In response to Representative WIRGAU's question about how unserved areas will be defined for purposes of the grant program, Mr. SMITH

said that the proposal uses the Federal Communication Commission's current standard, which defines unserved areas as those without access to capacities of at least 25 megabits per second download and 3 megabits per second upload, though he said that priority will be given to areas without access to at least 10 megabits per second download and 1 megabit per second upload. Representative WIRGAU also asked whether the proposal includes rate caps for grant recipients to ensure that coverage expansions subsidized by the state will result in affordable service. Mr. SMITH responded that rate caps are not included in the proposal but that they could ultimately be included among the rules adopted by the agency tasked with administering the program. In response to Chairman NORRIS' question about whether the proposal includes requirements for a follow-up study to determine the effectiveness of the grant program, Mr. SMITH said that the proposal requires that a report be submitted to the General Assembly every year in which grants are distributed.

Mr. SMITH said that the proposal would authorize electric cooperatives to provide retail broadband service if they make it available to all of the communities in their electric service areas. In response to Representative CARTER's question about how the proposed authorization for electric cooperatives differs from their authorization under Tennessee Code Annotated, Section 7-59-316, Mr. SMITH said that whereas the existing authorization only allows electric cooperatives to provide service as part of joint ventures with other providers, the proposed authorization would allow them to provide broadband individually. Further, the joint ventures authorized under current law are only authorized to provide service in unserved areas that have been developed for residential use for five years, are outside of an existing cable franchise area, and which no other provider intends to serve. Mr. SMITH said that, according to the Tennessee Regulatory Authority, no one has set up a joint venture under this law. In response to Representative WIRGAU's question about how long electric cooperatives will have to expand coverage to the entirety of their electric service areas, Mr. SMITH said that the proposal does not include a specific timeline but that electric cooperatives already provide other services using this area coverage principle.

In response to Senator YARBRO's question about whether the administration's proposal also includes any programs or initiatives to encourage broadband adoption, Mr. SMITH said that it includes funding for digital literacy training to help local libraries meet the Tennessee State Library and Archives technology services guidelines. Digital literacy training can encourage broadband adoption by increasing users' comfort level with technology and by showing them how they can benefit from broadband use. He said that the state can also help coordinate existing initiatives through its rural task force. Senator WATSON asked whether the administration's proposal includes any funding to subsidize the cost of service for consumers; Mr. SMITH responded that it does not but that the state could help raise awareness of existing federal subsidies for consumers as well as provider-led programs. Chairman NORRIS said that presentations on existing programs for encouraging broadband adoption that the Commission heard at its August 2016 meeting had been very informative.

Tennessee's Court Fees and Taxes: Funding the Courts Fairly—Final Report for Approval

The Commission approved the final report on Tennessee's court fees and taxes. The report responds to a request from Senator Jon LUNDBERG, who at the time was the chair of the House Civil Justice Committee, to study court fees.

Tennessee Valley Authority Payments In Lieu Of Taxes—Annual Report for Approval

The Commission approved the annual update on Tennessee Valley Authority (TVA) payments in lieu of taxes (PILOT). The report shows that the amount Tennessee is estimated to receive from TVA decreased because of reduced power sales even though Tennessee's estimated share of the Authority's PILOT increased.

Emergency Communications Services Funding (Public Chapter 795, Acts of 2014)—Update and Panel Discussion.

The Commission heard from a panel of stakeholders of telecommunications industry representatives regarding emergency communications services funding:

- Tom Jankowski, Director of Public Policy, AT&T
- Levoy Knowles, Executive Director, Tennessee Telecommunications Association
- Mandy Haynes Young, Attorney, Butler Snow LLP, representing Verizon.

Ms. Mandy Haynes YOUNG said she worked on the 911 legislation in 1998, and there are many more cell phones now than anyone predicted at that time. Although the legislation that passed is fair and does not negatively affect their customer base, merely taxing phones to pay for 911 may be past its time. Verizon believes that the 911 fee is a tax and should be increased or decreased only by the state legislative body. Many providers worry that as 911 fees have increased over the years, they may now disproportionately affect wireless customers because so many more cell phones exist than anticipated when the original legislation passed. In addition, as Next Generation 911 (NG911) is implemented in Tennessee and the state 911 board begins paying trunking costs for each public safety answering point (PSAP), it will save PSAPs money and free up dollars to be used at the local PSAP level. She said Verizon believes the use of 911 fees should be limited to the cost of relaying the emergency call to the primary 911 call center. Any cost incurred after the 911 call reaches the PSAP should be the responsibility of the PSAP and local government. The discussion about how calls are relayed, what the costs are, and who should pay was occurring when the 911 bill was passed and has a lot to do with dispatching.

Mr. Levoy KNOWLES said that the Tennessee Telecommunications Association's (TTA) membership includes 21 small rural telephone companies and cooperatives scattered throughout Tennessee. He responded to research questions 5 through 9, which pertain specifically to TTA members. Question 5 asks whether a flat rate communications service surcharge is the best manner in which to fund 911 system costs or whether such costs should be funded in other ways. He said the TTA encourages the Commission and the state to find other means of funding 911 services. Telephone bills have been used as a revenue collection source since the late 1980s and are already complicated with various taxes and charges—the 911 charge is just one more charge to explain to the consumer. The TTA encourages researching the possibility of using water or electric bills as the collecting point. If the Commission and the state legislature decide to continue collecting the charge from local telecom bills, then the TTA feels the flat rate collection process is by far the best method because it is consistent, fair, and easier to administer, collect, and explain.

Question 6 asks whether the board membership of the state emergency communications board should include other stakeholders. Mr. KNOWLES said they feel that each segment of stakeholders

who are expected to participate in the implementation, delivery of service, and collection of fees should be represented on the state board. Many of the local communications boards include telecom representatives. It is a great method of keeping the communications between agency and provider. The same is true for state board representation. Other states have telecom representatives on their boards.

Question 7 asks whether there is a need or benefit for the board to have the ability to raise the 911 surcharge rate should there be a financial reason to do so. The TTA feels the fee is a tax. Only the state legislature should be able to set rates and this would result in much more oversight and accountability in reviewing expenses that are being incurred.

Question 8 asks whether there is a need or benefit for the providers of communications services to register with the board prior to providing service. He said that because TTA members have been collecting the 911 surcharge for many years, he does not see a need for them to register. However, it would be reasonable to require new providers to register with the state board prior to providing service. Many of the new telecom companies are IP (internet protocol)-hosted providers, and it is difficult to determine whether they are collecting the correct amount or providing the appropriate service. Registration would also help ensure that the important testing phase between the provider and the communications district occurs.

Question 9 asks whether there is a need or benefit for providers of communications services to notify the board when there is a known service interruption. He said that all regulated telecom companies are already under an FCC reporting requirement for outages and have to notify the FCC when they hit a certain threshold. Perhaps the threshold could be adjusted, but the local district and possibly the state board should know when extended outages are occurring. Setting up a reporting process seems appropriate and would require all providers to play by the same rules. TTA members would be willing to assist in setting up rules for reporting outages. Mr. KNOWLES concluded by saying that the TTA feels that any additional costs needed to provide NG911 service should be paid by the state board or the communications districts rather than the providers.

Mr. Tom JANKOWSKI said that Tennessee is a model for 911 funding. The private-public sector partnership is also a good model. Historically, the 911 fee was intended to provide 911 call service, not public safety service. AT&T's position is that future 911 funding should migrate towards a general revenue type of imposition, which is an efficient, equitable, and reliable source for local government, as opposed to relying on technologies and subscribers that change over time. Broad-based funding would be reliable like the state sales tax is for other consumer products.

He said AT&T also believes that NG911 efficiencies will help reduce the cost to local governments for 911 delivery and help keep the fee where it is today. The statutory number already set should be adequate. They support the state administration of the fee. Local governments really gain by having the Tennessee Department of Revenue administer the fee because the department has the expertise to audit, administer, collect, and register. The department has already registered retailers and this is the most efficient and effective way to do that.

Representative WIRGAU asked whether we will see growth in the number of cell phones and asked whether this will result in a net revenue increase. He would like the Commission to look at how

many cell phones were being used in Tennessee two years ago compared to now. There could be a temptation to spend excess revenue on needs outside of 911. He asked whether we could project the number of cell phones in the future. Ms. YOUNG responded that when they first passed the legislation 15 years ago they could not anticipate the growth of cell phones. Now growth has flattened, and she said that the growth in cell phones in the future probably won't be as much as it has been over the last 15 years. She can get those numbers. They considered cell phone growth when calculating the 911 fee amount. It is hard to keep up with the numbers of landlines and cell phones, but landline cancellations may balance out the increase in cell phones. She said the 911 state board has authority to, and does, distribute excess monies to the local districts.

Representative WIRGAU asked whether the excess money that was given as grants was part of the \$5 million for broadband that is included in the Governor's program. Ms. YOUNG said the 911 grant money is for PSAPs to use only for 911 purposes.

Southeast Tennessee Regional Water Supply Study—Information Update

Executive Director Cliff LIPPARD updated the Commission on the Southeast Tennessee Regional Water Supply Study and water supply issues across Tennessee. He said the material for the update was prepared by Lynnis ROEHRICH-PATRICK, who was unable to attend this meeting but was invited to attend the May Commission meeting to provide updates. The Commission approved, without objection, inviting to the May Commission meeting a panel of representatives of the Tennessee Department of Environment and Conservation, the US Army Corp of Engineers, and the Tennessee Attorney General's Office.

Development Districts Overview of Infrastructure Inventory Survey Process—Information Update

At the December 2016 Commission meeting, Mayor GREER asked TACIR staff to invite representatives from Tennessee's development districts to attend the January meeting and share how they use the public infrastructure needs inventory (PINI) and the PINI report, and ways to improve the survey and report. The Commission heard from two panelists representing the development districts:

- Susan Reid, Executive Director, First Tennessee Development District
- Michael Skipper, Executive Director, Greater Nashville Regional Council (GNRC)

Ms. REID said development districts believe the information in the inventory is very accurate. She said the PINI report is used across the state to assist agencies with identifying needs, provides the foundation for grant applications by showing that local governments have well thought out plans, and serves as the Capital Improvement Planning (CIP) document for small, local communities without large planning resources and as the building block for CIPs for larger communities with more robust planning resources. She said the report also serves as a planning document for state government, provides information to congressmen who are trying to link projects to funding sources (for example communities needing potable water), and assists with strategic planning and investments. The report puts Tennessee ahead of other states in anticipation of President Trump's proposed infrastructure initiatives. Ms. REID read a letter strongly in support of PINI from Washington County Mayor Dan ELDRIDGE about how Washington County uses PINI, and how

it has been invaluable in the county acquiring its very favorable bond rating. Mayor ELDRIDGE believes the PINI report is a valuable and current resource for all of Tennessee's communities.

Mr. SKIPPER offered GNRC's strong support for PINI. He said it is the basic building block for what they help their local communities do. He echoed much of what Ms. REID said, emphasizing PINI is important for strategic planning and understanding the distribution of needs in the region and across the state. The PINI process and report also educates the public about the need for public infrastructure. He spoke about how the project could possibly be improved. He said a more continuous data collection effort allowing for timelier reporting would be one possibility. He suggested increasing resources for analysis at the local level, improving the definition of an infrastructure "need," and improving the data and reporting so it can be integrated into other agency efforts and programs.

Mayor GREER thanked the development districts for their work and emphasized that it is the responsibility of local officials to report accurately. He also thought it might be a good idea to separate conceptual projects from those already identified in CIPs.

Mayor MCBRIDE asked that TACIR take a look at infrastructure needs in relation to Governor HASLEM's fuel tax bill. Mr. SKIPPER added that PINI looks beyond what the Tennessee Department of Transportation (TDOT) reports—mainly because locals report the need for transportation improvements before they reach TDOT.

Dr. LIPPARD asked Mr. SKIPPER to elaborate on what he meant by coming up with a better definition for a need. Mr. SKIPPER thought needs should be broken into three categories; conceptual needs that are hard to estimate, program needs, and needs that are under development. It is much more difficult to report estimated costs for conceptual projects.

May 23-24, 2017

Fiscal Year 2016-17 Accomplishments

Fiscal Year 2016-17 accomplishments were presented to the Commission. A demonstration of the Commission's fiscal federal website, which is under development, was also provided.

Legislative Update

The Commission received a legislative update on the first session of the 110th General Assembly, which passed or considered legislation on several issues related to the Commission's work, some dealing directly with findings and recommendations from commission reports. Broadband internet access—the issue discussed in the Commission's January 2017 report—was the subject of seven bills introduced in the first session of the 110th General Assembly. Public Chapter 228, Acts of 2017, drew heavily on the research and recommendations in the Commission's report. The General Assembly passed three bills requiring work by the Commission pertaining to the study of boat titling, incentives local governments use to encourage economic development, and an update on its 2017 broadband internet report.

Work Program Amendment and New Research Plan

The Commission considered one amendment to the calendar year work program for the Commission's consideration. The amendment, adding three studies required by public chapters enacted by the 110th General Assembly passed unanimously. Public Chapter 179, Acts of 2017, directs the commission to study the creation and implementation of a system for the titling of boats in Tennessee. Public Chapter 431, Acts of 2017, directs the commission to study payments in lieu of ad valorem tax agreements and leases entered into by industrial development corporations organized by municipalities, and specifically, whether economic benefits are derived from limiting the length of term of an agreement or lease in the absence of county approval or an agreement by the corporation or municipality to pay the county a sum equal to the amount of real property tax that would have been assessed in the absence of the agreement or lease following the expiration of the original term. Public Chapter 228, Acts of 2017, directs the commission to study and prepare a report updating its January 2017 report on broadband internet deployment, availability, and adoption in Tennessee.

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

The Commission approved the annual report on the public infrastructure needs inventory, *Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs*. The presentation included information about the changes in the report's format, including the new county summary format and the online access to the county summaries dashboard. Commission discussion centered on the support of the new county summary format and how the report has been used as a policy tool by the legislature in the past. Discussion about the BEP brought up the need for a panel at the next commission meeting about school infrastructure needs and the BEP

Fiscal Capacity for Fiscal Year 2017-18

The Commission heard a presentation on the annual update on TACIR's fiscal capacity index and provided background information about the index and education funding in Tennessee. The presentation included an explanation of the US Bureau of Economic Analysis's revision of its per capita income data and an update of counties' 15-year fiscal capacity trends. Commission discussed how the BEP is a funding formula and not a spending plan. Chairman Mark NORRIS said it is an allocation, not an appropriation, and there is no restriction on how they spend it.

Current Water Supply Issues In Tennessee—Update

The Commission heard a panel presentation on updated information regarding water supply issues across Tennessee from three panelists:

- Lynnissee Roehrich-Patrick, senior public policy consultant, TACIR
- Mike Bernard, engineer, principal with Smith Seckman Reid, Inc.
- Lewis B. Jones, attorney, partner with Kind and Spalding.

Ms. ROEHRICH-PATRICK provided an update on water supply issues that continue to occur and have public policy implications across the state. She said these issues vary by region and three examples would be provided by the panelists. She said pollution concerns were recently raised when the Tennessee Department of Environment and Conservation permitted the Tennessee Valley

Authority to drill wells in the aquifer and noted that in 2017 a bill was introduced, but did not pass, in the Tennessee General Assembly that would have created a “watchdog” board responsible for approving certain wells in the Memphis Sands Aquifer. [Senate Bill 776 by Kelsey, House Bill 816 by Lollar]

Ms. ROEHRICH-PATRICK said that water supply issues in Middle and East Tennessee are primarily driven by drought. In Middle Tennessee population growth has worsened these issues. The 2007-2008 drought was the worst on record in Tennessee. Following it, many parties became more engaged to improve drought planning and management, and Tennessee created a new drought management plan. She said that federal, state, and local officials collaborated to create a framework for regional water supply planning. She provided a brief history of the creation of the J. Percy Priest Reservoir (JPP), which was constructed in the 1960s. She said the issue of water storage in JPP started in the earlier 2000s. She explained the various issues with the JPP water supply and storage saying these issues stem, in part, from population growth.

Speaking next, Mr. BERNARD detailed his involvement with Bledsoe County’s emergency water supply issues stemming from a drought that caused four of their five ground water wells to run dry and leading to the water supply being cutoff to the Bledsoe County Correctional Complex. The prison required at least 300,000 gallons per day to meet their legal minimum requirements. He described the various proposed solutions to provide the needed water. He said that when he met with Governor Haslam and Tennessee Department of Corrections’ leadership regarding potential water supply solutions for the prison’s emergency water supply issue, Governor Haslam was concerned that many of the proposed solutions required lengthy implementation periods. Mr. BERNARD said that he proposed the idea of a mobile treatment unit to take water from the Fall Creek Falls Lake to supply the prison and informed Governor Haslam that this could be accomplished in three weeks. To meet this deadline, the numerous regulatory hurdles with Tennessee Department of Environment and Conservation were fast-tracked. He said that a state of the art water filtration system was established on the lake and the treatment unit was constructed. Mr. BERNARD detailed the various technical aspects of the mobile treatment unit and the steps taken to establish the mobile water supply. He said that eventually the drought ended and refilled the reservoirs, and the mobile treatment was dismantled as it was no longer needed.

Next, Mr. JONES discussed the reallocation of storage at the JPP Reservoir and some of the legal issues involved, with a particular focus on the division of responsibility between the State of Tennessee and the Army Corps of Engineers. He said that the Corps is in the middle of a reallocation of storage, which is the process they use when it will make more of the storage in the reservoirs available for a new purpose, such as water supply. The reallocation process is needed now because the current water allocation contracts from 2003 and 2008 for JPP do not yield the amount of water that they were originally anticipated to provide and more water is needed because of the population growth. He said that there are a few issues with the Corps water allocation process that need to be resolved. He said that population growth and water demand projections need to be finalized.

He said that when Corps builds a reservoir, it doesn’t take control of all the water. The water remains in the control of the state, and this can be a hard concept to understand. He said this stems from legal principles regarding water and state sovereignty and explained the historical context that guides the federal water program. Mr. JONES said the Corps is not a utility district, but it does

provide a service by setting aside a volume of water in the reservoir where water can be stored. The contracts are agreements for water storage in the reservoir and specifically don't guarantee any specific yield, which is the amount the utility can withdraw from the purchased space.

In response to Representative Tim WIRGAU's question on the differences in water supply issues in West, Middle, and East Tennessee, Ms. ROEHRICH-PATRICK said that West Tennessee does have a more stable and abundant water supply than Middle or East Tennessee and that water supply does vary across the state. She said Middle Tennessee water supply issues, which are exacerbated by the area's rapid population growth, can occur during times of drought. In East Tennessee, water supply is decreased because of the higher elevation causing water to typically flow away from the area. East Tennessee has faced difficulty attracting economic development, in large part, because of limited water supply. However, in certain areas of East Tennessee, the Tennessee River provides a sufficient source of water. She mentioned that the federal Government Accountability Office is currently studying the effect of state-level water supply technical advisory organizations across the county. She suggested that the Commission might be a good group to keep tabs on Tennessee's water supply issues as it represents both state and local governments.

Emergency Communications Services Funding (Public Chapter 795, Acts of 2014—Draft Report for Review and Comment

The draft report on emergency communications services funding was presented to the Commission for review and comment. The report was required by Public Chapter 795, Acts of 2014, which replaced the 911 funding system that relied on state and local fees to fund 911 services with a flat statewide fee on all types of telecommunications services and a new method for distributing those funds. It directed the Commission to study nine specific questions and report its conclusions to the joint committee on government operations on or before September 15, 2017. The report addressed each of the nine required study questions and the proposed responses.

The draft report proposes two actions. First, the report says that because the Tennessee Emergency Communications Board (TECB) would be able to better assist ECDs when interruptions occur if they knew about them sooner, telecommunications service providers should be required to notify the TECB when there are service outages. Second, in response to the question whether the 911 surcharge is generating adequate revenue, the report suggests building on a Commission recommendation from its 2006 report that the TECB could tie the distribution of any additional revenue generated by rate increases to a standard set of cost components. This idea is similar to the state's Basic Education Program (BEP) funding formula, which consists of cost components that serve as the basis for calculating the level of funding for each school system but does not prescribe specific levels of expenditures for individual components. The cost components for providing a minimum standard of 911 services could be developed with input from the existing TECB operations and technical committees using minimum technical operating standards and should be reviewed regularly. The method would determine and distribute funding to ECDs, but ECDs would have flexibility with spending as long as they meet the minimum technical operating standards. This distribution method would only apply to excess revenue above the base amount that is generated by the rate increase.

State Prisoners in County Jails—Draft Report for Review and Comment

The draft report on state prisoners housed in county jails was presented to the Commission for review and comment. The draft report is in response to the Commission's May 2016 request that staff update its 2007 report, *Beyond Capacity: Issues and Challenges Facing County Jails* and examine the current state of jails in Tennessee and how housing state prisoners in county jails affects county governments. At its August 2016 commission meeting, members requested that staff research how the state chooses which prisoners to transfer from county jails to state prison facilities and any limitations on the state housing state prisoners in facilities operated by private contractors. The draft report updates information about state contracts with private corporations and local governments to house convicted felons and includes suggestions for ways to reduce the burden placed on county governments when the state uses county jails to incarcerate felons for extended periods of time. These recommendations include providing additional funding for the state's criminal justice liaison program, reestablishing an incentive program for county jails to implement standardized programs for improving outcomes, and clarifying and strengthening legal authority for the Tennessee Corrections Institute (TCI) to enforce minimum jail standards.

The report explains that the state relies heavily upon local jails to accommodate its felon population. Tennessee's prison system was at 97.7% capacity when the Commission's 2007 report was issued and has stayed between 95% and 100% of capacity in the years since, except for a few months in 2016 after the new Trousdale Turner Correctional Center opened. Twenty-seven percent—about 8,000—of Tennessee's convicted felons are currently in county jails. Tennessee relies on county jails to hold state inmates more than most other states. Jails, however, are not designed to hold felons long-term, most can't provide beneficial programs to inmates, and they are crowded: fifty-two of Tennessee's 120 county jail facilities—more than 40%—are at or above their operating capacities.

Mr. MOREO discussed some of the existing efforts by the state to reduce the burden on counties from housing a large number of state inmates. One example, from the Public Safety Act of 2016, is the requirement for a uniform risk and needs assessment of all convicted felons, which should help TDOC and counties match inmates with needs to facilities that can provide appropriate services. Mr. MOREO also discussed the positive outcomes resulting from the Department of Mental Health and Substance Abuse Services criminal justice liaison program. The draft report notes that this program is currently only able to serve 32 counties, and recommends that the program receive more funding to expand coverage statewide.

Mayor Tom BICKERS pointed out from the draft report that only 18% of the people in jail at a given time are convicted for misdemeanors. He expressed concern that the state often treats local governments with one-size-fits-all solutions, and said there is a need to better identify each county's jail costs and needs. Mr. MOREO responded that the reimbursement rate is a cap and said several counties were receiving less than the maximum at the time of the 2007 report because their reported costs were below the cap. In the time since, costs have risen beyond the capped rate, and those counties are no longer required to report their costs to TDOC.

Mayor BICKERS asked whether anything would prevent TDOC and individual counties from negotiating contracts for additional costs like Shelby and Davidson counties have done. Mr. MOREO said he would need to look at the statutes for a specific answer to that question. [The law allows for exceptions to the maximum reimbursement rate set each year in the appropriations act for

counties with contracts for higher amounts.] Mayor BICKERS added that there would need to be a mechanism in place if TDOC and counties could not reach a negotiated agreement. Mr. MOREO answered that the current process provides a maximum rate for counties without contracts.

Mayor BICKERS discussed pre-trial felony detainees and the cost of holding them in jail, which is not reimbursed by the state. He questioned whether it would be more equitable for that cost to be spread across the state instead of handled by each individual county. Mr. MOREO said staff found in its research that there are many factors that determine locally how long defendants might be jailed—from sheriffs making arrests, to district attorneys pressing charges, to judges setting bail—and how that all varies greatly from county to county, making assigning financial responsibility for pre-trial detainees complicated. Mayor BICKERS pointed out that it might affect district attorneys and judges’ decisions regarding jail if their local jail is overcrowded.

Fiscal Year 2017-18 Scheduled Commission Meetings

August 29-30, 2017

Fiscal Federalism Web Project—Update

Research Manager, Mark MCADOO provided an update and demonstration of the Commission’s website on fiscal federalism. He reviewed data added to the website at the request of Commission members at its May 2017 meeting, which includes: 1) tax collection information by county, 2) a crosswalk of the fiscal federalism data with the State Budget, and 3) local data in per capita dollars. Mr. MCADOO also acknowledged the contributions of the Comptroller’s Office and the Department of Revenue in providing information for the website, and thanked David Thurman in the State Budget Office and Dr. Meg Streams at Tennessee State University for their assistance. He explained that TACIR staff will update this information and make incremental improvements as time and resources allow.

Tennessee’s 911 System: Functionality and Funding Adequacy (Public Chapter 795, Acts of 2014)—Final Report For Approval

Senior Research Associate Jennifer BARRIE presented the final report for approval, which was required by Public Chapter 795, Acts of 2014. Ms. BARRIE explained changes and additions to the report since the May meeting and the suggested recommendations:

- Because the Tennessee Emergency Communications Board (TECB) would be able to better assist emergency communications districts when interruptions occur if they knew about them sooner, telecommunications service providers should be required to notify the TECB when there are service disruptions.
- The TECB could tie the distribution of any additional revenue generated by rate increases to a standard set of cost components.

Mayor WATERS asked whether the report says the Municipal Technical Advisory Service (MTAS) and County Technical Advisory Service (CTAS) oppose using 911 funds for any aspect of dispatch. Ms. BARRIE responded that the position of MTAS and CTAS is 911 funds should not be used for dispatch, which is why they encourage local agreements to fund dispatch. Mayor WATERS

explained that in Sevier County the 911 board contributes to the general county fund for the county-run dispatch center. He asked whether MTAS and CTAS would say this is not the appropriate use of funds or say a cooperative effort is okay. Ms. BARRIE said she thinks they would say that a cooperative effort is okay.

Mayor HUFFMAN asked how many districts had revenue decreases or increases since the law changed. Ms. BARRIE said 33 districts had a negative change in net position in 2016, but she is not sure about specific revenue numbers. Mayor HUFFMAN asked about available options for districts that continue to have negative numbers for one or two more years. Ms. BARRIE said the report summarizes the TECB's process for determining whether a district is distressed and the steps they take to help districts. The details are outlined in TECB's policy 6, which is included as an appendix in the report. The report was approved unanimously.

Housing Tennessee's Convicted Felons: Improving Outcomes While Balancing State and County Needs—Final Report For Approval

Senior Research Associate Bob MOREO presented for approval the final report on housing the state's convicted felons in county jails. The final report recognizes that Tennessee relies on county jails to house convicted felons more than most other states. Both state and local governments benefit from the arrangement, but changes could be made to ease the burden on local governments and improve outcomes for inmates and communities. He said the report supports targeting spending on programs treating mental illness and drug addiction, with the goals of lowering recidivism and the burden on local jails.

The report recommends increasing state spending by an estimated \$1.6 million annually to expand the Tennessee Department of Mental Health and Substance Abuse Services' criminal justice liaison program so that it provides case worker coverage in all 95 counties. It also recommends that in addition to reimbursing reasonable costs, the state should provide additional financial assistance for counties to implement the same types of treatment programs and services that are available to inmates in state prisons. The report notes that these programs need to be standardized and monitored for success. Mr. MOREO said the report also recommends that the Tennessee Corrections Institute (TCI) be given greater legal authority to enforce adherence to the minimum standards it sets for local jails, including an ability to recommend that state prisoners be removed from jails that fail to pass certification inspections.

Mr. MOREO said cost estimates were added to the report showing the cost to the state to increase reimbursement rates for most counties to \$45 per prisoner per day, which would be closer to the estimated average cost. Mayor BICKERS asked whether it was the staff's opinion that the recidivism rate for felons released from jails is higher than that for those released from prison because jails lack the level of programming and services available to inmates in prisons. Mr. MOREO replied that it appears so based on the studies TDOC has published. Mayor BICKERS asked whether investing in programs in order to reduce recidivism would reduce the total felon population and lower the cost to the state and counties of housing so many criminals in prisons and jails. Mr. MOREO said that is the conclusion reached in the report. The report was unanimously approved.

Public Chapter 179, Acts of 2017 (Boat Titling)—Update

Senior Research Associate Nathan SHAVER presented an update to the Commission on the progress of the boat titling study and explained that the draft report would be presented at the December 2017 Commission meeting. Mr. SHAVER's presentation included information on

- the motivation for the study,
- the current state and federal laws related to boat titling,
- prior Tennessee boat titling legislation,
- other states' boat titling systems and fees,
- the general support for boat titling among stakeholders,
- the purported benefits of boat titling, and
- information on model legislation for boat titling.

Ad Valorem Payments in Lieu of Taxes—Update & Panel

Mr. Tyler CARPENTER introduced the panel members who spoke on Payments in Lieu of Taxes (PILOTs). The panel included

- John Lawrence, Senior Economic Development Specialist, Economic Development Growth Engine for Memphis and Shelby County (EDGE);
- Betsy Knotts, Executive Secretary, Tennessee State Board of Equalization;
- Matthew N. Murray, Professor of Economics and Associate Director, Boyd Center for Business & Economic Research; and Director, Howard H. Baker Jr. Center for Public Policy, University of Tennessee;
- Helen Burns Sharp, Founder and President, Accountability for Taxpayer Money, Chattanooga (ATM); and
- J. Thomas Trent Jr., Attorney at Law, Bradley Law Firm.

Mr. LAWRENCE went first, saying that the Economic Development Growth Engine for Memphis and Shelby County (EDGE) has transparent policies and procedures. Every project is reviewed based on the jobs created, wages produced, and capital investment made. They have a third party that analyzes the projects during and after the term of the PILOT agreement for direct and indirect tax increases and weighs that against the benefit to the company. All PILOT recipients submit annual reports to EDGE, must allow onsite inspections, and are audited once every four years. He said that EDGE abates up to 75% of property taxes that would have been due. There was considerable discussion by the Commission following Mr. LAWRENCE's remarks.

In response to a question by Mayor HUFFMAN, whether PILOT revenue is distributed the way the property tax revenue is or whether more money could be put into public safety or education, Mr. LAWRENCE responded that it is up to the local government to decide how to allocate the PILOT revenue.

Next, Mayor HUFFMAN asked whether EDGE is involved in the regional megasite with the Tennessee Department of Economic and Community Development (ECD), to which Mr. LAWRENCE replied that EDGE doesn't have much involvement with the site because it is beyond their jurisdiction.

Mr. YOUNG concluded the questions following Mr. LAWRENCE's remarks by asking what are the average number of PILOT applications that EDGE receives annually and whether the 60 PILOTS listed in the EDGE scorecard are the total number of PILOTS through the years or the number of current PILOTS. Mr. LAWRENCE answered that 60 is the number of active PILOTS passed in the past five or six years. Between 20 and 40 prospects contact EDGE per year and most rarely develop to the point of an application. A stringent pre-application process ensures that it is unlikely that an application will be turned down. He thinks one was turned down in the past five or six years.

Ms. KNOTTS of the State Board of Equalization spoke next, saying the law requires the board to receive a copy of all PILOT agreements in the state. She added that they are digitizing them. Ms. KNOTTS said the board also collects annual reports from lessees and assesses fees for those delivered late. The board also approves PILOTS—lessees will submit a request for a determination of best interest letter when they want a PILOT for longer than 20 years plus three years construction. The board looks at the need for the project and then issues a letter in conjunction with ECD.

Senator YARBRO asked Ms. KNOTTS whether it's possible to get from the board's website a sense of the PILOT inventory in the state and whether a state analysis has been done on the return on investment. Ms. KNOTTS said the inventory is available on their website, but that no state analysis has been done on the benefits of PILOTS.

In response to a question from Mr. YOUNG about how the state enforces the requirement to file annual reports, Ms. KNOTTS said the board compares those who filed this year with those who filed last year and those who filed last year but not this year are asked to file.

Dr. MURRAY, who serves on the Blount County Industrial Development Board (IDB), spoke next, saying that it is necessary for Tennessee to use PILOTS to be competitive with other states who use them. The IDB is a partnership that includes the Tourism Bureau, IDB, and Chamber of Commerce and coordinates across Blount County, Maryville, and Alcoa on the utilization of incentives and has representation from the three mayors or their designees. The IDB looks for companies that can provide high compensation levels, including healthcare benefits, and large capital investment.

Dr. MURRAY said without a strong foundation for economic development (education, workforce, and infrastructure), communities will have to offer higher incentives to make up for that. Few states engage in what is considered best practices, which include more reporting, keeping negotiations confidential but increasing transparency of incentive programs and recipients, and having the right structure for bodies making decisions over PILOTS.

Responding to Representative CARTER asking who is responsible for the payback of abated taxes in the event of a clawback, Dr. MURRAY said companies in Blount County don't pay back abated taxes when they fail to meet the job goals, but they are denied further incentives. When asked by Representative CARTER how many agreements in Blount County have resulted in a clawback, Dr. MURRAY said he could not name one. Mr. LAWRENCE said EDGE had terminated Ford's PILOT.

Representative PARKINSON went on to ask why an actual payback of abated taxes is not part of these agreements. In response, Mr. TRENT explained that companies have turned away from communities that used clawbacks, which is why IDBs shifted from using clawbacks to adjusting

future benefits when companies fail to meet performance requirements. He said he thinks this is a best practice. Representative PARKINSON responded that he thinks the companies should be required to pay money back when they fail to fulfill the requirements of the agreement.

Senator YARBRO said the size of the average tax incentive package has risen since 1990, and asked how we avoid a race to the bottom. Dr. MURRAY answered that other states may be in race to the bottom, but not Tennessee, with a few exceptions. The race to the bottom could be stopped nationally with some Congressional action. The General Assembly could put restraints on PILOTs, but it could hamstring local governments.

When asked by Mayor HUFFMAN how Blount County handles requests for PILOTs for expansions of existing businesses, Dr. MURRAY said they determine whether the company has the potential to go elsewhere before deciding whether to award such PILOTs. Mayor WATERS asked how to address the issue of two cities competing for a retail business using PILOTs without consulting with the county government or doing analysis. Dr. MURRAY suggested not allowing a government unit to forego another government unit's taxes. He said that one government having the ability to abate another's taxes without their consent is inconsistent with representative government.

Ms. SHARP of Accountability for Taxpayer Money went next, saying that PILOTs should be used when companies would not have chosen to locate at a site but for the incentive provided. She complained that in Chattanooga and Hamilton County there are no policies and procedures written down, and clawbacks haven't been used effectively. Ms. SHARP said that taxpayers need someone representing them in these agreements. Chattanooga and Hamilton County haven't turned down a deal since 1979. Ms. SHARP recommended requiring all local governments to develop policies and procedures for PILOTs, legislating threshold criteria for PILOTs, sending PILOT agreements to an independent third party for review, and prohibiting cities and counties from abating other government's taxes. She also suggested having a policy that prevents education funds from being abated—an unofficial policy that has been in place in Chattanooga for 10 years.

Mr. TRENT concluded the panel's remarks, saying that there is a mechanism in statute for a joint IDB with representatives from the county and cities in the county. They are relatively unusual because the statute doesn't really describe how it works. He recommended improving that section of statute and encouraging local governments to create them but keeping flexibility at the local level. He recommended requiring that city IDBs only be allowed to abate county taxes if the county has delegated authority to the city IDB—this would prevent the need for individual approval of each PILOT. Mr. TRENT also recommended improving the required cost benefit analysis. He mentioned that if a PILOT is required to be approved by more than one entity it could compromise confidentiality since multiple meetings increase the likelihood that information will leak. If information about the potential PILOT deal leaks to the media and the company's board finds out about it before the staff tells them this could cause the board to stop the deal from going forward.

Following Mr. TRENT's remarks, Mayor HUFFMAN asked whether a referendum is required when a local government is going to borrow money and develop property for industrial purposes. Mr. TRENT answered that if a local government is going to lend its credit on behalf of a private company and issue general obligation bonds, then they have to hold a referendum. If they are going to issue bonds for an industrial park, they must go through ECD and get a public purpose and necessity

certification and a referendum would not be required. Mayor HUFFMAN asked in reference to the Memphis regional megasite how a PILOT would be structured when the property is already owned by the state. Mr. TRENT responded that the property would need to be conveyed to the IDB. Mayor HUFFMAN asked whether the Megasite Authority Board has to approve any PILOT. Mr. TRENT said that if there is a PILOT it will have to go through an IDB.

Basic Education Program—Information Panel

Deputy Executive Director Melissa BROWN explained that at the May 2017 Commission meeting questions were raised about the funding of capital outlay for fast growing systems in Tennessee and whether anyone tracks the use of the capital outlay funding. Commission members requested that a panel be convened to discuss these issues. Ms. BROWN introduced the panel members who would be providing information on school infrastructure needs, the Basic Education Program funding formula, the calculation and distribution of funds for capital outlay, and whether there was any tracking of those funds at the state or local level. Panel members included

- Maryanne Durski, Executive Director Office of Local Finance, Tennessee Department of Education;
- Mickey Hall, Deputy Director and Chief Financial Officer, Wilson County Schools;
- Leslie Holman, Chief Financial Officer, Williamson County Schools; and
- Jeff Sandvig, Assistant Superintendent Budget and Finance, Rutherford County Schools.

Maryanne DURSKI explained that there is a component in the BEP funding formula that generates funding for all school districts for capital outlay. The calculation is based on the number of students in each grade span, the number of square feet assigned to students in those grade spans, and a cost per square foot based on the RS Means report [\$139.41 per square foot for elementary, \$140.00 per square foot for junior high, and \$145.70 per square foot for high school. These result from multiplying by a location factor (0.85833) that is the average of three years of the city cost index of Nashville (0.88), Chattanooga (0.85), Memphis (0.87), and Knoxville (0.84)]. The funds are calculated based on the school districts population and amortized over a 40 year useful life of the building and a 20 year bond issue. She reminded the Commission that the BEP is a funding formula, and funds generated for capital outlay are not required to be spent on capital outlay, with many school districts spending the funds for instructional items. Although the Department of Education does not track construction costs, she believes there are other organizations in the state that do.

Following Ms. DURSKI's remarks, Representative SARGENT asked how capital outlay is reported. Ms. DURSKI responded that districts report funding, which might include capital outlay, and they also report expenditures for capital outlay made by other government entities, in many cases, the county. She said the Department of Education does not use actual Tennessee costs but uses a southeast regional average. As a follow-up question, Representative SARGENT asked Ms. HOLMAN whether \$139 to \$145 per square foot comes close to the actual cost in Williamson County. Ms. HOLMAN said the last elementary school cost was \$200 per square foot.

Ms. HOLMAN of Williamson County Schools spoke next, reiterating that the BEP is a funding formula and that the Department of Education does track spending in the instructional component of the formula. She said over the years Williamson's share of education funding was 45%, but now it is 55%. She said the BEP puts budget at \$254,396,000, but Williamson's budget is \$337 million.

Ms. HOLMAN said, besides the local match of \$128 million, Williamson County contributes an additional \$83 million to provide a basic education.

Ms. HOLMAN said that when the state gave a 4% raise this year, Williamson County gave a 2% raise, which complies with the state law, because it does not designate that money for the salary schedule. When the state says they're giving a 4% raise, Williamson County doesn't get half of that. [The money received is based on a 4% raise of positions generated through the BEP, but Williamson County employs more teachers—once the money is spread across all positions, it calculates to less than a 4% raise.] Ms. HOLMAN concluded her remarks, saying that Williamson County does use some of the BEP generated capital outlay funding for instructional items because the county issues debt for the school system for operational capital. In response to Ms. HOLMAN's comments, Chairman NORRIS said that legislators feel they've increased funding for salaries, but salaries don't always increase. He said this needs to be addressed.

Mickey HALL of Wilson County Schools spoke next, discussing the capital outlay for his system. He said Wilson County has a \$142 million building program and is requesting \$110 million for a new high school. [For comparison, the equalized state share of the BEP was \$19.1 million for the Wilson County School System in the 2017-2018 school year]. He said they have about 200 teachers not funded by the BEP funding formula, which means they are funded locally.

Jeff SANDVIG of Rutherford County Schools concluded the panel by giving a presentation on growth in his system. He said the number of students doubled in the 18 years since the 1990-91 school year, and 16 schools and 14 additions were built to cover that growth. He said capital funding is inadequate for that kind of growth and providing seats for students has been a challenge. In response to Mr. SANDVIG's presentation, Senator TRACY said the BEP Review Committee should look at funding for fast growing counties in particular. Representative SARGENT said the fast growing systems are struggling.

Ms. HOLMAN mentioned Williamson County School District's transparency website. She said they did district-wide rezoning and went 5 years without having to build a building. She said counties that don't build schools for years spend the capital component in the BEP on maintenance and renovation.

December 13-14, 2017

Public Chapter 179, Acts of 2017 (Boat Titling)—Information Panel

The Commission heard presentations from a panel of stakeholders as part of its study of the possible implementation of a boat titling system in Tennessee. The panel included:

- Amy Heaslet, Senior Vice President and General Counsel for the Tennessee Bankers Association;
- Kelli Jackson, Montgomery County Clerk and Mary Gaither, Tipton County Clerk, jointly representing the Tennessee County Clerks Association; and
- Chris Richardson, Legislative Liaison for the Tennessee Wildlife Resources Agency
- Paula Shaw, Director of the Motor Vehicle Commission;

In addition to the panelists, Dana CAPOCCIA, who was a victim of the boat fraud at Pickwick Lake, and Barbara SAMPSON, Deputy Commission of the Tennessee Department of Revenue (TDoR), were present and were asked to address the commission.

Ms. HEASLET spoke first, saying that the Tennessee Bankers Association supports moving to a system that requires boat titling and that titling boats would be preferable over the current system of filing a Uniform Commercial Code (UCC) financing statement. This is because a title would provide a better way for lenders to secure their interest in the property and better protection for consumers.

Representative SARGENT said that no matter which state agency administered boat titling there would be additional costs because the agency would likely need to hire additional staff to process boat titles. Mr. RICHARDSON agreed that there would be additional costs, but these costs would vary depending on the requirements of the boat titling law. He said that some states issue electronic titles rather than paper titles. If Tennessee did this, it would reduce the administrative costs. He added that TWRA is exclusively responsible for all aspects of recreational boating in Tennessee and that the state's boating program is funded solely from boat registration fees.

Ms. JACKSON and Ms. GAITHER spoke next, with Ms. JACKSON saying that county clerks support boat titling in Tennessee because they believe it would improve the tax collection process for boat purchases, but they have concerns about administration of the program. She shared that at a meeting of county clerks on November 2, 2017, members present voted unanimously to support boat titling, but only if TDoR administers the boat titling process. Ms. JACKSON explained that the county clerks have an established relationship and communication process with TDoR, which has legal staff that is knowledgeable on issues related to titling.

In response to Representative WIRGAU's question as to why the county clerks prefer partnering with TDoR over TWRA, Ms. GAITHER responded that the county clerks have a good working relationship with TDoR and that there is no need to re-invent the wheel by bringing in another agency when TDoR and the county clerks have a good system. She explained that TDoR has an experienced legal team that understands the complicated issues related to titling and that TDoR uses the same software system that the county clerks use.

Mr. RICHARDSON spoke next, saying that TWRA does not have a position on whether Tennessee should title boats or not. But, he said, TWRA is ready, willing, and able to administer a boat titling program. He said that TWRA currently registers boats and because the information and expertise needed to title boats is similar to the information and expertise needed to register boats, TWRA is the best state agency to administer boat titling if boat titling is established.

Chairman NORRIS asked that TDoR comment on the topic of boat titling. Ms. SAMPSON said that the Department of Revenue sees benefits to boat titling, but it is not in a position to advocate for a new program. Ms. SAMPSON said that if boat titling is adopted that it should be administered by the same agency that administers boat registration, which is TWRA.

Representative CARTER expressed concern that boat titling alone would not fully protect the consumer from a boat fraud incident like the one at Pickwick. Mr. CAPOCCIA agreed that a title

would not guarantee that this type of fraud could never happen; however, having titles for boats would add a needed layer of consumer protection. Mr. CAPOCCIA offered suggestions for future legislation, which included defining boat dealers in legislation, requiring surety bonds for boat dealers, requiring insurance on all property at a boat dealer's place of business, and requiring boat titles so they can be tracked.

Ms. SHAW spoke, explaining that, in addition to other responsibilities the Tennessee Motor Vehicle Commission regulates automobile dealers and recreational vehicle (RV) dealers. She explained the process for regulating each and said that regulating boat dealers would include licensing, complaint investigation, appeals, and enforcement activities. She shared that fraud still occurs for automobiles and RVs and that the Motor Vehicle Commission deals with these types of issues. Ms. SHAW pointed out that boats align with United States Coast Guard standards and that TWRA is the only agency in the state that has expertise with these standards. Ms. SHAW shared her support of boat titling and boat dealer regulations because the benefits would parallel the benefits of titling and dealer regulations for automobiles and RVs, which include surety bonds, liability insurance, an established place of business, a state sales tax number, and clear ownership of the business and the property.

Broadband Adoption Working Group—Update

Policy Coordinator Dr. Matthew OWEN provided an update on the state's broadband adoption working group. The working group was established within the Governor's Rural Task Force following the release of the Commission's report on broadband internet deployment, availability, and adoption, which recommended that the state coordinate the efforts of its existing agencies to assist communities in establishing programs to increase the adoption of broadband service. Dr. OWEN said that commission staff are assisting the working group's effort to identify best practices for encouraging broadband adoption in Tennessee.

Chairman NORRIS asked for an update on the state's broadband accessibility grant program, which provides grants to broadband providers to expand coverage in unserved areas as recommended in the Commission's report. Dr. OWEN responded that applications for the first grant cycle include requests for a total of more than \$66 million in funding. He said that the state would only be able to fund approximately 15% of these requests this year because of the \$10 million cap on the program's annual grant budget and that recipients would likely be announced in late January 2018. In response to Representative WIRGAU's question about the number of applications received, Dr. OWEN said that there are a total of 71 applications from 31 different applicants.

Public Chapter 1101 of 1998 Guidebook Update—Information Presentation

Senior Research Consultant Bill TERRY presented updates to the Growth Policy section of the Commission's website and to the guidebook for Public Chapter 1101.

Trends In Tennessee Valley Authority Gross Revenue Receipts and Local Government Pilots—Information Presentation

Mr. Stephen SCHOOLFIELD, TVA's senior program manager for taxes, provided an overview of the factors affecting TVA's payments in lieu of taxes (PILOT) to state and local governments. He

said that under federal law TVA distributes PILOTs both to the states in which it sells electricity and to the states and counties in which it owns power assets. Total payments each fiscal year are equal to 5% of TVA's gross power revenue from the previous fiscal year. Half of the total is divided among the states based on revenue from sales of TVA power in each state, and the other half is divided based on the value of TVA power assets in each state. He said that out of each state's allocation, TVA makes direct payments to counties in which it owns power assets and, under section 15d(g) of the TVA Act, reimburses the owners of any power assets that TVA leases for the property taxes those owners pay—he said that, currently, TVA's only leased power asset is its Caledonia plant located in Mississippi and that reimbursements under Section 15d(g) for the facility will be approximately \$1 million in fiscal year 2017-18. States distribute what remains from their individual allocations according to formulae set in state law.

Mr. SCHOOLFIELD said that because the PILOT is based on power revenue, it is affected by factors that affect the amount of power sold from year to year, such as the weather and changes in the region's economy, including the gain or loss of large industrial customers. In response to Vice Mayor SENTER's question about whether TVA is monitoring the effect of consumers' energy efficiency efforts on the PILOT, Mr. SCHOOLFIELD said that it is; TVA has calculated that if each customer replaced one incandescent lightbulb with a compact fluorescent lightbulb, which uses less energy, the resulting reduction in electricity sold would reduce TVA's gross revenue by approximately \$40 million over one year. [Staff note: Because the PILOT is equal to 5% of gross revenue, this would result in a \$2 million decrease in total payments.] He said that TVA does not consider efforts to improve energy efficiency to be a concern in part because reducing the amount that consumers spend on energy can encourage economic development, which is one of TVA's core missions in addition to environmental stewardship and providing electricity.

Chairman NORRIS asked whether the construction of a new natural gas-fired facility at TVA's existing Allen steam plant in Memphis would affect Tennessee's share of the overall PILOT. Mr. SCHOOLFIELD responded that because half of the PILOT is distributed based on the value of TVA power assets in each state, TVA's decisions to retire old or construct new generating facilities affect the share each state receives. He said that TVA depreciates the value of retired facilities, which are no longer used to produce electricity, basically to zero. Conversely, investments in new facilities, such as the second generating unit added at TVA's Watts Bar nuclear plant, increase the value of TVA property in the states where they are located. He also said that the amount of TVA's PILOT distributed through Tennessee's distribution formula to Shelby County and the cities therein would likely increase because of construction at the Allen steam plant. The state's formula includes a set-aside for local governments in counties affected by TVA construction.

Chairman NORRIS said that because TVA's PILOT varies from year to year, local governments that rely on these payments to fund their school systems can face difficult budgeting decisions when payments decrease. Mr. SCHOOLFIELD said that TVA tries to inform state and local officials before large decreases in payments and helps them plan for resulting revenue shortfalls.

Public Chapter 179, Acts of 2017 (Boat Titling)—Draft Report For Review And Comment

Senior Research Associate Nathan SHAVER presented the draft report on the creation and implementation of a boat titling system in Tennessee for review and comment. The report was

required by Public Chapter 179, Acts of 2017. Summarizing the draft report's recommendations, Mr. SHAVER said Tennessee should consider implementing a boat titling system that is gradually phased-in, with exemptions for smaller boats, administered by the Tennessee Wildlife Resources Agency (TWRA) with the support of the county clerks. In addition, Tennessee could provide further protection for consumers by requiring certain minimum dealer licensing requirements for boat dealers, similar to the requirements for motor vehicle and RV dealers, such as criminal background checks and surety bonds. The final report is scheduled to be presented at the January meeting.

Mayor GREER recalled that there had been several bills introduced over the years to introduce boat titling. He suggested bringing TWRA, the Department of Revenue, and the county clerks together to reach an agreement before more legislation is introduced that may not be passed without support from those groups. He reiterated that everyone seems to agree that titling would be good public policy. Mr. SHAVER said that he and research staff had a meeting with those groups together to understand their concerns. Mayor GREER asked whether there is a financial advantage for TWRA to administer the titling process, and what drives their desire to take it on. Mr. SHAVER said that TWRA had provided a lower cost estimate than the Department of Revenue, both of which are included in the draft report, and added that TWRA thinks it is the agency most familiar with boats and boaters. Mayor GREER said that he believes titling is a more complex process than boat registration, and that TWRA would need to have people capable of assisting county clerks with legal issues related to boat titling. Representative WIRGAU said that the previous years' legislation had all included county clerks as the ones to handle title applications. Mr. SHAVER said that the most recent bill, from 2008, named the county clerks as the ones to process the paperwork with TWRA administering the program overall. The draft report recommends a similar arrangement. Vice Chairman WATERS commented that any legislation introduced needs to have the support of the county clerks, and also stressed the importance of boat dealer licensing and requiring surety bonds. Chairman NORRIS explained that PC 179, which directs TACIR to study boat titling does not stipulate due date for a final report. He said that there may be an initial report in January, but also further work with the county clerks and other groups. Mayor MCDONALD commented that, for a final report in January, there needs to be some unity among the various agencies as to who will be responsible for the different aspects of any boat titling system, and an explanation that surety bonds and some dealer regulations should be required.

Ad Valorem Payments In Lieu of Taxes—Draft Report For Review And Comment

Research Associate Tyler CARPENTER presented the draft report on payments in lieu of taxes (PILOTs) for review and comment. The report was required by Public Chapter 431, Acts of 2017, which directs the Commission to study the economic benefits to counties and municipalities from the use of PILOT agreements and leases by industrial development corporations (IDBs) organized by municipalities, examining whether any economic benefits are derived from limiting the length of term of a PILOT agreement or lease to five or less years absent county approval or an agreement by the corporation or municipality to pay, each year after the initial five years, to the county a sum equal to the amount of real property tax that would have been assessed to a property if the agreement or lease had not been executed, and any additional issues that the Commission deems relevant to meet the objective of the study. The Act requires the Commission to submit a report to the State and Local Government Committee of the Senate and the Local Government Committee of

the House of Representatives no later than February 1, 2018. The final report will be submitted for approval at the next meeting.

The draft report makes four recommendations. The first recommendation is that to ensure that economic development needs are being met without undermining the tax base of other city, county, or special school districts, the state should encourage local governments to pursue one of the following cooperative approaches before entering into ad valorem PILOT agreements with private businesses:

- Form a joint IDB with representation of all separate taxing jurisdictions within the county.
- Enter into interlocal agreements with other taxing jurisdictions to establish criteria for any PILOTs that might affect shared tax bases.
- Receive written approval from the city or county mayor, the city or county legislative body, and local special school districts before approval of PILOT agreements.

In response to Mayor MCDONALD's question about whether they could agree the amount of taxes abated in a PILOT would not have been received by the jurisdiction if the PILOT had not been created, Mr. CARPENTER said it depends on who owned the property prior to the PILOT agreement being negotiated. Mayor MCDONALD noted that all the PILOTs the City of Bartlett has done have been in situations where they were not receiving any taxes on the improvement to the property. He explained you only abate taxes on the improvement to the property. He said he would like to see proof of PILOTs that reduce the amount of money that would have come in by taxes but now come in by PILOTs. Mr. CARPENTER answered that is difficult to determine on a large scale because the amount of taxes being abated is not being reported to the Comptroller. He said that one of the recommendations in the report is that that information should be reported. Chairman NORRIS asked Mayor MCDONALD to put his comments in writing and submit them to staff so that they can make sure they are addressed in the report. Mayor MCDONALD said that there needs to be a base line agreement that the amount of taxes abated in a PILOT would not have been received by the jurisdiction if the PILOT had not been created.

Mayor WATERS, saying there were good recommendations in the report, discussed a situation in Sevier County where an entity that presently pays property taxes is moving to another part of the county and getting a property tax abatement. Mayor WATERS pointed out that there can be a significant effect on counties when their property taxes are abated without consultation. They may have to raise taxes to pay for education, and other entities that are paying taxes will have to pick up the slack for abatements given to other entities. He said the recommendations say these things need to be a cooperative effort, and we need something to say that these efforts need to be cooperative. Representative CARTER said that a possible solution would be to run a bill that would require local government approval if it had an economic effect on them but would not require approval if it was a PILOT that doesn't have an economic effect because it doesn't take anything off the tax rolls.

January 25-26, 2018

Commission Update on the State's Broadband Grant Programs

Policy Coordinator, Dr. Matthew OWEN, provided an update on the state's broadband grant programs. On January 18, 2018 the Department of Economic and Community Development

(ECD) in partnership with the Secretary of State's Office and Tennessee State Library and Archives announced a total of 52 grants awarded through two programs to 49 different libraries across the state. Consistent with recommendations in the Commission's report on broadband internet deployment, availability, and adoption, the grants will be used to support digital literacy training and educational programming in science, technology, engineering, and math, including computer coding. Dr. OWEN noted that ECD in partnership with the US Department of Commerce's National Telecommunications Information Administration is hosting a summit on broadband in Nashville on March 20.

Public Chapter 179, Acts of 2017 (Boat Titling)—Final Report for Approval

Senior Research Associate Nathan SHAVER presented the final report on boat titling for the commission's approval and reviewed revisions made since the draft was presented at the Commission's December 2017 meeting. He said that the main recommendation of the report remains unchanged.

Mr. SHAVER explained, that one recommendation was revised in response to members' concerns that county clerks, the Tennessee Wildlife Resources Agency (TWRA), and the Department of Revenue had not reached a consensus regarding which government entity should administer a potential boat titling system. The final report recommends that TWRA, the county clerks, and the Department of Revenue work together to determine an effective and agreed upon way to administer boat titling in the state and requests that they report their decision to the Commission in December 2018. The members approved it unanimously.

Public Chapter 431, Acts of 2017 (Ad Valorem Payments in Lieu of Taxes)—Final Report for Approval

Senior Research Associate Tyler CARPENTER presented the final report on payments in lieu of taxes (PILOTs) in Tennessee for approval. The report was required by Public Chapter 431, Acts of 2017, which directs the Commission to study: the economic benefits to counties and municipalities from the use of PILOTs and leases by industrial development corporations (IDBs); examine whether any economic benefits are derived from limiting the length of term of a PILOT agreement or lease to five years absent county approval; and any additional issues that the Commission deems relevant to meet the objective of the study. Mr. CARPENTER reviewed changes made to the report since the December meeting. Chairman NORRIS suggested deferring voting on the report until the next day to give Mayor MCDONALD the opportunity to address his questions.

Tennessee Valley Authority Payments in Lieu of Taxes—Annual Report for Approval

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 this year even though Tennessee's percentage of TVA's total payments to all states in the Valley region is estimated to decrease slightly. Dr. OWEN reviewed TVA's strategies for meeting energy demands while rebalancing its power network, saying that they could affect the PILOT in future years. In response to Representative WIRGAU's question about how TVA's PILOT is distributed, Dr. OWEN said that the formula TVA uses to divide the overall

PILOT among the states is set in federal law, while the formula used by Tennessee to distribute the amount it receives from TVA is set in state law. The report was approved unanimously.

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 2018* for approval. He mentioned preliminary discussions of President Trump's infrastructure plan and how Tennessee's Public Infrastructure Needs Inventory may give Tennessee an advantage as components of the plan become known. TACIR staff plan to monitor the situation as it develops. The report was unanimously approved.

Ad Valorem Payments in Lieu of Taxes (PILOT): Addressing Accountability and Transparency—Information Presentation

Senior Research Consultant Lynne HOLLIDAY presented information to the Commission about transparent reporting of tax incentive agreements, as a supplement to the Commission's report on Ad Valorem Payments in Lieu of Taxes. She said some local governments in Tennessee voluntarily provide detailed reporting of PILOTs received and described how that revenue is allocated in their budgets. She suggested that these municipalities could serve as examples to others wanting to enhance transparency around the payments and their use.

Director of the Metropolitan Government of Nashville and Davidson County's Mayor's Office of Economic and Community Development, Matt WILTSHIRE, presented next to the Commission and said that economic incentives are an important tool for attracting businesses to Nashville, and the mayor's office believes it is important to provide information to the public about those deals. He displayed the city's website and interactive map showing incentives projects by location in Metro Nashville. The map shows the amount and what type of incentives were provided to each company, date of agreement, number of jobs expected, capital investment by the company, other grants provided, and a total expected value of the agreement. The economic development office also does an annual review of each agreement in place to verify the number of employees compared to initial expectations. Most of the incentive agreements the city enters into have job reporting requirements. He said that he hopes to add more information in the future to show how property tax and appraisal fluctuations over time affect the actual PILOT money received by the city compared to the initial estimate. Chairman NORRIS asked who maintains the website. Mr. WILTSHIRE responded that it was created by Metro's Information Technology Services (ITS) department.

Chairman NORRIS had the commission return to the discussion of the draft report on PILOTs and said that based on the prior day's discussion; revisions had been made to the draft report. Executive Director LIPPARD provided a summary of the proposed changes to the report, saying that those changes make a distinction between incentives for retail development and those for manufacturing and other commercial development. He said the revisions say the state should encourage local governments to pursue cooperative approaches before entering into PILOT agreements with manufacturing and commercial businesses and recommend that local governments be required to pursue one of three cooperative approaches before entering into PILOT agreements longer than 10 years with retail businesses; either they or their IDBs should be required to make annual

payments after the initial 10 years to the other affected local governments equal to the amount of property taxes those governments would otherwise receive. Mayor MCDONALD said he wanted the Commission to make clear in the recommendation that local governments can abate their own property taxes without anyone else's approval. Chairman NORRIS said it will be clarified in the report. Chairman NORRIS recommended that the report make clear that special school districts have taxing authority. The amendment was adopted unanimously, and the report was approved unanimously.

May 3-4, 2018

Commission and Staff Update

Policy Coordinator Matthew OWEN provided an update on several programs for improving broadband access and adoption. He explained that in February 2018, the Federal Communications Commission (FCC) finalized the list of census blocks that will be eligible for its Connect America Fund Auction (CAF Auction), which will assist providers in expanding coverage by offering funding to offset the cost of deploying broadband infrastructure in unserved areas. The unserved census blocks in Tennessee eligible for the CAF Auction contain almost 13,000 homes and businesses and are home to more than 23,000 Tennesseans.

Dr. OWEN discussed the state's broadband accessibility grant program. On January 26, 2018, the Department of Economic and Community Development (ECD) announced that nine projects had been awarded funding in the program's first grant cycle. These projects will expand coverage to a total of at least 5,200 locations across 13 counties.

Dr. OWEN also provided information on the state's Broadband Ready Communities program and Broadband Adoption Working Group. Twenty-two communities across the state have been designated as broadband ready communities. The designation, consistent with recommendations in the Commission's 2017 broadband report, is intended to signal providers that these communities have adopted permitting and zoning procedures for streamlining the deployment of broadband infrastructure. Based on the discussions of the Broadband Adoption Working Group, ECD has released a webpage with links to a variety of resources for communities to use when planning to meet their local broadband needs or when developing programs for encouraging broadband adoption. Several of these resources were among those identified in the Commission's report.

Fiscal Year 2017-18 Accomplishments

Deputy Executive Director Melissa BROWN summarized the Commission's major accomplishments for the past fiscal year, which will be incorporated into the biennial report for fiscal years 2016-2017 and 2017-18.

Legislative Update

Senior Research Associate Nathan SHAVER reviewed legislative action during the second session of the 110th General Assembly on issues related to Commission studies. The legislature 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 pertaining to the following issues: nontax-producing properties, small cell wireless facilities, criminal statutes of limitation, GPS monitoring as a condition of bail for domestic abuse offenders, creation of a food desert relief enterprises fund, credit to shipper's franchise and excise tax liability (Shelby County), and multi-school system counties. The General Assembly's legislative committees requested three additional Commission studies pertaining to the following issues: consolidation of municipal elections, state-shared taxes and local services, and the tobacco master settlement agreement.

Work Program Amendment and New Research Plans

Deputy Executive Director Melissa BROWN presented three amendments to the calendar year work program for the Commission's consideration. The first amendment, adding the seven studies required by legislation enacted by the 110th General Assembly, passed unanimously. The first of those pieces of enacted legislation, Public Chapter 849, Acts of 2018, directs the Commission to study the effectiveness of Tennessee's statutes of limitation on the prosecution of criminal offenses. It must include, but is not limited to, information on the effectiveness of statutes of limitations on the prosecution of sexual offenses. 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 Tennessee. Public Chapter 693, Acts of 2018, directs the Commission to determine the amounts of non-tax producing property that exists in the state and make recommendations on how this property can better be used. Public Chapter 827, Acts of 2018, directs the Commission to study the implementation and effects of global position 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. Public Chapter 952, Acts of 2018, directs the Commission to study the potential, overall effects of creating a franchise and excise tax credit for shippers with pickups or deliveries originating in, or destined to, any county having a population over nine hundred thousand (900,000) according to the 2010 federal census or any subsequent census. The last of the seven enacted pieces of legislation, Senate Joint Resolution 593, directs the Commission to study the overall effects on public education relative to the laws and regulations related to the sharing of resources among school districts located in the same county and the effect of the operation within a county of municipal or special school districts in addition to the county system.

Amendment two, which passed unanimously, added two studies that were referred by committees and subcommittees of the General Assembly. House Bill 2265 by Sexton and Senate Bill 2146 by Gardenhire, as amended, would require legislative bodies of municipalities to change the date of municipal elections to coincide with the August or November general election beginning in 2022. Ordinances that change the election date must provide for the extension of the terms of elected officials of the municipality, but not term may be extended for more than two years beyond its regular expiration date. The House bill was referred to the Commission, while the Senate version was referred to summer study. But the chairman of the Senate State and Local Government Committee said it was their intention that the Commission conduct the study. Mayor BICKERS asked why the research plan for the elections study is only focusing on municipal elections. Both Mayor BICKERS and Representative WIRGAU said that county and municipal elections should be researched as part of this study. Chairman NORRIS said the study could be comprehensive as

long as the original mandate of the public act requesting the study is met. Senator YARBRO said that beyond the issue of turnout vs dollars spent on elections are the issues of ballot fatigue and drop-off issues.

Senate Bill 1989 by Stevens and House bill 2154 by Hawk directs the Commission to study the Tennessee Department of Revenue's use of state law to exclude an escrow compliant non-participating manufacturer or brand family, or both, owned by the non-participating manufacturer in Tennessee. The Commission is also required to determine the necessity for any such enforcement action by the Tennessee Department of Revenue either under the provisions of the master settlement agreement or for the purpose of limiting an adverse impact to state revenues.

Amendment 3 adds one study that was referred to the Commission by the House, Finance, Ways and Means Committee. House Bill 971 by Sargent and Senate Bill 1075 by Watson, as amended by the House Finance, Ways and Means 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. The Commission was directed by the House Finance, Ways and Means Committee to address the following questions:

1. What are the duties of cities mandated by law?
2. What are the duties of counties mandated by law?
3. What funds go from the state to cities to comply with the law?
4. What funds go from the state to counties to comply with the law?

During the meeting, members directed that the study address several issues of concern to state and local governments and expand its scope to provide a comprehensive review of the revenue sources and service requirements of cities and counties. Representative SARGENT requested that the study include information about the streamlined sales and use tax, out-of-state sales and use tax, which includes internet sales, and the state shared portions of the state sales tax. He added that the proportion of counties' and cities' populations relative to their shares of revenue, and the debt of fast-growing counties, should be considered. Representative SARGENT also asked that the Executive Director of the County Mayor's Association be interviewed as part of the research for the project. Mayor MCDONALD requested that the study include the distribution and use of all funds of the state and cities, rather than state-shared taxes alone. He asked that the study review the services that cities and counties are required to provide either by the state constitution or under state law.

Mayor BICKERS concurred with having a comprehensive approach to the study and said we have to conduct an analysis of the revenue system of the state and look at the public policy issues behind the different revenue sources and try to develop recommendations that both cities and counties think is fair and equitable. Representative LOVE said he wants the study to consider the effect of changes on Metropolitan Nashville-Davidson County. He said that although some think there wouldn't be changes because of the metro form of government, there could be because of satellite cities that could lose revenue that would go to the county for education purposes. After discussion of establishing a due date for the final report, Chairman NORRIS said the commission

would work toward a report for the January 2019 meeting and that we would not specify whether it is a preliminary or final report. Commission members agreed.

Chairman NORRIS discussed a request by Senator Nicely to update a section of its 2007 report, *Trust But Verify*, that addresses two topics related to a voter-verified paper audit trail. He said the topic could be addressed with a staff report. Dr. LIPPARD said the project would be completed but would have to be worked in around projects with imminent due dates.

Fiscal Capacity for the Fiscal Year 2018-19

Senior Research Associate Michael MOUNT presented the annual update on TACIR's fiscal capacity index and background information about the index and education funding in Tennessee. He provided an update of Tennessee's 95 counties' 15-year fiscal capacity trends and the effect of the Tennessee Virtual Academy on the fiscal capacities of both Union County and the state's other 94 counties. Michael MOUNT reviewed the commission's recommendation in its 2018 report on payment in lieu of tax agreements that "TACIR's fiscal capacity calculation should be updated to include current IDB assessment amounts rather than the 1993-1995 PILOT payments data currently used." He noted this revision would require a change in state law or a recommendation by the BEP Review Committee and approval by the General Assembly.

Food Deserts (Public Chapter 795, Acts of 2018)—Information Presentation

The Commission heard from Dr. Jackie YENERALL, a population health economist with the Office of Health Policy in the Tennessee Department of Health, as part of its study of the benefits and costs of establishing a grant and loan program meant to encourage greater access to food in low-income and underserved neighborhoods.

Dr. YENERALL said that academic research on the topic of food access and health outcomes started in the 1990s when researchers noticed that obesity and risk for cardiovascular disease varied across neighborhoods. They began studying areas of low food access and found such areas tend to be in neighborhoods that have low-income residents or a higher prevalence of African-American residents. Researchers studied whether living in a food desert influenced an individual's dietary quality and health outcomes, shifting the focus from neighborhood food access to household food access. She said that not all individuals living in a food desert have low income and some have access to a car.

Dr. YENERALL said that conclusions are mixed on whether increasing access leads to healthy eating or positive health outcomes. There are four primary studies in the US that have looked at grocery store intervention. Two saw a change in diet and health outcomes, though one was not a healthy change, and the other was unable to attribute change to the new supermarket. She said Americans on average travel beyond their nearest grocery store to shop. A United States Department of Agriculture (study found that the average distance to a supermarket for an individual was 2.1 miles from a home, but the average distance traveled was 3.8.)

Mayor Tom BICKERS asked what defines a healthy food retailer. Dr. YENERALL said it is a supermarket, superstore, or some place that people are likely to be able to purchase fruits and vegetables—corner stores, convenience stores, and gas stations are not generally considered to be

healthy food retailers. Representative LOVE asked what role food swamps—areas that have more than the expected number of fast food restaurants, corner stores, and similar retailers—play in incentivizing corner stores to not offer fresh fruits and veggies. Dr. YENERALL explained that because people prefer shopping at superstores, small retailers are hesitant to put fresh food on shelves because it is perishable. However, the Healthy Food Financing Initiative has offered grants to small retail stores to offer fresh fruits and vegetables in their store or to provide them with refrigeration.

Mayor Keith MCDONALD asked about the logic behind defining a rural food desert as low income people living further than 10 miles from the nearest supermarket, supercenter, or grocery store. Dr. YENERALL said it is generally assumed that people in rural areas have greater access to a vehicle, where car ownership is around 80%. However, the 10 mile threshold is not based on any research indicating that behavior changes for individuals at that distance in rural areas. Mayor BICKERS said that in East Tennessee some people grow their own food yet still do not eat healthy, and asked whether this is an issue of access or should the focus be on changing behavior. Representative Jeff YARBRO asked if someone is raised with limited access does that mean their behavior is unlikely to change when they gain more access. Dr. YENERALL said for some households, access is going to be their greatest issue. Finding households with the most constraints and addressing their issues gets us closer to making sure everyone has a choice to make a healthy decision. She said that people have a strong preference for large supermarkets. Even when you live in a low-access area, people still try to shop at a supermarket once a week. Behavior change is also a time issue. The time cost of going to the store, purchasing and preparing the food, and then knowing what to do with it is something people have been trying to address through educational campaigns.

Representative Mike CARTER asked whether anyone is looking at using food trucks to deliver fresh food to people. Dr. YENERALL said that the Chattanooga Health Department runs a program that takes fruits and vegetables into underserved communities. She said there is a lot of fear as these low income households go to make their purchases, concerning whether the food will last throughout the week or whether their kids will eat it. If the healthy food was cheaper it may encourage them to try it. She explained that any solution must include the affordability component.

Mayor BICKERS asked whether any research has been done on working with farmers to get food into the hands of those who need it. Dr. YENERALL said that is one possible solution, but she knows of no evaluation of this in the literature. Some people have focused on making farmers markets more affordable. Dr. YENERALL said that farmers are a great resource.

Senator Ken YAGER asked what Tennessee local health departments are doing about food choices, noting that health departments see a lot of children through the immunization program and most are likely low income. Dr. YENERALL said that the Office of Primary Prevention has healthy development coordinators across the state that do outreach to help with educational campaigns—also issuing grants to help promote health like building parks for physical activity. These interventions are expensive and the lack of resources may be constraining. She said the grants have been used to do things such as build walking trails and put water dispensers in schools that fill water bottles.

Mayor BICKERS asked whether there have been any studies that looked at the health cost savings when you have healthier children with healthier diets. Dr. YENERALL said she was not aware of any study looking at that for food access.

Consolidation of Municipal Elections (Senate Bill 2146 and House Bill 2265)—Information Panel

In response to the legislative request for TACIR to study the effect of requiring municipalities in Tennessee to change the date of municipal elections to coincide with the August or November general election beginning in 2022, the Commission heard from a panel of speakers sharing their views on the consolidation of elections as well as answering questions from Commission members:

- Jill Burgin, Mayor, City of Brentwood
- Mark Goins, Tennessee Elections Coordinator, Office of the Tennessee Secretary of State
- Ron Littlefield, Senior Fellow with the Governing Institute and Lead Analyst on its City Accelerator Initiative, Fellow of the American Institute of Certified Planners
- Chris Norman, Administrative Assistant to the Mayor and City Administrator, City of Dickson
- Phillip Warren, Wilson County Administrator of Elections and President, Tennessee Association of County Election

Mr. Mark GOINS said consolidation of elections might make more sense for small to medium size cities, but maybe shouldn't be mandatory for larger cities. He discussed results from a survey he conducted of county election commissions. Of the 34 out of 40 county election administrators that responded to the survey, 73% favor consolidation, 18% do not favor it, and about 10% had no opinion. Larger counties generally do not favor it because they are concerned with the number of different ballot styles involved. Survey respondents noted advantages to consolidation include significant cost savings for municipalities, increased voter turnout, easier poll worker recruitment, more efficient use of resources, and simplification of deadlines and registration dates. The disadvantages include additional printing costs and precincts, complicated or confusing ballot types, increased campaign costs, increased difficulty communicating about candidates and issues, confusion about non-partisan and partisan races, and ballot fatigue. Mr. GOINS suggested talking to the cities that have and haven't consolidated and looking at turnout, cost, date, and competitiveness of races. He is aware of 71 municipalities in 40 counties that have stand-alone elections. Since 2010, when the law authorized election consolidation without having to change the city's charter, 23 cities have consolidated their city elections to coincide with county elections.

Mayor Jill BURGIN and Mr. Chris NORMAN agreed that cities should be able to choose their election dates as the law already allows. Mayor BURGIN said Brentwood has elections on different dates than general elections, and the majority of the seven-member city commission has never expressed interest in changing the election date primarily because local issues would get lost in county, state, and national general election discussions. When elections are consolidated, costs could increase for candidates because they are competing with more candidates for attention, and it could be confusing to mix partisan and non-partisan races in the same election. She said consolidating might result in cost savings for the city and better turnout, but not necessarily more informed voters on local issues.

Mr. NORMAN said the City of Dickson's mayor and city council and the Dickson County election administrator oppose the bill. He said that data from four Dickson County municipalities that

chose to change their elections after the law passed in 2010 does not show a pattern of increased voter turnout, and that City of Dickson leaders chose not to consolidate because they believe that ballots would be even more confusing and voter education more challenging. Mr. NORMAN believes turnout is ballot-driven, not date-driven—people don't care about when they vote, they care about the candidates and issues, especially in mayoral races, and whether the candidate is running opposed or not. He said cost is not a driving factor, and turnout doesn't seem to be very affected by consolidation in Dickson County. The 2010 law allows cities to change their mind one time to go back to their previous election schedule if the new one is not working. Counties that have more than one state house district have to provide the appropriate number of different ballot styles, adding to the complexity of the ballot. He said the bottom line is encouraging people to vote and changing the way we vote to make it easier. Turnout is the goal. The greatest thing we have done is early voting, and there are other things we can do such as easing restrictions on absentee voting, allowing registration on election day, and online voting.

Mr. Phillip WARREN said all three cities in Wilson County—Lebanon, Mt. Juliet, and Watertown—have chosen to consolidate municipal elections with general elections. Ballots can be complex because of differing boundaries for cities, school districts, and voting districts, and school boards also have their own elections. From an administrative standpoint consolidation can save work and cost.

Mr. Ron LITTLEFIELD, mayor of Chattanooga from 2005 to 2013, and who previously served on the city council, supports the bill requiring consolidation because he thinks it will lead to greater participation, and the best representative government is one where the most people participate. He said he is less worried about ballot fatigue than he is about low turnout because of too many elections. The cost of elections is insignificant to this discussion because it is very small relative to the size of government budgets.

Mayor MCDONALD asked whether there was a fiscal note on the bill. Representative WIRGAU responded the fiscal note for the original bill was not significant, and after it was amended, the effect on local governments was a \$100,000 decrease. Mr. GOINS said a larger municipality might have additional cost if it has many ballot styles or has to open up an additional precinct.

Mayor BICKERS asked why the same standard shouldn't be applied not just to cities, but to the county primaries too, and why not have elections only in August and November? He suggested that the Commission report could provide data for cities to help them make the decision to consolidate or not. Mr. LITTLEFIELD said changing the time of the election is not simple. He thinks there are still stand-alone elections because of political inertia—a lack of political will and time. Senator YARBRO thinks the fact that 23 cities have changed their elections since the law was passed in 2010 speaks against the idea of inertia. Turnout is not the only issue. The questions we are trying to answer are: What is democracy and what should it look like? Who gets to decide? What measures will we use to evaluate whether this is working?

Multiple School System Study (Senate Joint Resolution 593)—Update

Senior Research Associate David KEISER presented an update on the study directed to TACIR by Senate Joint Resolution 593 by Senator HAILE to study the overall effects on public k-12 education

of the laws and regulations related to the sharing of resources and the operation of multiple school systems located in the same county.

Mayor Keith MCDONALD reminded the commission that sometimes people shop in neighboring cities and it's difficult to determine who is spending their money in one jurisdiction over another. The city of Bartlett raised their property taxes to help pay for local needs at their schools while Memphis chose not to raise their taxes. The commission should remember when focusing on debt issued for school capital projects that staff look into how local property taxes are spent on paying off the debt used for local schools.

Dr. LIPPARD noted that much of the information gather for the State-shared Tax Study will also be used for the Multiple School System Study.