

# TACIR

The Tennessee Advisory Commission  
on Intergovernmental Relations

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## MINUTES OF THE TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

21 October 2015

### Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 30 at 1:08 p.m., Chairman Mark NORRIS presiding.

Present 21	Absent 3
Mayor Tom Bickers	Ms. Paula Davis.
County Mayor Ernest Burgess	Representative Harold Love Jr.
Mr. Charles Cardwell	Representative Charles Sargent
Representative Mike Carter	
City Commissioner Betsy Crossley	
Ms. Christi Gibbs	
Mayor Brent Greer	
County Executive Jeff Huffman	
Mayor Kenny McBride	
Mr. Iliff McMahan	
Senator Randy McNally	
Senator Mark Norris	
Representative Antonio Parkinson	
Mayor Tom Rowland	
Mayor Pro Tem Kay Senter	
Senator Jim Tracy	
Mayor Larry Waters	
Justin Wilson <sup>1</sup>	
Representative Tim Wirgau	
Senator Jeff Yarbro	
Mr. Kenneth Young	

<sup>1</sup> Russell Moore represented Justin Wilson.

## **1. Call to Order and Approval of the Minutes**

Chairman Mark NORRIS called the meeting to order at 1:08 p.m. Chairman NORRIS dispensed with calling of the roll and requested approval of the minutes. Vice Chairman Tom ROWLAND moved adoption and Mr. Illif MCMAHAN seconded the motion, which passed unanimously.

## **2. Commission Updates**

Executive Director Lynnisse ROEHRICH-PATRICK congratulated Tyler CARPENTER on receiving his master's degree in public administration from Tennessee State University. Chairman NORRIS and Ms. ROEHRICH-PATRICK also congratulated Janet STEEN on her 5 years of state service.

## **3. Broadband Internet Deployment, Availability, and Adoption In Tennessee-Panel Discussion**

The Commission heard presentations from two panels as part of its study of broadband access, deployment, and adoption in Tennessee. The first panel included representatives of broadband providers and issues related to providing broadband services:

- Levoy Knowles, executive director, Tennessee Telecommunications Association
- Daniel Hayes, public affairs director, AT&T, Tennessee
- John Farris, legal counsel, Tennessee Cable Telecommunications Association
- Ben Lovins, senior vice president, telecommunications division, Jackson Energy Authority
- Ken Webb, president and CEO, Cleveland Utilities
- Mike Knotts, director of government affairs, Tennessee Electric Cooperative Association

Chairman NORRIS said the Commission's study would analyze all issues affecting broadband availability, deployment, and adoption in Tennessee with the intent to ensure that all Tennesseans, including people in rural communities, have access to broadband services. He also said that the study is not focused solely on whether or where public or private entities should provide broadband.

Mr. KNOWLES said that the member organizations of the Tennessee Telecommunications Association (TTA), which include mostly small- and medium-sized telephone companies and cooperatives, have made significant investments in broadband infrastructure in rural communities throughout the state to meet its objective of ensuring that everyone who wants the service can get it, deploying thousands of miles of fiber in their networks and making broadband service available to 98.3% of their customer base. He said they must nevertheless

consider population density and subscription rates when expanding their broadband infrastructure because of the high cost of deployment.

Mr. KNOWLES said four things would make it easier for TTA's members to expand the coverage and quality of services: tax incentives for expansion including reducing or deferring taxes on sales and property for broadband deployment in rural areas; expansion of federal grant programs so that more of TTA's members could take advantage of them; reduction of pole attachment rates via state regulation; and state funding to build and maintain broadband infrastructure. State law allows for a broadband fund that has never been funded. Noting that the Connect America Fund's (CAF) most recent grants went only to large carriers, which include only one of TTA's members, Mr. KNOWLES asked that the state's lawmakers and congressional delegation encourage the federal government to provide more support for smaller rural broadband providers.

Mr. KNOWLES added that educating citizens about the ways broadband could benefit their lives could help improve rates of adoption, which would make expansion in areas with low population density more economical. Many TTA members provide 1 gigabit service in several areas, but 95% of customers subscribe to 25 mbps or less. Mr. KNOWLES said the TTA supports promoting and expanding broadband service in Tennessee but opposes allowing municipalities to expand broadband service beyond their existing footprints.

In response to a question from Chairman NORRIS about the difference between regular internet and broadband, Mr. KNOWLES said that broadband has faster download and upload speeds than normal internet connections. Mr. HAYES, representing AT&T, also explained that while the Federal Communications Commission (FCC) defines broadband as a connection with at least 4 megabits per second download and 1 megabit per second upload speed, the CAF program requires providers to build infrastructure capable of providing 10 megabits per second download and 1 megabit per second upload speed, and the FCC has set a new target of achieving 25 megabits per second download and 3 megabits per second upload speed. Representative WIRGAU asked for more information about how often the FCC sets new broadband standards and what it considers when establishing them. Mr. HAYES replied that the standards were set based on assessments of the industry and where consumer demand is heading. Senator YARBRO said that more information about how different speeds affect performance would also be helpful.

Chairman NORRIS asked whether there would be any objection to municipal utilities expanding outside their electric service areas to provide broadband in unserved communities. Mr. KNOWLES said that he did not think so, that the objective is to make sure all Tennesseans have access to broadband, but duplicating services should be avoided. Chairman NORRIS said that, because of the large investments required to expand broadband infrastructure in some areas, it is important to think about costs for providers in addition to consumer benefits and needs when considering policies for expanding broadband.

Mr. HAYES said that providers have already made significant investments in both wired and wireless broadband infrastructure and urged neutrality on different technologies for providing

broadband, noting that wireless use on AT&T's networks has increased significantly in recent years. He said that federal data from the FCC and National Telecommunications Information Association (NTIA) show that most coverage gaps are in rural residential areas and explained that the second round of CAF grants recently announced by the FCC are for areas that currently lack access to wired broadband of at least 10 megabits per second download speed and 1 megabit per second upload speed. Mr. HAYES said the companies in Tennessee eligible for and accepting this round of CAF grants were AT&T, Frontier, and Century Link. Mr. HAYES said that, in Tennessee, 96% of the population lives in areas covered by AT&T's 4g network. He also noted that, according to the FCC, NTIA, and the national broadband map, 99.1% of Tennesseans have access to 10 megabit download and 1 megabit upload speeds either through wired or wireless connectivity from one or more providers and technologies.

Responding to questions about the most recent CAF grants, Mr. HAYES said that the FCC determined where providers could use CAF grants to improve broadband infrastructure and that 93,000 census blocks in Tennessee qualified. This round of CAF grants allows six years for deployment but 40% of the infrastructure must be completed by 2017.

Responding to questions about broadband access for schools and libraries, Mr. HAYES explained that schools, hospitals, and libraries can obtain subsidized coverage through the federal government's e-rate program and that in his opinion these institutions have robust connections.

Representative CARTER asked whether the government's CAF grants to for-profit providers are any different from government funds used by municipally owned providers. Mr. HAYES responded that CAF grants can be used only in high-cost rural areas to support private investment while municipal providers are using government funds to duplicate existing services.

Representative CARTER asked whether municipal utilities should be allowed to compete with private providers. Mr. HAYES said he did not think public money should be used to compete against private industries but that AT&T does not oppose municipally owned providers building in unserved areas. He said that identifying opportunities for greater adoption and for greater investment are equally important. Mr. HAYES said a recent report by the Pew Research Center found that the two main reasons for not purchasing broadband cited by those who don't currently have it are lack of understanding of the ways they can benefit from broadband and fear of hacking and spamming. In response to Chairman NORRIS' concern about where cost ranks in comparison to those reasons, Mr. HAYES said that cost is third but includes both the cost of broadband service and the cost of devices.

Responding to Mr. MCMAHAN's questions about Mr. HAYES' discussion of the extent of broadband coverage in Tennessee, wireless versus wired and urban versus rural, Mr. KNOTTS cautioned that federal broadband coverage maps overestimate coverage and speed of service because they count an entire census block as being covered at a given speed as long as even one person or business in it receives broadband at that speed. Mr. KNOTTS also said that wireless service is not equivalent to wired service because of issues both with latency and with

transmitting large volumes of data quickly. Mayor ROWLAND remarked that there seem to be inconsistencies in broadband services in the areas that providers claim to serve and that these need to be explained.

Mr. FARRIS described changes in Tennessee law related to internet providers since the early 1990s, noting that the 1999 law allowing municipal utilities to provide broadband within their electric service areas has not been updated. He listed several barriers to private sector expansion in Tennessee that should be removed before the state considers allowing municipal utilities to expand: high pole attachment rates charged by local electric companies, the time electric companies take to complete work needed to ready poles for attaching broadband infrastructure, and permitting processes that should be streamlined to allow private providers to expand their coverage more easily. Mr. FARRIS suggested that these barriers exist because local electric utilities in Tennessee are not regulated and called them anti-competitive practices. He said that cable companies would likely consider investing in new infrastructure in the state if these barriers were removed. Mr. FARRIS said that Indiana's program for expanding broadband coverage by creating guidelines for policies that communities could adopt to be certified as "broadband ready" has industry support.

Mayor BICKERS' asked whether allowing providers to seek statewide franchises rather than negotiating individual local licenses has slowed broadband expansion by limiting the ability of local governments to negotiate with providers for expanded coverage. Mr. FARRIS said that was the Competitive Cable Services Act of 2008, but local franchising never addressed the other barriers to expansion, and he does not support devolving control over broadband to the local level or duplicating existing services.

Mr. LOVINS said that access to broadband is necessary to support industries, telemedicine, job training, agriculture, and public education—including higher-education initiatives like the Governor's Drive to 55 and Tennessee Promise initiatives—all of which rely on affordable, reliable high-speed data transmission. He said that fiber-optics is the platform of the future and that all solutions include moving fiber connections closer to the end user.

Mr. LOVINS emphasized giving local leaders choice to help their communities meet their broadband needs. He said that Jackson Energy Authority's (JEA) decision to provide broadband services was a local one made to ensure that all commercial, industrial, and residential customers would have access to broadband that met their needs. He explained that establishing and maintaining these services did not require any taxes or other government funding. When asked by Representative WIRGAU how JEA's broadband business was financed, Mr. LOVINS replied that it was through revenue bonds not general obligation bonds. He responded to Mayor ROWLAND's question about whether JEA separated its broadband services from its electric services by saying that the divisions were totally separate, each with its own bonded debt and paying its own allocated costs. He also said that the Tennessee Comptroller of the Treasury audited utilities to make sure that there were no cross-subsidies between electric and broadband services.

In response to Representative WIRGAU's question about who owns JEA, Mr. LOVINS said that its ratepayers own it. Expressing concern about how ratepayers and taxpayers would be affected if a utility failed, Representative WIRGAU asked who is at risk if municipal utilities are unable to pay their debts related to providing broadband. Mr. LOVINS responded that debts would first revert to electric ratepayers but that city taxpayers would assume its debts if the utility folded.

Responding to Representative WIRGAU's question whether JEA was a party to the Chattanooga Electric Power Board's petition to the FCC to preempt Tennessee's law restricting municipally owned broadband providers to their electric service areas, Mr. LOVINS said no. Responding to Representative WIRGAU's question whether JEA provides broadband services outside of its footprint, Mr. LOVINS said that JEA broadband services coincide with its electric services and extend into the county. In response to Representative WIRGAU's question whether JEA would be receiving CAF, Mr. LOVINS responded that JEA is not eligible for these funds.

Mr. WEBB said that access to reliable broadband is no longer a luxury but a necessity for education, business and community development, medical care, and public safety. He said that the public power model would be useful for providing broadband services because it emphasizes cooperation. Based on the public power model, Cleveland Utilities wants to provide reliable, reasonably priced broadband throughout its service area while adhering to a financially sound business plan reviewed by the Tennessee Comptroller of the Treasury with no cross-subsidization and with first class customer service and noted that the Tennessee Valley Authority also audits local electric utilities.

Representative WIRGAU asked how long Cleveland Utilities had been offering broadband services. Mr. WEBB said that Cleveland Utilities does not provide broadband services but is studying it. Representative WIRGAU asked why. Mr. WEBB said that, based on requests for service from local residents, there are both wired and wireless broadband coverage gaps in Cleveland Utilities' electric service area. When asked by Representative WIRGAU whether the utility would provide service to rural areas in its electric footprint where others don't, Mr. WEBB said that Cleveland Utilities' first obligation for broadband service would include all areas within its electric footprint.

Mr. KNOTTS explained that electric cooperatives are private, non-profit corporations, committed to universal service, and among the largest taxpayers in their communities. He acknowledged that they cannot provide broadband under current law; however, they need broadband infrastructure to operate their electric grids and their reliance on it for grid management will only increase. Mr. KNOTTS said that the primary barriers to expanding service in rural areas are population density and the time required to make a return on capital investments. He said that the model used to promote electrification of rural areas in the 20<sup>th</sup> century using cooperatives was applicable to broadband. He also said that there is little correlation between pole attachment rates and broadband availability.

Mr. YOUNG asked whether the FCC regulates pole attachment rates. Mr. FARRIS responded that while AT&T is subject to FCC guidelines for establishing rates, the Tennessee Valley

Authority, municipal utilities, and electric cooperatives are not. In response to Representative CARTER's question about whether Tennessee Code Annotated, Section 7-59-316(c), limits pole attachment rates in historically unserved areas, Mr. FARRIS said that he thinks the limits apply only to joint ventures [Note: Staff confirmed this with the Tennessee Regulatory Authority. The limits apply only in areas designated by TRA as historically unserved in response to application by a municipality or county for authority to establish a joint venture with one or more other providers to provide broadband in the area]. In response to Representative CARTER's question about whether statewide average pole attachment rates for broadband are \$2, Mr. HAYES said that the average that AT&T pays to utilities and electric cooperatives statewide is quite a bit more.

Senator YARBRO asked whether the decision to allow municipally owned utilities to expand broadband beyond their electric service areas should be made at the local or the state level. Mr. FARRIS responded that safeguards are needed to prevent cross-subsidization of services and defaults on debt. In response to Mayor ROWLAND's question about whether any municipal utilities are successfully providing broadband in Tennessee, Mr. FARRIS said he was not aware of any, citing JEA's debt in 2010 of \$68 million as evidence that it was failing. Mr. WEBB, a certified public accountant, explained that the ability to pay back debt rather than total debt was a better indicator of success and that to his knowledge JEA had not had any problems paying its debt. He added that for-profit providers like AT&T also carry debt. When Mayor BICKERS asked whether private providers receive government subsidies such as tax incentives, Mr. FARRIS said that cable companies do not receive public funding.

The second panel included representatives on behalf of broadband users and community needs:

- Amy New, assistant commissioner of rural development, Tennessee Department of Economic and Community Development
- Cliff Lloyd, chief information officer, Tennessee Department of Education
- Steve Mallard, computer information technology master instructor, Tennessee College of Applied Technology at Shelbyville
- Sgt. Ehrin Ehlert, Tennessee Highway Patrol, Department of Safety and Homeland Security
- Shaun Lawson, mayor, Hickman County
- Rhedona Rose, executive vice president, Tennessee Farm Bureau

Ms. NEW said that access to reliable, affordable broadband is necessary for students, businesses, downtowns, and main streets, and was a recurring topic of conversation in the meetings she had with community leaders and residents across the state. In these meetings and in surveys, 20% of respondents said that broadband was the most difficult need to meet in their communities ahead of site development, community development, health, and transportation. She said communities without access to fiber-based broadband struggle to land industrial prospects and many farms need help getting wired connections. In response to

Senator YARBRO's question about the minimum broadband speed necessary to promote economic development, Ms. NEW said that consultants the department is hiring to study broadband coverage and needs in the state will be surveying businesses to determine that.

In response to Chairman NORRIS' request for more information about the Department of Economic and Community Development's study, Ms. NEW said that the study is geared toward determining what coverage exists in Tennessee as well as what policies could help improve coverage throughout the state. She said that there is misinformation about what communities have access to in terms of broadband. The department is contracting with Strategic Networks Group and NEO Fiber to carry out the study, which includes surveys of residents and businesses to determine their current coverage, rates of adoption, and needs. In response to a question from Representative WIRGAU, she replied that the department hopes to complete its study and make it available for the legislature by the end of February 2016.

Ms. NEW also discussed the importance of broadband to individuals seeking employment or completing their education. She explained that only two out of nearly 40 participants who completed a recent training program for jobs that could be done from home were eventually able to find home-based employment. The rest, she said, could not either because they could not get fast enough internet speeds at their residences or could not afford it. Speaking from her personal experience, Ms. NEW described how inadequate internet speeds and reliability can make it more difficult for students to complete and turn in assignments.

In response to a question from County Executive HUFFMAN about funding for fiber-optic infrastructure build-outs to prospective industries, Ms. NEW said the department's fast-track funding could be used but the rural development fund does not have money for broadband infrastructure. She said the state's \$6 million site-development program could be used for build-outs.

Mr. LLOYD said that broadband needs for the state's K-12 schools are going to expand rapidly in the coming years as the way students consume information changes. He said the traditional model of internet use in schools driven by the need for email communication and a single computer lab accommodating a small percentage of students at a time is being replaced with one in which every student will be connected to the internet in real time with one-to-one computing as well as an expansion of online assessment. Tennessee is a leader in the transition to online assessment, and replying to a question from Representative PARKINSON, he said the state has tested its new online assessment program and connectivity shouldn't be a problem this year.

Mr. LLOYD said that although broadband capacity of schools is not currently under much pressure, lack of capacity could become a problem as shifts to online assessment and real-time one-to-one computing take place. He also cautioned that while many customers care only about download speeds, schools rely on having fast upload speeds as well. In response to a question from Mayor BICKERS about connectivity issues at some schools, Mr. LLOYD said these problems are not always the result of inferior service from providers and speed alone does not capture the problems at some schools. Instead, he said that bottlenecks that reduce

connectivity can be related to the infrastructure and devices within schools rather than their external connections to the internet.

Mr. LLOYD explained that the primary broadband issue for school districts is cost. Tennessee districts rely on the federal e-rate program, which is managed by the FCC and pays for a portion of what Internet providers charge, for 86% of their broadband funding and would not be able to afford broadband without it. Several districts recently lost e-rate funding after FCC audits found problems with their vendor selection process. In response to Mayor BICKERS' question about other funding sources, including federal Race-to-the-Top funding, Mr. LLOYD explained that Race-to-the-Top funding expired on June 30, 2015, and that although most of the money went to districts for individual projects, the state spent \$9 million building a data network that will eliminate the need for manual state reporting. He said that the FCC is offering incentives for states to connect K-12 schools through school-only networks; however, the grants are not large enough to cover all costs.

Mr. MALLARD said the growth of technology is driving the need for more broadband in higher education and broadband issues are often brought up when he visits the state's colleges of applied technology. Broadband access is increasingly important for training his students because more machines and appliances, such as heating, ventilation and air conditioning units connected with smart thermometers, are being connected to the internet. As a result, his classes can exceed their monthly data cap of 250 gigabytes in a single day. Mr. MALLARD said that he finds that some of his students have access to broadband at home, but others do not, and he cautioned that coverage maps are not always accurate.

Sergeant EHLERT said broadband connectivity is important for public safety officials in the digital age, citing the ability to quickly check licenses, download building blue prints, check firefighters' vital signs, connect paramedics with emergency room staff, and operate Next Generation 911 systems as benefits. He cautioned that the most important issues related to broadband for those in public safety are slightly different from those of providers. While providers are more concerned about coverage and speed as they relate to customer satisfaction and return on investment, public safety officials need coverage where population density is very low as well as where it is high, and they need enough capacity to connect safety workers during large-scale emergency responses. Public safety networks must be able to support push-to-talk and group communication and must have built-in redundancy and hardened sites that will function during natural disasters. Deployable broadband that can be mounted on trucks is particularly important in areas where terrain and financial constraints prevent traditional broadband infrastructure from being built.

Sergeant EHLERT also described FirstNet, which is a nationwide public safety network being built that will rely on mobile broadband. FirstNet in Tennessee will be interoperable with FirstNet networks in other states. In response to Representative WIRGAU, he said that most networks currently used for public safety are operated by commercial carriers. In response to Mayor ROWLAND's questions about weak links in broadband coverage and performance throughout the state, Sergeant EHLERT said coverage is a problem in less heavily populated

areas, but the lack of people does not mean that service isn't needed in those areas. He also said that voice communication throughout the state is generally good, but data networks that can be used to send videos or photos of crime scenes to officers could be improved. In response to Representative WIRGAU's concerns about security, Sergeant EHLERT said that end users must be trained to maintain the security of public safety networks.

Mayor LAWSON described inconsistencies in coverage in his community. He mentioned that he has to rely on a mobile hotspot rather than wired coverage at his house despite the fact that neighbors on either side of him have access to wired broadband and there is cable running along the road in front of his property. As a result, he has difficulty downloading large files, which hampers his and his family's ability to use other devices in his home.

Mayor LAWSON said fiber-optic broadband infrastructure is typically part of the requirements for prospective businesses and industries in their site selection processes, and his county has lost businesses to counties with better broadband coverage. He said this happens despite the fact that there is a lot of fiber-optic cable in his county that is not being used. He said that cost is an impediment for both residents and businesses, citing the example of a business owner who was quoted a price of \$85,000 to connect existing fiber-optic infrastructure along the interstate to his location just 1.4 miles away.

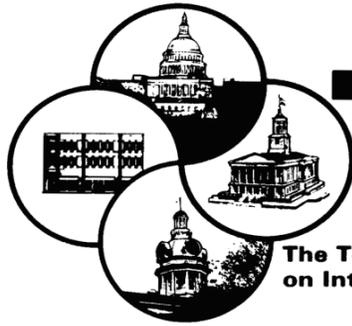
Mayor LAWSON said commercial providers cite the low rate of return on investment as a reason for not expanding in his county. He characterized broadband as today's utility and stressed that, although his local electric cooperative wants to be able to provide broadband and he thinks they should be allowed to, he does not care whether broadband is provided by commercial carriers, electric cooperatives, or municipally-owned utilities, as long as coverage in his community improved. In response to Mayor ROWLAND's question, Mayor LAWSON said he does not think the major commercial carrier in his county have a local license.

Ms. ROSE said that common complaints received by the Tennessee Farm Bureau include service that covers some but not all residents in a given area, speeds that are too slow to be of value, costs that are too high, data caps that are too low or that can only be used at non-peak times, and infrastructure easements that are required but cannot be accessed by those whose land they cross. She said broadband is essential for farmers as they collect, analyze, and use massive volumes of data to manage their businesses. She explained that modern farm equipment is often internet enabled, allowing it to communicate mechanical issues before they become major problems and to use and collect real-time data. She said these machines can transmit data collected in the field to the internet, which farmers can download and analyze using information about markets and weather to plan their farm operations. Ms. ROSE said data collection is vital for farmers as they compete in a global economy, and they cannot just wait for providers to extend coverage to them.

In response to a question from Representative WIRGAU about whether farmers are moving toward mostly wireless service, Ms. ROSE said farmers needed both wired and wireless service. Equipment wirelessly uploads the data it collects, but farmers need wired connections to download the data.

Mr. MCMAHAN said technology has exploded in the last 15 years, but providers haven't been able to build to all of the areas that need or want coverage; as a result, local stakeholders have tried to take care of their communities' needs. He also said that TACIR's study could help many people better understand what is accessible to them.

**Chairman NORRIS adjourned the meeting at 5:08 p.m.**



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22 October 2015

### Meeting Called to Order

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Present 20	Absent 4
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Mayor Pro Tem Kay Senter	
Senator Jim Tracy	
Mayor Larry Waters	
Comptroller Justin Wilson <sup>1</sup>	
Representative Tim Wirgau	
Senator Jeff Yarbro	
Mr. Kenneth Young	

<sup>1</sup> Russell Moore represented Justin Wilson.

#### **4. Zoning Process and Consent to Rezone Private Property**

Senior Research Consultant Bill TERRY presented the final report on the zoning process and consent to rezone private property for approval. The report responds to Senate Bill 549 by Senator NICELEY and House Bill 775 by Representative DANIEL, which would require the written consent of the owner for any rezoning affecting a single parcel of private property. The report says that short of requiring the consent of owners for rezonings, some of the approaches already used by local governments in Tennessee to ensure that property owners are aware of rezonings could be required. If additional notification requirements are placed in law, consideration should be given to authorizing local governments to require the party requesting the rezoning to pay for them.

Mr. TERRY also presented the language on takings that had been added to the report at the request of Chairman NORRIS. Mr. TERRY said that the US Supreme Court has held that if a land use regulation has too large of an effect on the value of a property, then that effect will be recognized as a taking under the US Constitution. He said that the Tennessee Supreme Court ruled in August 2014 in the *Phillips v Montgomery County* case that Article 1, Section 21, of the Tennessee Constitution encompasses regulatory takings in the same manner as the US Constitution. That case resulted from the local planning commission in Montgomery County disapproving a preliminary subdivision plat for the sole reason that the proposed subdivision was located in the path of a proposed extension of a state highway. The Tennessee Supreme Court ultimately remanded the case back to the circuit court for further proceedings to determine whether the planning commission's denial was in fact a taking. The parties have not yet asked for a ruling on the matter. Mr. TERRY said that there was a second lawsuit filed in chancery court where the property owner asked the court to determine whether the actions of the planning commission were arbitrary and capricious. That case has been heard, but there is no decision as of yet.

Representative WIRGAU asked when there would be a decision in the first case. Mr. TERRY said it was up to court and the parties. He said they were waiting on the decision in the chancery court before they take any action in circuit court.

Chairman NORRIS said, reading from the draft report, that giving individual property owners veto power over rezonings would disrupt zoning efforts based on community consent expressed through local, elected legislative bodies and could create problems for neighborhoods by allowing incompatible land uses next to each other. He noted that there are some additional things that could be done and are being done by some local communities already and those are spelled out in the report.

Mayor ROWLAND moved approval of the report, Mr. MCMAHAN seconded the motion, and the report was approved unanimously.

## **5. Homestead Exemption in Tennessee Bankruptcy (Public Chapter 326, Acts of 2015)-Panel Discussion**

Research Associate Tyler CARPENTER presented the draft report on homestead exemptions in Tennessee for review and comment. The report responds to Public Chapter 326, Acts of 2015, requiring the Commission to study the homestead exemption amounts in Tennessee and determine whether they should be increased to accurately reflect the cost of living. He said the homestead exemption in Tennessee primarily applies in bankruptcy and seeks to balance the interests of debtors and creditors. Mr. CARPENTER explained that the federal homestead exemption amount was originally set at \$7,500 in 1978 and has since grown to \$22,975; it is doubled for joint filers. He said that when the federal exemption was established, Tennessee's homestead exemption was \$5,000 for an individual and \$7,500 for joint owners; these amounts have never been increased and continue to lose value. He also reviewed the larger exemptions for some categories of debtors added in the last eleven years.

Mr. CARPENTER said that had Tennessee's homestead exemption amounts for individuals and joint filers kept pace with inflation, they would now be valued at \$16,304 and \$21,645. If the exemption for joint filers was double the exemption for individuals, it would now be \$32,608. A simpler way to bring these figures up to date and keep them up to date would be to adopt the federal amounts, which are adjusted for inflation every three years. Tennessee's exemption amounts for debtors with custody of a minor child are currently more than those amounts and would need to be grandfathered until the federal exemption amount catches up to it.

In the discussion following the presentation, Chairman NORRIS asked staff to rephrase language in the report referring to clarify that state laws are exemption laws not bankruptcy laws and that bankruptcy courts were restructured under the Bankruptcy Reform Act of 1978, not created.

Chairman NORRIS invited Linda KNIGHT, a partner at Gullett Sanford Robinson & Martin, to speak to the Commission. Ms. KNIGHT practices in the areas of bankruptcy and commercial law, litigation, and general business counseling. She said she has several concerns about adopting different sets of exemptions for Chapters 7 and 13, an idea suggested by a panelists at the September 2015 commission meeting. Ms. KNIGHT said the bankruptcy code already contains incentives to file under Chapter 13, one of the rationales offered for different exemptions, and in some cases, one is almost forced to file Chapter 13 based on income and expenses. She said the bankruptcy system depends upon as much simplicity as possible and for cases to flow through as quickly and simply as possible. Creating separate sets of exemptions would make the already complicated system even more complicated. Attorney fees already went up markedly in consumer cases in 2005 because changes made to federal bankruptcy laws that year made representing consumer debtors much more time-consuming.

Ms. KNIGHT pointed out that under Chapter 13, a debtor has to pay unsecured creditors at least as much as they would have paid in Chapter 7, so higher exemptions for Chapter 13 wouldn't make any difference. Ms. KNIGHT said many Chapter 13 cases are not successful, so they either get converted to Chapter 7 or they get dismissed. If converted, exemptions have to

be recalculated. The time involved in recalculating separate sets of exemptions would add administrative overhead.

Ms. KNIGHT closed by saying that although it has been pointed out that some bankruptcies are beyond the debtor's control, sometimes bankruptcies result from really bad financial decisions or life decisions. As was pointed out in the last hearing and in the report, it is the unsecured creditors that really pay for exemptions. She said that if a debtor is not worthy of sympathy, there is really no point in penalizing his unsecured creditors by increasing the exemptions or creating different sets of exemptions.

Chairman NORRIS said Ms. Knight's concerns would be noted in the report.

Mayor BICKERS expressed concern that the report is almost entirely focused on the homestead exemption as used in bankruptcy and that the report should include other applications, noting that increasing the homestead exemption for bankruptcy would mean increasing it for those purposes as well. He also suggested including the full set of exemptions offered in Tennessee and each state and expanding discussion of the interests of creditors and the effects that bankruptcy exemptions may have on creditors, communities, and the tax bases of the local governments that serve them.

Senator YARBRO asked whether the General Assembly has raised the individual homestead exemption only once since 1870. Mr. CARPENTER answered yes. Senator YARBRO asked whether it would be best to index the homestead exemption to avoid continually revisiting it moving forward. He said that the indexed federal exemption is appealing because it would continue to grow with inflation.

Representative CARTER said that what he took away from the panel discussion at the September meeting was that 96% to 97% of people owe more on their home loans than their homes are worth and that raising the homestead exemption will not change anything in most cases. He said that if the homestead exemption is increased too much, then the people with true assets will be able to avoid debt.

## **6. Hotel Motel Tax-Draft Report For Review And Comment Hotel Motel Tax Earmark and Impact Study**

Senior Research Associate Michael MOUNT presented a draft report on lodging taxes for review and comment. The report responds to Public Chapter 395, Acts of 2015, which directs the Commission to study the effect of hotel occupancy taxes on the economy, tourism, and the hospitality industry. Mr. MOUNT provided background information on the use of lodging taxes in Tennessee and discussed their effects on the economy, their use in other states, and the role of public input in establishing or increasing the taxes. In Tennessee, combined state and local sales tax rates can equal up to 9.75%; when lodging taxes are added to that, the total tax rate paid by lodgers can be as high as 19.75%. The most common rates in Tennessee are from 14% to 15%, consisting of a 5% lodging tax plus the sales tax. He noted that tourism and hospitality revenue is at an all-time high and grew 6% from 2013 to 2014.

Mr. MOUNT said that, overall, lodgers do not reduce stays much when lodging taxes increase. They are even less sensitive to them when staying in destination cities or economy hotels. Mr. MOUNT said, however, that the presence of different lodging tax rates in close proximity can hurt hotels in higher-taxed areas.

Mr. MOUNT said that forty-three states authorize local lodging taxes, and most grant blanket authority to local governments and earmark the revenue for tourism. Tennessee and the other states that grant authority one local government at a time do not always earmark lodging revenue. A small number of states have no caps on lodging tax rates and allow them to be set at the local level either by the legislative body adopting the tax or by referendum.

Mr. MOUNT said that the draft report says that it is not clear that the General Assembly's practice of considering earmarks one case at a time rather than imposing a general earmark—especially in the absence of a general authorization to impose lodging taxes—is not an appropriate way to respond to disparate local situations and avoid unnecessarily restricting all local officials' discretion and hindering communities' efforts to set their own priorities and determine how best to meet their needs.

In the discussion following the presentation, Senator TRACY asked whether taxes were higher in Nashville than in Lebanon or Franklin and whether people pass through Nashville and stay in bedroom communities because of the hotel taxes. Mr. MOUNT answered that a study might find a difference and that a study of hotel rates in Odessa and Midland Texas found that hotels in the city with the lower tax rate had more revenue per available room.

Chairman NORRIS invited Dan HASKELL, to speak to the Commission on behalf of the Tennessee Hospitality and Tourism Association. Mr. HASKELL said that while the report presumed that customers do not care about room taxes, lodging taxes are a major factor. Travel planners list hotel taxes as one of ten factors they consider when choosing a site. Professional travelers are sensitive and may decide not to return to places where taxes are too high. He said that tax rates up to 17% to 18% seem bearable particularly for destination cities, but when they are higher than that, it is a problem.

Mr. HASKELL said that Tennessee has particularly high rates in small towns, and the revenue from the taxes is mostly put into their general funds. He said that hotel taxes that are not invested in tourism are shortsighted expenditures, and that spending the money properly brings back more than what is spent. Mr. HASKELL also said that Tennessee is at a competitive disadvantage compared to states with lower lodging taxes.

Mr. HASKELL said that the Tennessee Hospitality and Tourism Association would be vigorously opposed to an additional room charge like the \$5 tax adopted in Georgia. He said that increasing lodging taxes drives business elsewhere; an American Economics Group report, *Room Taxes and the Economic Impact on the Lodging Industry*, said that a 2% increase in room taxes causes a large decrease in economic activity.

Representative CARTER, referring to Chattanooga's combined tax on lodging of 17.25%, said that 9.75% of the rate is because of state and local sales taxes and that the lodging tax rate itself seems reasonable. Mr. HASKELL responded that the combined tax rate is what matters. The hotel association in Chattanooga had opposed a lodging tax but changed sides and supported it when the money was devoted to developing downtown Chattanooga and the riverfront. Representative CARTER said the hotel owners did not oppose the tax because they saw it as an investment.

Mr. HASKELL said that he understands that local governments need revenue to provide services and the argument that there are costs associated with serving tourists, but tourists also contribute to our economy in a huge way beyond just staying at hotels. He also said that a significant number of tourists in Tennessee are Tennesseans.

Asked by Senator YARBRO whether there are cities outside the big four that have earmarked lodging taxes for tourism development, Mr. HASKELL said most of the private acts or exceptions to the general law in the last ten years authorizing lodging taxes have earmarked the revenue for tourism. He said that identifying what increases tourism is complicated, giving the popularity of youth athletic tournaments as an example.

County Executive HUFFMAN said the complaints he hears are not about the tax rates but about room rates. He said that while a tax could be too high and hurt the economy, restricting it too much is a concern because local governments have very narrow tax bases. Part of the reason for the tax is to provide basic services. Saying that it looks like the greatest difference between rates in Tennessee and neighboring states is between Memphis and Southaven, Mississippi, County Executive HUFFMAN asked whether the industry knows what the effect of differential tax rates is on hotel tax revenue. He added that almost all the states around Tennessee have lower consumption taxes and that the outflow of sales taxes from Tennessee to other areas is significant. Mr. HASKELL said he did not have a study on that subject, but the loss of business and revenue is the issue. A problem for local governments on the border is that higher sales and hotel taxes here mean that people, given the chance, will go to another state.

County Executive HUFFMAN asked whether Mr. HASKELL had any recent numbers on how the lodging industry is performing. Mr. HASKELL said he would provide the Commission with those numbers. He said that during the recent economic downturn, the hospitality industry in Tennessee was the only industry that continued to grow.

Vice-Chairman ROWLAND asked whether customers who stay more than 30 days in a hotel should have to pay the lodging tax and what is the definition of a long-term stay. Mr. HASKELL said after 30 consecutive days the customer is no longer considered a transient and, therefore, does not owe lodging taxes. One of the discussions that led to last year's bill was the possibility of moving the requirement from 30 days to 90 days. You pay the tax for 29 days, and then on the 30th day you get a credit.

Representative WIRGAU asked whether the lodging industry is okay with a combined lodging rate as high as 17% or 18% as long as some of the money goes to tourism. He added that Henry

County spends \$500,000 a year on tourism, more than they generate from the lodging tax. He said it should be the overall amount spent on tourism that concerns the tourism industry. Mr. HASKELL said that lodging tax rates over 18% are a concern no matter how the revenue is spent. He gave the example of New York City raising lodging tax rates to 21% but quickly lowering them after losing business to other cities.

Representative WIRGAU said that this year the governor added \$6 million to the budget for promoting tourism because of how well tourism is doing. Tourism keeps growing, and it is vital to rural communities. He asked how we are comfortable with 18% combined rates in one county but not in another. Mr. HASKELL said local governments were considering rates of 19% to 21% without any focus on what to do with the money. Even Nashville, which has led the way, built a convention center with their first hotel tax in the mid-70s; 80% was dedicated to tourism and 20% to the general fund. This example was the inspiration for the 80% earmark in the original version of the bill that was eventually amended and referred to the Commission for study.

Representative WIRGAU said that requiring local governments to spend lodging tax revenue on tourism will just create a numbers game. The money they were already spending on tourism will be shifted to other needs. In response, Mr. HASKELL said that some cities and counties are spending money for tourism but not taking credit for it.

Mayor WATERS said the industry appears to have three issues: the sales tax, the hotel tax, and the use of that hotel tax. He added that Sevier County divides the revenue between school infrastructure and marketing, trying to reach an appropriate balance.

## **7. County Employees Serving On County Commissions-Draft Report for Review and Comment**

Senior Research Associate Jennifer BARRIE presented the draft report on the issue of county employees serving on county commissions for review and comment. The report responds to a request from both the Senate State and Local Government and the House Local Government committees to study Senate Bill 466 by BELL and House Bill 985 by ROGERS, which would disqualify all county employees from serving on the county commission of the county that employs them. The draft concludes that rather than forbidding all county employees to serve on their county commissions, conflict of interest measures and provisions in the law could be strengthened to make conflicts more apparent and to further limit the situations in which commission members use their influence to benefit themselves, their businesses, or their families.

Examples from existing practices of Tennessee counties, previously introduced legislation, and other states' laws include further restricting voting and service on certain committees; more specifically defining conflict of interest in law; requiring ethics training, ethics committees, and written disclosures when voting; and authorizing state ethics commissions to enforce conflict of interest laws. Other options include forbidding county employees serving as county commissioners to vote if a conflict of interest exists, with conflict of interest defined as anything

that improves their pay or benefits or the pay or benefits of their spouse, and requiring commissioners who accept county employment after being elected to resign but allowing them to run again in later elections.

In response to questions, Ms. BARRIE clarified that judicial officers are not allowed to serve on the legislative body of the county that employs them. She also explained that each county is required to have a code of ethics, which can be more stringent than state law.

Vice-Chairman ROWLAND and Mayor MCBRIDE pointed out apparent conflicting interpretations of what is or is not a lucrative position in court decisions and attorney general opinions interpreting Article II, Section 26, of the Tennessee Constitution presented in appendix C. Mayor MCBRIDE asked that the definition of lucrative office be clarified in the final report. The Commission also asked staff to clarify whether the majority required to pass legislation is reduced when a member abstains because of a conflict of interest.

Vice-Chairman ROWLAND asked who determines whether there is a conflict of interest and overrules the vote, and what happens if commissioners disagree about whether there is a conflict. Ms. BARRIE replied that the law doesn't specify. Mr. MCMAHAN said that in Cocke County the issue is usually referred to the county attorney.

Mayor BURGESS asking whether the Tennessee County Commissioners Association's (TCCA) ad hoc committee on county employees had issued its recommendations on whether county employees should be allowed to serve on their legislative body. Ms. BARRIE, quoting from a document provided by TCCA, said it had and the recommendations were to (1) allow county employees to serve as county commissioners but not allow them to vote if they have a conflict of interest, (2) define a conflict of interest as anything improving their pay or benefits or the pay or benefits of a member of their immediate family, and (3) define immediate family member as a spouse. The TCCA intentionally left vague the issue of whether a commissioner married to a teacher could vote on a budget, a question raised by Mayor WATERS.

Mayor BURGESS asked whether the TCCA recommendations remove the ability of employees to read the disclosure statement and then vote. Ms. BARRIE said that the recommendations did not mention reading disclosure statements, but TCCA staff said that commissioners abstaining because of conflicts would have to let the group know why.

Chairman NORRIS recognized Representative ROGERS, sponsor of the House bill, and offered her the opportunity to speak before the Commission. Representative ROGERS said she did not bring the bill because of individual conflicts with contracts but rather because of the violation of separation of powers created by allowing county employees serve on their legislative body. An assertive executive could bring the percent of commission seats filled by employees from 50% to 70%. The solution is to separate the power an individual has so they cannot be coerced. She said she is also concerned that the county commission could become the stage where departments battle to establish their priorities.

**Chairman NORRIS adjourned the meeting at 10:41 a.m.**