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**MINUTES OF THE
 TENNESSEE ADVISORY COMMISSION
 ON INTERGOVERNMENTAL RELATIONS**

29 August 2017

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 16 at 1:06 p.m., Chairman Mark NORRIS presiding.

Present 20	Absent 4
Mayor Tom Bickers	Ms. Christi Gibbs
Mayor Ernest Burgess	Representative Harold Love, Jr
Metropolitan Trustee Charles Cardwell	Vice Mayor Kay Senter
Representative Mike Carter	Representative Tim Wirgau
City Commissioner Betsy Crossley	
Assistant Commissioner Paula Davis	
Mayor Brent Greer	
Senator Thelma Harper	
County Executive Jeff Huffman	
Mayor Kenny McBride	
Mr. Iliff McMahan	
Senator Mark Norris	
Representative Antonio Parkinson	
Representative Charles Sargent	
Senator Jim Tracy	
Mayor Larry Waters	
Comptroller Justin Wilson ¹	
Senator Bo Watson	
Senator Jeff Yarbrow	
Mr. Kenneth Young	

¹ Lauren Spires represented Justin Wilson

1. Call to Order and Approval of the Minutes

Chairman Mark NORRIS called the meeting to order at 1:06 p.m., dispensed with the calling of the roll, and requested approval of the minutes of the May 23-24, 2017 meeting. Regional Director Iliff MCMAHAN moved approval and Representative Mike CARTER seconded the motion, which passed unanimously.

2. Commission and Staff Updates

Executive Director Cliff LIPPARD provided the members with several commission updates, most notably being the resignation of the Vice Chairman, Mayor Tom ROWLAND, for personal reasons related to his health, effective August 3, 2017. Dr. LIPPARD said that Mayor Rowland had served on the Commission since August 1995 and as vice chairman since August 2002. Dr. LIPPARD informed the members that the election to fill the Vice Chair position would be postponed until the new member filling Mayor ROWLAND's position as a municipal representative is filled, but would probably be held during the December meeting.

Chairman NORRIS said that Mayor ROWLAND would be greatly missed by the Commission. He then segued to discussing the Commission's recent recognition for outstanding public policy achievement by the Governmental Research Association (GRA). The Commission was recognized for the tangible improvements in government made possible in part by its 2015 report, *Municipal Boundaries in Tennessee: Annexation and Growth Planning Policies after Public Chapter 707*. The GRA is a national organization for professionals engaged in public policy research. Chairman NORRIS thanked the members for all of their work on the report.

Dr. LIPPARD then requested the members' concurrence on two issues, a request by the Department of Health for TACIR participation on a working group for their fluoridation initiative, and a TACIR staff request to enter into a contract with a software developer to make it possible for our contract surveyors from the development districts to enter latitude and longitude coordinates for local projects in the Public Infrastructure Needs Inventory database. On the first, noting that it is not clear that the Commission would be able to work with the group's September 30, 2017, timeline, Dr. LIPPARD suggested that a better option would be for the working group to recommend the legislature seek a TACIR study next session. The members concurred with this recommendation and with the staff request for infrastructure database enhancements.

Dr. LIPPARD concluded the updates, informing the members that Ethel Detch, senior research consultant, was retiring from her status as a contracted part-time employee with the Commission on August 31, 2017. He noted that Ethel had been a valuable member of the TACIR team since March of 2009, serving as lead researcher on several of the Commission's more complex studies and contributing to numerous others.

3. 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.

Mr. MCADOO demonstrated the county-area profiles available on the website and emphasized that this is the only resource on the Internet that allows users to generate a profile of intergovernmental funding by county. He explained that TACIR staff will update this information and make incremental improvements as time and resources allow.

Chairman NORRIS said the Comptroller of the Treasury and the Council of State Governments both provide information related to fiscal federalism and asked that staff make each of those agencies aware of the Commission's website resources on fiscal federalism so that they might link to the website.

4. 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 whether debt issued by districts is backed by the local governments or by the ECD and whether it is fair to use 911 fee revenue or property taxes for dispatch. He asked what statute says about the debt responsibility. Executive Director LIPPARD said staff knows of five ECDs with revenue bonds. He said he is not sure who is responsible for the debt but assumes, similar to the utility districts, the district would be responsible, not the city or county. Staff will follow up with a definite answer. [In a telephone conversation on September 12, 2017, Ms. BARRIE explained to Mayor HUFFMAN that the statute does not say that the city

or county would be responsible for a district's debt, and therefore, the district would be responsible.]

The topic of funding of dispatch services came up again later, with several members asking questions about MTAS and CTAS's position on using 911 surcharge funds to pay for dispatch. Mayor BICKERS asked why not allow each community to decide what works best for them? What is the public policy reason for MTAS and CTAS's position? Ms. BARRIE responded that the state allows each community to decide what works best for them. Dispatch is a permissible use of revenue, but there are different views on whether 911 money should be used for dispatch. Some stakeholders think the 911 money was never intended to pay for dispatch, but many disagree with that view. MTAS and CTAS think local governments and agencies should be contributing to dispatch. Mayor WATERS said he is concerned about opposing any 911 funds going to dispatch. Executive Director LIPPARD said the report does not recommend that the 911 funds not be used for dispatch. It says dispatch is a permissible use.

[During the research process, staff had spoken with MTAS and CTAS consultants who share the view that 911 revenue should not be used for dispatch. After further consultation with the executive directors of CTAS and MTAS, staff amended the report to say that neither organization takes a position on how 911 funds should be spent, but both encourage and support agreements between ECDs and local governments to pay for dispatch.]

On that same topic, Chairman NORRIS later read from a letter submitted by Representative Wirgau, who was unable to attend the meeting. The letter expressed Representative Wirgau's agreement with the National Association of State 911 Administrators' (NASNA's) position that no 911 funds should be used for dispatch salaries. Chairman NORRIS noted the report does not make a recommendation but only highlights the issue and said this might be the subject of new legislation in January.

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.

Mayor GREER added that Representative Wirgau wrote in his letter that some emergency communication districts (ECDs) were charging 65 cents on residential lines in 2012 when the base amounts were set. He asked whether those ECDs are receiving less under the new formula because additional money is being distributed to the ECDs that had higher fees in 2012. Ms. BARRIE responded that the law allowed ECDs that were not at the maximum rate as of July 1, 2011, to request an increase to their base amount. Every ECD that was not at the maximum rate has since requested and received an increase.

Representative CARTER moved approval of the report, and City Commissioner Betsy CROSSLEY seconded the motion. The report was approved unanimously.

5. 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. He pointed out three recent news articles from across the state illustrating some of the issues addressed by the report and the many challenges facing the criminal justice system that are beyond the scope of the report. 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.

Mr. MOREO summarized the recommendations presented in the report, which were unchanged from the draft report. 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 explained that, since the draft report was presented at the Commission's May 2017 meeting, the state's contracts with various counties to house convicted felons had expired, and noted why some contracts have not been renewed. Some counties have not been able to comply with the federal Prison Rape Elimination Act (PREA), which makes them ineligible for state contracts. Appendix E was added to the report to explain this law and its effect on Tennessee. Other counties have failed their TCI inspections and the state cannot contract with them. The report explains that non-certified counties did not lose their existing contracts, but the state cannot sign new contracts with them unless they are certified. Counties without contracts that fail inspections, however, are not reimbursed any differently than counties that are certified. The final report also added some details about how contract counties get reimbursed for medical expenses.

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.

Representative Antonio PARKINSON asked whether the report explains what offenses are causing the recidivism and returning people to jail or prison. Mr. MOREO said that was not something he examined for this report, but that the TDOC recidivism studies may have more details. Representative PARKINSON asked how spending \$1.6 million to fund criminal justice liaisons would reduce the jail population. Mr. MOREO explained that the criminal justice liaison program does two things—it intervenes to divert some people from jail before trial and it helps follow up with people who are released in order to keep them from going back to jail. Representative PARKINSON asked whether there were measurements of the program’s success, and Mr. MOREO said the Department of Mental Health and Substance Abuse Services provided some statistics at the Commission’s December meeting.

Mayor Jeff HUFFMAN asked whether staff had discovered any provisions in other states that allow local jails to reduce overcrowding, similar to powers given to Tennessee’s governor to reduce prison overcrowding. Mr. MOREO replied that he had not noted a similar provision in other states.

Senator Jeff YARBRO asked whether staff knew what the economic benefit might be from lowering the recidivism rate and whether there is an analysis of the cost benefit of reducing recidivism for prisoners released from jails to the lower rate for those released from prisons. Mr. MOREO replied that an economic cost analysis was not something staff had done; that it was beyond the scope of the current report but is probably worthy of future research.

Chairman Mark NORRIS noted the presence of Senator Ken YAGER in the audience and said that there has been some discussion in the Senate State and Local Government Committee regarding incentives for local jails to adopt programs aimed at lowering recidivism.

Representative Mike CARTER asked whether studies on jail recidivism took into account inmates’ mental health conditions. Mr. MOREO said he would need to look at the studies in more detail, and that it was not something included in this report. [The TDOC studies did not include mental health conditions in comparing recidivism.] Representative CARTER spoke further about the importance of treating patients with mental health issues instead of criminalizing their illness and putting them in jail. He noted a successful housing program in Charlotte, North Carolina that he and others from Hamilton County have looked at that is being replicated in Hamilton County.

Mayor Larry WATERS spoke about the problem of pretrial detainees taking space in jails and about the struggle to treat people with opioid addictions and keep them from returning to jail after release. He said that the cost of adding space for more inmates has prevented his county from trying treatment and reentry programs.

After a motion from Mayor HUFFMAN, seconded by Mayor BICKERS, the report was unanimously approved.

6. 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.

Senator Jim TRACY asked what the fee should be if Tennessee were to implement boat titling and what the average boat titling fee is in other states. Mr. SHAVER said staff does not have a recommendation on a fee at this time, and titling fees vary among the states, ranging from \$2 to \$60, with the average fee being approximately \$15. Senator TRACY noted that Tennessee does not require mandatory liability insurance for boats while we do with automobiles.

Mayor Tom BICKERS asked staff to include additional information in the report on the effect of a title in protecting purchasers of boats that are subject to a lien. Mayor BICKERS said he has had clients in the past that experienced problems from unknowingly purchasing boats with preexisting Uniform Commercial Code liens. He said that if boats were titled similar to automobiles, perhaps the buyer would be less likely to purchase a boat with a lien against it because the buyer would see the lien listed on the title document.

Mayor Brent GREER said that the gatekeepers of a potential boat titling system in Tennessee would be the county clerks and asked what the county clerk's opinion was regarding boat titling. Mr. SHAVER said the county clerks have expressed a willingness to be involved in a potential boat titling system and have been helpful with the study. He said Kellie JACKSON, President of the Tennessee County Clerks Association, was in attendance.

Chairman NORRIS adjourned the meeting at 2:48 p.m.



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**MINUTES OF THE
 TENNESSEE ADVISORY COMMISSION
 ON INTERGOVERNMENTAL RELATIONS**

30 August 2017

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 16 at 8:33 a.m., Chairman Mark NORRIS, presiding.

Present 22	Absent 2
Mayor Tom Bickers	Vice Mayor Kay Senter
Mayor Ernest Burgess	Representative Tim Wirgau
Metropolitan Trustee Charles Cardwell	
Representative Mike Carter	
City Commissioner Betsy Crossley	
Assistant Commissioner Paula Davis	
Ms. Christi Gibbs	
Mayor Brent Greer	
Senator Thelma Harper	
County Executive Jeff Huffman	
Representative Harold Love Jr	
Mayor Kenny McBride	
Mr. Iliff McMahan	
Senator Mark Norris	
Representative Antonio Parkinson	
Representative Charles Sargent	
Senator Jim Tracy	
Mayor Larry Waters	
Senator Bo Watson	
Comptroller Justin Wilson ¹	
Senator Jeff Yarbrow	
Mr. Kenneth Young	

¹ Lauren Spires represented Justin Wilson

7. 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. Representative PARKINSON asked how many companies have not met expectations. Mr. LAWRENCE said that over the last six years the board has had to use clawbacks frequently. When asked by Representative PARKINSON whether the taxes that are abated are repaid, Mr. LAWRENCE said the taxes are not repaid but that EDGE may reduce the term of the PILOT or terminate the agreement altogether. EDGE performs periodic reviews and catches noncompliance early.

In response to Mayor HUFFMAN asking how many Tax Increment Finance districts (TIFs) there are in Shelby County and how they are handled in comparison to PILOTs, Mr. LAWRENCE said that they have five TIF districts, and explained that they used TIFs for inner city revitalization projects and large-scale projects involving land assembly or residential property. They find PILOTs are better suited for most economic development projects.

Mayor HUFFMAN then asked how EDGE competes when a company with a PILOT granted by EDGE is lured by Mississippi. Mr. LAWRENCE said they would discuss issues like workforce development with the company and try to offer additional incentives. Asked by Mayor HUFFMAN whether all projects have clawbacks and whether PILOTs are provided to businesses other than manufacturing, such as retail, Mr. LAWRENCE said yes.

Asked by Representative SARGENT whether the county was giving up the portion of the property taxes for education, Mr. LAWRENCE said the county receives PILOT revenue and that they decide how the money is spent. Representative SARGENT followed up by asking why education funds are being abated. Mr. LAWRENCE said that without the business in the community there would be no taxes at all. Representative SARGENT said business would come when you have an educated workforce and mentioned that he represents a county that does not abate the education portion of their property tax.

Mayor WATERS voiced concern over PILOT agreements being granted for retail businesses such as supermarkets. He explained that a city industrial development board (IDB) could give up city and county property tax revenue for 20 years with no discussion with the county. Mayor WATERS added that in some cases the PILOTs are in Tourism Development Zones (TDZs) and the county does not receive the additional sales tax revenue. In response to Mayor WATERS asking how EDGE dealt with such situations, Mr. LAWRENCE said they do in depth analysis to make sure the business will bring something new, like additional tax revenue, to the community and not take it away.

Responding to Mayor BICKERS asking why Tennessee feels the need to offer incentives if we have such low business costs in the state, Mr. LAWRENCE said incentives are a way to set Tennessee apart from other states that have low business costs as well. Mayor BICKERS asked whether the effect on existing businesses, specifically grocery stores, is taken into consideration when conducting the cost benefit analysis, to which Mr. LAWRENCE responded by giving an example involving three grocery centers EDGE worked to recruit. EDGE did an in-depth analysis to identify areas where a community needed to be served and where the people did not have the ability to reach an existing facility.

Mayor WATERS asked how we encourage discussion and cooperation on these types of issues across the state. Mr. LAWRENCE responded that EDGE just recently started building relationships with other cities to transfer best practices with each other. Ms. KNOTTS suggested communities draft an economic development policy with input from the public.

Mayor HUFFMAN then asked whether EDGE's cost benefit analyses consider economic ripple effects. Mr. LAWRENCE said they have a third party that does those analyses. Mayor HUFFMAN asks what they do when there is a negative cost benefit analysis. Mr. LAWRENCE said they look at the situation holistically. For example, there may not be many jobs created, but there may be a lot of capital investment.

In response to another 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 SARGENT then asked whether Blount County was giving up the portion of the property taxes for education. Dr. MURRAY responded that the local governments decide how to spend the PILOT revenue, not the IDB, and that the county and city mayors who sit on the IDB have not expressed concerns about education funding.

Representative PARKINSON asked Dr. MURRAY and Mr. LAWRENCE whether they have been able to quantify the effect of loss when companies miss expectations. Both men answered no. Representative PARKINSON said this is important for the General Assembly to know for accountability to taxpayers.

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 HUFFMAN asked whether Blount County is part of a multi-county industrial development organization. Dr. MURRAY said no. Mayor HUFFMAN asked whether the distribution formula for PILOTs revenue has to be in the agreement. Dr. MURRAY said no.

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.

8. 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.

Senator TRACY said we're going to have to do something in the BEP funding formula for fast growing counties, which we need to define, and that portables are not a long term solution. He asked about growth rates in Tennessee. Ms. DURSKI answered the state is at slightly less than 1/2 %, Williamson and Rutherford are at 2-3%, and others are stable or declining. Representative SARGENT added that Williamson's student growth is one third of the state's student growth.

Mayor HUFFMAN asked, since fast growing counties' tax bases are growing fast as well, whether they might get less state funding in the future. Ms. DURSKI said it's possible.

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.

When asked by Representative LOVE whether raises approved by the legislature are funded with local dollars, Ms. HOLMAN said yes, but 500 of the 3,000 teachers in Williamson County are not funded by the BEP funding formula and are funded locally. Representative LOVE said it's worth considering changing the BEP funding formula so we don't have the issue of locals having to give pay raises without adequate funding from the state.

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. He said 80% of the average state funding per student should be the minimum, and six school systems are not getting that. He asked Ms. HOLMAN what Williamson's projecting for growth in the next 5 to 10 years. She said \$300 million for buildings in 5 years and \$500 million in 10 years with operating cost doubling. Representative SARGENT said we have a lot of school districts with no growth who haven't built a new building in 20 or 30 years.

Mayor HUFFMAN said Rutherford County's property tax base has grown and per capita debt has gone down. He asked whether Rutherford County raised its property tax recently. Mr. SANDVIG said in the earlier years, growth was a burden on the property tax, and they increased the sales tax to the maximum of 2.75% in 1999-2000.

Mayor HUFFMAN asked how school resource officers are funded: Ms. DURSKI said they are not one of the positions that are in the BEP funding formula, and many districts contract with local law enforcement agencies, or law enforcement provides them. She said safe schools grants are available to our districts, \$4.6 million statewide, and that's been steady for several years. Mr. HALL said there's a huge liability difference with a school system employee and a law enforcement employee.

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.

Chairman NORRIS adjourned the meeting at 11:51 a.m.