



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM: Cliff Lippard *Cliff*
Executive Director

DATE: 25 January 2018

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

Note: This memorandum has been edited to reflect revisions to the first recommendation, as approved by the Commission on January 26, 2018.

The attached Commission report is submitted for your approval. The report was required by Public Chapter 431, Acts of 2017, which directs the Commission to study

- the economic benefits to counties and municipalities from the use of payment in lieu of ad valorem tax agreements and leases by industrial development corporations organized by municipalities;
- examining whether any economic benefits are derived from limiting the length of term of a payment in lieu of ad valorem tax agreement or lease to five or less years absent county approval or an agreement by the corporation or municipality to pay, each year after the initial five years, to the county a sum equal to the amount of real property tax that would have been assessed to a property if the agreement or lease had not been executed; and
- any additional issues that the Commission deems relevant to meet the objective of the study.

The Act requires the Commission to submit a report to the State and Local Government Committee of the Senate and the Local Government Committee of the House of Representatives no later than February 1, 2018. Staff has continued to refine the

information and recommendations presented in the report to address questions and feedback received from members at the December 2017 meeting.

Staff added language to clarify that whether or not PILOTs agreements have economic benefits depends on a number of factors and that some IDBs require proof that benefits outweigh costs before they will approve a PILOT. Language was included to explain that most local governments and the state don't generally collect enough information from businesses that have agreements to determine whether the incentives have resulted in economic benefits to their communities. Additionally, information was included explaining how local governments in Shelby County work collaboratively on PILOT agreements and highlighted that Bartlett only abates the improved value of real property of the city property tax, requiring the payment of PILOTs equal to taxes that were previously owed.

To address the concern of several members that PILOTs can reduce education funding, staff added language to the recommendation regarding cooperation between governments when approving PILOT agreements. The report recommends that to ensure that economic development needs are being met without undermining the tax base of other city, county, or special school districts, **the state should encourage local governments to pursue cooperative approaches before entering into ad valorem PILOT agreements with private businesses.** Existing approaches already available in state law include

- **forming a joint IDB with representation of all separate taxing jurisdictions within the county, to include special school districts which have taxing authority,**

AND

- **entering into interlocal agreements with other taxing jurisdictions to establish criteria for any PILOTs that might affect shared tax bases,**

AND

- **receiving written approval from the city or county mayor, the city or county legislative body, and local special school districts before approval of PILOT agreements.**

When entering into PILOT agreements for retail development, local governments should be required to take one of these three cooperative approaches for agreements longer than 10 years, or their IDBs should be required to make annual payments after the initial 10 years to the other affected local governments equal to the amount of

property taxes those governments would otherwise receive for the affected property based on its assessed value. Further, the state may consider requiring that local governments receive PILOT payments for retail development at least equal to the portion of the revenue that would have otherwise gone to schools. These requirements would not apply to PILOT agreements affecting only the jurisdiction making the agreement.

The other three recommendations in the report remain unchanged:

- **To improve transparency in the PILOT approval process without undermining the confidentiality needed to negotiate agreements, IDBs should be required to provide at least some public notice prior to their meetings, similar to what is already required for TIF hearings. Notice requirements should allow IDBs flexibility regarding both the information provided and the time between posting and when a meeting is held to ensure they remain workable within business recruitment processes that are highly competitive.**
- **Lessees with PILOT agreements should be required to include information about total investments made, number of jobs created, and taxes abated in their annual PILOT report to the Comptroller of the Treasury. To allow for greater accountability and transparency, the Comptroller's Office has recently compiled a master list of all agreements and in the future plans to send a copy of the annual reports they receive from each company to the local property assessor's office from that county so they can compare their reports.**
- **TACIR's fiscal capacity calculation should be updated to include current IDB assessment amounts rather than the 1993-1995 PILOT payments data currently used. This would require a change in state law or a recommendation by the BEP Review Committee and approval by the General Assembly.**