



# TACIR

The Tennessee Advisory Commission  
on Intergovernmental Relations



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226 Capitol Boulevard Bldg., Suite 508  
Nashville, Tennessee 37243-0760  
Phone: (615) 741-3012  
Fax: (615) 532-2443  
www.tn.gov/tacir

## MINUTES OF THE TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

23 May 2017

### Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 16 at 1:03 p.m., Chairman Mark NORRIS presiding.

<b>Present 20</b>	<b>Absent 5</b>
Mayor Ernest Burgess	Mayor Tom Bickers
Metropolitan Trustee Charles Cardwell	Mayor Brent Greer
Representative Mike Carter	Senator Thelma Harper
City Commissioner Betsy Crossley	Mayor Kenny McBride
Assistant Commissioner Paula Davis	Representative Antonio Parkinson
Ms. Christ Gibbs	
County Executive Jeff Huffman	
Representative Harold Love, Jr	
Regional Director Iliff McMahan	
Senator Mark Norris	
Mayor Tom Rowland	
Representative Charles Sargent	
Vice Mayor Kay Senter	
Senator Jim Tracy	
Mayor Larry Waters	
Senator Bo Watson	
Comptroller Justin Wilson <sup>1</sup>	
Representative Tim Wirgau	
Senator Jeff Yarbrow	
Mr. Kenneth Young	

<sup>1</sup> Lauren Spires represented Justin Wilson

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

Chairman Mark NORRIS called the meeting to order at 1:03 p.m., dispensed with the calling of the roll, and requested approval of the minutes of January 26-27, 2017. Vice Chairman Tom ROWLAND moved approval and Regional Director Iliff MCMAHAN seconded the motion, which passed unanimously.

## **2. Commission and Staff Updates**

Executive Director Cliff LIPPARD announced the signing of Public Chapter 116, Acts of 2017, which extended the Commission until 2021. The Act was amended to include an attendance requirement whereby appointed members who miss more than half the meetings in a calendar year must be removed from the Commission. He also welcomed the new and reappointed commission members as well as new and returning TACIR staff members.

## **3. Fiscal Year 2016-17 Accomplishments**

Deputy Executive Director Melissa BROWN summarized the Commission's major accomplishments for the past fiscal year, which will be incorporated into the biennial report for fiscal years 2016-17 and 2017-18.

Research Manager, Mark MCADOO presented a demonstration of the Commission's fiscal federal website, which is under development. He explained that fiscal federalism is the aspect of public finance that addresses the way federal, state, and local governments share responsibility for funding and administering programs.

Senator Bo WATSON asked whether this project was in line with TACIR's mission, and if TACIR has the staff resources to maintain this website or whether additional positions would be needed. Mr. MCADOO responded that TACIR staff is monitoring intergovernmental aspects of funding to see how changes at one level may affect other levels of government. Executive Director Cliff LIPPARD responded that TACIR has the capability to maintain the website with existing resources.

Chairman Mark NORRIS asked whether the information could be presented in a manner that relates to the state budget. Executive Director LIPPARD responded that the intent is for the website to include state and federal funding to local governments and display information that relates the funding to the state budget.

Senator Jeff YARBRO asked whether we knew the amount of federal taxes collected in Tennessee by county. Mr. MCADOO responded that in 2015 Tennessee received \$70.2 billion in federal funds and that the Internal Revenue Service collected \$62.7 billion in taxes from Tennesseans in 2015. Mr. MCADOO explained that TACIR does not currently have data on taxes collected by county, but that staff would work to collect this information.

Chairman NORRIS requested that an update of progress on the website be presented at the August Commission meeting.

#### **4. Legislative Update**

Senior Research Associate Rachel JAKUBOVITZ reviewed legislative action during the 110<sup>th</sup> General Assembly on issues related to past studies. The legislature passed or considered legislation on several issues related to the Commission's work, some dealing directly with findings and recommendations from commission reports. The General Assembly also passed three pieces of legislation requiring new commission studies, a public chapter calling for a study of boat titling in Tennessee, one directing a study of the economic benefits to counties and municipalities from the use of payments in lieu of ad valorem tax agreements (PILOT), and another requiring a follow up study on the Commission's January 2017 broadband report. Chairman Mark NORRIS noted that the PILOT study has a short timeframe to conduct research and complete the report. Executive Director LIPPARD assured the commission that staff can meet the deadline. Vice Chairman Tom ROWLAND asked for clarification of Senate Bill 1257 by Norris and House Bill 488 by Lollar, which allows cities incorporated under the general law city manager-commission charter to charge a fee to raise revenue to fund municipal fire stations. Chairman NORRIS said the bill applies to city manager forms of government only, and by adoption of an ordinance, cities can assess a fee in lieu of the county's fire fee.

#### **5. Work Program Amendment and New Research Plan**

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

#### **6. Annual Report on Tennessee's Public Infrastructure Needs—Final Report for Approval**

Senior Research Associate David KEISER presented the final report *Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs 2017* for approval. He described changes in the report's format and explained the new county summary format, using Montgomery County as an example.

Representative Charles SARGENT asked what effect state transportation aid budgeted for county governments in the 2016-17 (\$42 million) and 2017-18 (\$55 million) state budgets would have in the inventory on the overall transportation needs for roads at the county level. Mr. KEISER said they should have a small effect.

Chairman NORRIS asked about online access to the county summaries dashboard. Executive Director LIPPARD reported that the summaries would be available online as part of the report. Mayor Larry WATERS said he is supportive of the report, and that TACIR staff and development district staff do a good job, but he worries that local officials in some places may report wish list items in the inventory. He added that he doesn't know how to solve the problem. Chairman Mark NORRIS added that maybe letters to some local officials from TACIR commissioners could help them focus on just the needs of their communities.

Representative SARGENT said the fastest growing counties are building new schools at a rapid pace. He questioned whether fiscal capacity and the Basic Education Program (BEP) funding formula should take the rapid growth in these counties student populations and the resulting needed infrastructure for new schools into account.

Chairman NORRIS brought up the Comptroller's recent audit and how the inventory transportation needs reported compared to the transportation backlog referenced by Governor Haslam during the push for approval of the IMPROVE ACT during the 110<sup>th</sup> General Assembly. Mr. KEISER said there is a sidebar on page 11 discussing the differences. Chairman NORRIS also said he used the infrastructure report as a policy tool during Governor Bredesen's administration—to limit transfer of transportation funds to the general fund. Senator TRACY recalled how the report was also later used in 2009 to help pass a statute prohibiting these types of transfers.

Vice Chairman Tom ROWLAND complimented Mr. KEISER on data accuracy—data from his area of the state (Cleveland and Bradley County) looked accurate.

Representative Harold LOVE, Jr. said he is concerned that there are still students in schools ranked in poor condition and whether the BEP has enough funding. Mayor Ernest BURGESS talked about state dollars and school capital projects in Rutherford County. He said that they can't pay for all the schools needed in the next 10 to 15 years, and that the state needs to examine the BEP. Representative SARGENT talked about capital outlays and the need to examine the BEP. Representative LOVE agreed, saying the state needs to examine the BEP and the expense of building schools.

Discussion about the BEP brought up the need for a panel at the next commission meeting about school infrastructure needs and the BEP. Chairman NORRIS asked Executive Director LIPPARD to arrange for an appropriate panel at the August meeting.

Chairman NORRIS asked for a motion to approve the report. Representative LOVE moved approval, and Trustee Charlie CARDWELL seconded. The report was unanimously approved.

## **7. Fiscal Capacity for Fiscal Year 2017-18**

Senior Research Associate Michael MOUNT presented the annual update on TACIR's fiscal capacity index and provided background information about the index and education funding in Tennessee. He included an explanation of the US Bureau of Economic Analysis's revision of its per capita income data and an update of counties' 15-year fiscal capacity trends. He concluded

the presentation with an update on the effect of the Tennessee Virtual Academy on the fiscal capacities of both Union County and the state's other 94 counties.

Representative Charles SARGENT asked what percentage is set aside in the BEP funding formula to fund capital improvements and how much Williamson County receives. [For the fiscal year 2016-17 BEP, the capital outlay component generated \$760.9 million, 11% of the total cost of the BEP with Williamson County generating \$29.0 million—the State funds 30.1% of that \$29.0 million for Williamson County through the non-classroom component.]

Representative SARGENT asked whether the \$760.9 million for capital outlay includes computers, desks, etc. or just bricks and mortar. Deputy Executive Director Melissa BROWN said things like desks are separate from capital outlay—that is for bricks and mortar—and the capital outlay component is based on the southeast average in the RSMMeans report for capital costs and is not based on actual expenditures. Also, the money generated for capital outlay can be used anywhere and is not earmarked for capital outlay.

Representative SARGENT asked how a school system's amount for capital outlay is calculated. Ms. BROWN said all the BEP is calculated on prior year average daily membership—student counts—and there is a separate pot of money for growth. She said a county with no growth or a loss in the number of students would still generate money for capital outlay.

Representative SARGENT asked why a school system that is not growing should receive money for capital outlay. Ms. BROWN said the BEP is a funding formula, not a spending plan, and locals have flexibility to buy what they need. None of the money is earmarked, except for earmarks in other parts of the statute. Chairman Mark NORRIS said it is an allocation, not an appropriation, and there is no restriction on how they spend it.

Senator Jim TRACY said no one is checking to see if the money allocated for capital projects is spent on capital projects. He said that, for the next meeting, a finance person for a local education agency should be invited to explain it.

County Executive Jeff HUFFMAN asked why 55 counties are trending down in their fiscal capacity index. Mr. MOUNT said the concentration of property and sales tax growth in a few counties pulls up the overall average above the growth in other counties. In response to County Executive HUFFMAN observation that the service burden is a factor in TACIR's model but not the Center for Business and Economic Research's model, Mr. MOUNT said service burden has the least weight of the factors in TACIR's model. [The more heavily weighted factors, from most to least weighted, are: residential and farm assessment as a percentage of total assessment, sales tax base, per capita income, and property tax base.]

Mayor Larry WATERS said the major natural disaster in Sevier County caused property assessment and sales tax revenue to decrease; however, because fiscal capacity was increasing, Sevier County may lose state money as well. Mr. MOUNT said there is a lag before data is published, and any changes in assessments and sales tax base are phased in over three years.

Senator TRACY said, with BEP 2.0 was meant to “dial up” the state percentage of funding to 75% and wanted to know the current level of state funding. Mr. MOUNT responded that the

statewide percentages have stayed the same since last year [For the fiscal year 2016-17 BEP funding formula, the state share was 70% for instructional costs, 75% for other classroom costs, and 50% for non-classroom costs.]. Senator TRACY also stated that we should look at flexibility for local education agencies that have to hire an extra teacher because of the number of students. Chairman NORRIS said we will hear more about what it means to “fully fund the BEP” during the August meeting.

Chairman NORRIS adjourned the meeting at 3:13 p.m.



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

24 May 2017

**Meeting Called to Order**

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 16 at 8:37 a.m., Vice Chairman Tom ROWLAND, presiding.

<b>Present 17</b>	<b>Absent 8</b>
Mayor Tom Bickers	Mayor Brent Greer
Mayor Ernest Burgess	Senator Thelma Harper
Metropolitan Trustee Charles Cardwell	County Executive Jeff Huffman
Representative Mike Carter	Representative Harold Love, Jr
City Commissioner Betsy Crossley	Mayor Kenny McBride
Assistant Commissioner Paula Davis	Senator Mark Norris
Ms. Christi Gibbs	Representative Antonio Parkinson
Regional Director Iliff McMahan	Mayor Larry Waters
Mayor Tom Rowland	
Representative Charles Sargent	
Vice Mayor Kay Senter	
Senator Jim Tracy	
Senator Bo Watson	
Comptroller Justin Wilson <sup>1</sup>	
Representative Tim Wirgau	
Senator Jeff Yarbrow	
Mr. Kenneth Young	

<sup>1</sup> Lauren Spires represented Justin Wilson

## 8. Current Water Supply Issues In Tennessee—Update

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

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

Ms. ROEHRICH-PATRICK provided an update on water supply issues that continue to occur and have public policy implications across the state. She said these issues vary by region and three examples would be provided by the panelists. She explained that the Memphis Sand Aquifer is a significant resource for the Memphis area and the surrounding region, including Mississippi and Arkansas. The replenishment rate for the Memphis Sand Aquifer is currently unknown, but the Ground Water Institute at the University of Memphis is studying this issue. She said that while the Mississippi River seemingly provides a large water supply, it would require extensive treatment prior to use. The Memphis Sand Aquifer water is naturally filtered in the ground and requires very little treatment.

Ms. ROEHRICH-PATRICK said pollution concerns were recently raised when the Tennessee Department of Environment and Conservation permitted the Tennessee Valley Authority to drill wells in the aquifer and noted that in 2017 a bill was introduced, but did not pass, in the Tennessee General Assembly that would have created a “watchdog” board responsible for approving certain wells in the Memphis Sands Aquifer. [Senate Bill 776 by Kelsey, House Bill 816 by Lollar]

She said the State of Mississippi brought litigation against the City of Memphis and the State of Tennessee claiming that the wells serving Memphis have altered the flow of water in the Memphis Sand Aquifer, pulling more of it northward across the state line. Ms. ROEHRICH-PATRICK explained that the special master appointed by the United States Supreme Court agreed with Tennessee’s argument that Mississippi has no enforceable property right to the unapportioned groundwater in the aquifer. However, the special master viewed this legal argument as premised on whether the aquifer is an interstate water resource. After the parties agree to the scope and mechanics of the hearing, a limited evidentiary hearing will ultimately be held to determine whether the aquifer is interstate in nature. This is a multi-year process and could become a precedent-setting case.

Ms. ROEHRICH-PATRICK said that water supply issues in Middle and East Tennessee are primarily driven by drought. In Middle Tennessee population growth has worsened these issues. The 2007-2008 drought was the worst on record in Tennessee. Following it, many parties became more engaged to improve drought planning and management, and Tennessee created a new drought management plan. She said that federal, state, and local officials collaborated to create a framework for regional water supply planning.

Ms. ROEHRICH-PATRICK provided a brief history of the creation of the J. Percy Priest Reservoir (JPP), which was constructed in the 1960s. She said the issue of water storage in JPP



started in the earlier 2000s. She explained the various issues with the JPP water supply and storage saying these issues stem, in part, from population growth.

In response to Vice Chairman Tom ROWLAND's question on whether there are other cities in America that primarily rely on ground water supply similar to Memphis and the Memphis Sand Aquifer, Ms. ROEHRICH-PATRICK said the middle region of the United States does rely on ground water, but Memphis is the largest city to rely exclusively on ground water, which she said is the cleanest source of water. She said that New York City also relies, in part, on ground water.

Speaking next, Mr. BERNARD detailed his involvement with Bledsoe County's emergency water supply issues stemming from a drought that caused four of their five ground water wells to run dry and leading to the water supply being cutoff to the Bledsoe County Correctional Complex. The prison required at least 300,000 gallons per day to meet their legal minimum requirements. He described the various proposed solutions to provide the needed water. He said he was tasked with providing cost estimates for either trucking water to the prison or using a mobile treatment unit. He determined that treating the water was more cost effective based on the predicted extensive duration of the drought.

Mr. BERNARD said that when he met with Governor Haslam and Tennessee Department of Corrections' leadership regarding potential water supply solutions for the prison's emergency water supply issue, Governor Haslam was concerned that many of the proposed solutions required lengthy implementation periods. Mr. BERNARD said that he proposed the idea of a mobile treatment unit to take water from the Fall Creek Falls Lake to supply the prison and informed Governor Haslam that this could be accomplished in three weeks. To meet this deadline, the numerous regulatory hurdles with Tennessee Department of Environment and Conservation were fast-tracked. He said that a state of the art water filtration system was established on the lake and the treatment unit was constructed. Mr. BERNARD detailed the various technical aspects of the mobile treatment unit and the steps taken to establish the mobile water supply. He said that eventually the drought ended and refilled the reservoirs, and the mobile treatment was dismantled as it was no longer needed.

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

He said that there are a few issues with the Corps water allocation process that need to be resolved. He said that population growth and water demand projections need to be finalized. The amount of available water storage at JPP is limited. The Corps balances the JPP use as a water supply source along with the other purposes of JPP, such as flood control and recreation.

He said that when Corps builds a reservoir, it doesn't take control of all the water. The water remains in the control of the state, and this can be a hard concept to understand. He said this stems from legal principles regarding water and state sovereignty and explained the historical context that guides the federal water program. This background has created some unresolved legal questions regarding the division of responsibility between a state and the Corps that have not been litigated in the Eastern United States. As the climate becomes more erratic and water supply dwindles because of population growth, conflicts will emerge regarding the limited water supply in the reservoirs.

Mr. JONES said the Corps is not a utility district, but it does provide a service by setting aside a volume of water in the reservoir where water can be stored. The contracts are agreements for water storage in the reservoir and specifically don't guarantee any specific yield, which is the amount the utility can withdraw from the purchased space. He said that the "firm yield" is an important concept and is defined as the maximum yield that could have been delivered without failure during the historical drought of record.

He said another important question is whether a utility can use the water that is returned to the reservoir. He said that Public Chapter 220 addresses this topic. The Corps of Engineers views the returned water as not belonging to the utility that returned it, while Tennessee's law says that it does belong to the utility. He said it is an important issue because if the returned water does belong to the utility, millions of dollars could be saved and allows the state to better plan for its own water supply.

Mr. JONES said the Army Corps of Engineers has developed regionally, with districts in different states doing different things. He said uniform legal principles should be applied across the board, but often we find arbitrary differences between the districts on matters of huge consequence. The Corps recognizes this problem and has proposed national rules that are not yet in effect.

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

In response to Representative WIRGAU's question on the effect of agricultural irrigation on the water supply in West Tennessee, Ms. ROEHRICH-PATRICK replied that so far it has not been an issue, but further examination of this will ultimately need to occur. She noted that the

Tennessee Department of Agriculture, Tennessee Department of Environment and Conservation, Army Corps of Engineers, and the Groundwater Institute all provide valuable resources to address water supply concerns.

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

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

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

Vice Chairman Tom ROWLAND said that in the (appendix) charts a lot of weight is given to district population. He asked whether any weight has been given to actual calls or whether an interstate runs through the jurisdictions. Ms. BARRIE said (referring to the chart in appendix F) that the distribution proportion is based only on population. Vice Chairman ROWLAND thinks it would be important to look at the call volume in each jurisdiction because you can't just go by population—you will get a lot of calls from people passing through that don't live in the jurisdiction.

Senator Jeff YARBRO said with next generation 911 (NG911) we have to be able to take calls over a digital framework. Consumers are more capable of sending information in different ways like texting and sending pictures, and ECDs will have to utilize social media and integrate it into 911. That functionality was not clear to him in the report, and he wanted to see if that

was incorporated. Ms. BARRIE said it is mentioned in the report, but we can expand on it if necessary.

Vice Mayor Kay SENTER asked about the fiscal year used when looking at ECDs' financial position. Ms. BARRIE clarified that staff used fiscal year 2016 data in the analysis, which was the first full year under the new law.

Vice Mayor SENTER also asked whether there would be a time when the 2012 base amounts will be reset to bring them up to date. Ms. BARRIE said the report does not suggest adjusting those numbers, but it is something we could look at.

Vice Mayor SENTER mentioned the extra cost for training and software that comes with new technology and emphasized that we need to pay attention to the 60% of directors who say the revenue is not adequate. She also said that if we give the districts more money we need to say how that money can be used. Many ECDs have money to pay for services but not employees. Her county came up with a local funding mechanism based on call volume and population that is shared between the city, county, and EMS. Everyone has to step up or it's not in balance. We need to make sure we have support financially.

## **10. State Prisoners in County Jails—Draft Report for Review and Comment**

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

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

Mr. MOREO said that in 2007, counties could receive up to \$35 per day reimbursement from the state to house convicted felons; the state raised the cap to \$37 in 2012 and will raise it to \$39 beginning July 2017. Senator Jim TRACY noted the higher amounts paid for inmates in Davidson (\$57.85) and Shelby (\$67.46) counties, and asked whether the average cost in other counties is closer to the costs reported in those counties than to \$37 or \$39. Mr. MOREO responded that most counties do not—and are not required to—report actual costs to the state, and that costs probably vary greatly across the state. The draft report lists two counties, Coffee and White, that report actual costs of \$42.80 and \$48.16, respectively—but they are reimbursed the maximum of \$37 per day. Mr. MOREO said that Tennessee Department of Correction’s staff testified at the Commission’s December meeting that costs average around \$43-\$45 in most counties.

Senator TRACY asked whether Davidson and Shelby counties have negotiated better contracts than other counties, and added that the overcrowding issues seem to indicate that people are staying longer in county jails. Mr. MOREO replied that each county may contract individually with the state based on its own costs, and that Davidson and Shelby counties both house large numbers of inmates for the state. [The cap is specific to reimbursement for costs in non-contract counties; contracts are not necessarily limited by the cap.] He explained that, while more inmates are being left in county jails as backup, the length of stay is not tracked, and the draft report calls for more data like this to be collected and reported. Senator TRACY agreed that it would be helpful to know the length of stay for backup inmates in jails, as well as more reporting of prisoner costs.

In response to Vice Chairman ROWLAND’s question about whether the state pays counties to hold parole violators while they await a court date, Mr. MOREO explained that **parole** violators, who have been to prison and released on parole, are covered by the state while jailed awaiting a hearing. However, **probation** violators—because they have not been sentenced to state prison—are not covered by state reimbursements.

Referring to Senator TRACY’s questions, Executive Director LIPPARD asked whether costs vary within Shelby and Davidson counties across their multiple facilities. Mr. MOREO answered that the state only has a contract to house inmates sentenced locally at the Shelby County Correctional Center and reimburses Shelby County all reasonable allowable costs up to \$67.46 for those inmates. There is not a contract covering the jail, and the county gets just the \$37 for any inmates held in the Shelby County Jail. Davidson County has five facilities, and the state pays the county reasonable allowable costs for inmates sentenced locally at any of them; it pays \$37 for backup inmates at any location.

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

Mr. MOREO explained the draft report's next recommendation, that the state should establish a new incentive program to offer additional financial assistance for counties to implement proven programs to reduce recidivism, rather than simply providing occasional increases to the basic reimbursement rate. The draft report identifies programs that TDOC uses at state prisons that could be offered at the county level, and points out an example in the way Kentucky provides an additional \$9 per day over its basic \$31.34 reimbursement for some counties to administer the state's substance abuse program in their jails. Mr. MOREO added that the implementation of more programs would require better data collection, which the draft report explains.

Mr. MOREO discussed the need for adequate oversight and regulation of local jails. The TCI inspects jails annually, but lacks authority to penalize counties whose jails fail to meet standards. State prisoners can remain in noncertified jails, and counties receive the same reimbursement from the state. The draft report recommends that the state give TCI clearer legal authority to enforce its standards, and suggests that its Board of Control be able to recommend removing state inmates from county jails that fail inspection. Also, these counties would not be eligible for the recommended financial incentives to offer programs if their jails don't meet minimum standards.

Vice Chairman ROWLAND asked how medical costs are paid for when a prisoner goes to the hospital and whether the payment goes directly to the hospital. Mr. MOREO said he would look into the billing process after the meeting, but explained that counties with state contracts are usually responsible for the first \$1,000 of a prisoner's medical expenses, after which the state pays. The state pays for hospitalization whether TDOC contracts with the county or not. Counties without contracts are responsible for all non-hospitalized prisoner health care. [Hospitals are usually paid by the state rather than the county.]

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

Mayor BICKERS asked whether anything would prevent TDOC and individual counties from negotiating contracts for additional costs like Shelby and Davidson counties have done. Mr. MOREO said he would need to look at the statutes for a specific answer to that question. [The law allows for exceptions to the maximum reimbursement rate set each year in the appropriations act for counties with contracts for higher amounts.] Mayor BICKERS added that there would need to be a mechanism in place if TDOC and counties could not reach a negotiated agreement. Mr. MOREO answered that the current process provides a maximum rate for counties without contracts.

Mayor BICKERS discussed pre-trial felony detainees and the cost of holding them in jail, which is not reimbursed by the state. He questioned whether it would be more equitable for that cost to be spread across the state instead of handled by each individual county. Mr. MOREO said

staff found in its research that there are many factors that determine locally how long defendants might be jailed—from sheriffs making arrests, to district attorneys pressing charges, to judges setting bail—and how that all varies greatly from county to county, making assigning financial responsibility for pre-trial detainees complicated. Mayor BICKERS pointed out that it might affect district attorneys and judges’ decisions regarding jail if their local jail is overcrowded.

Mayor BICKERS discussed management of backup inmates by TDOC and local sheriffs and said that it seems to be on a case-by-case basis. He asked what would prevent the use of technology to better manage movement of prisoners. Mr. MOREO answered that staff’s discussions with TDOC indicate that the department is making those improvements, and they do keep good track of where inmates are located, but the information has not yet been fully utilized to manage the prisoner population in a more proactive way. He said that the draft report recommends making better use of data and information to manage transfer of prisoners effectively.

Vice Chairman ROWLAND adjourned the meeting at 11:30 a.m.