

Summary and Recommendations: Improving Management of Government-owned Real Property in Tennessee

When Bass Pro Shops opened a store in East Ridge, Tennessee, in July 2016, a portion of the 58-acre development was on excess right-of-way (ROW) property that the Tennessee Department of Transportation (TDOT) owned for years after completing a welcome center along Interstate 75. East Ridge previously bought some of the excess ROW for a fire station and worked with the developer and TDOT over several years to relocate the fire station and acquire additional property for the Bass Pro Shops development. The city and the developers followed the standard TDOT excess land process for acquiring unneeded ROW, and the development is an example of how unused government-owned land can be repurposed. But the development also raises a question: How much unused government-owned land exists in Tennessee and to what uses could it be put? Because they were familiar with the Bass Pro Shops development in East Ridge, Representative Carter and Senator Watson introduced legislation that became Public Chapter 693, Acts of 2018 (see appendix A), which asked the Commission to

- determine the amount of non-tax-producing properties held by state and local governments in Tennessee and
- include recommendations as to the highest and best use of the properties and ways for making them productive.

TACIR staff reviewed several databases to determine the amount of government-owned real property in Tennessee. Within the Department of General Services, the State of Tennessee Real Estate Management Division (STREAM) currently maintains an inventory of state-owned real property. But the inventory doesn't include all legislative and judicial branch properties, and it does not include state-owned ROW managed by TDOT or any property owned by local governments or the federal government, which has its own separate inventory managed by the US General Services Administration (GSA). Seeking to find a consistent source of information that included data on property owned by all levels of government—federal, state, county, and city—TACIR staff collected property assessment data from the Tennessee Comptroller of the Treasury, both through its Division of Property Assessments and its Office of Local Government, as well as from several individual county governments. Because these data were originally collected for property assessment purposes, they were not intended to serve as a property management inventory and do not always include detailed information on a property's use or whether it has been—or could potentially be—declared surplus.

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Given the limitations of these various datasets, TACIR staff concluded that an analysis of GIS parcel data provided by each county to the Comptroller’s Office of Local Government would provide the most consistent, complete, and accurate estimate of ownership and acreage for local, state, and federally owned real property in Tennessee.

The total land area in Tennessee is approximately 26.4 million acres, of which more than 2.8 million acres (10.7%) is owned by the federal, state, or local governments (see table 1). In most counties, less than 7% of the total county land area is government-owned, but there are a few where government-owned land makes up a third or more of the county (see appendix B).

Table 1. Government-Owned Property in Tennessee, 2018.

Federal acres	State acres	County acres	City acres	Total Government acres	Total Land acres
1,303,303	1,179,155	196,502	142,662	2,821,171	26,390,386
4.9%	4.5%	0.7%	0.5%	10.7%	

Sources: US Census Bureau Geography Division (total land acres), Tennessee Comptroller of the Treasury Office of Local Government, Tennessee Department of General Services STREAM, and several individual county governments (government-owned acres; see appendix B). State-owned acreage includes an estimate of right of way (ROW) from the Tennessee Department of Transportation.

Improving the Management of State-owned Real Property

Tennessee has taken steps toward a more strategic approach to managing state-owned property over the past several years. STREAM was established within the Department of General Services (DGS) in 2011, following a transfer of the state’s Division of Real Property Administration from the Department of Finance and Administration to DGS by executive order. The move was intended to help the state manage its real property assets in a “more economical and efficient manner.” STREAM is now responsible for managing an inventory of the state’s real estate assets and disposing of unneeded surplus as determined by individual agency needs. Its mission is to “create and maintain a real estate portfolio that effectively provides for the program requirements of state agencies while minimizing the total cost of the portfolio.”

STREAM staff say the state has made significant progress toward more effective property management; however, additional information from other state agencies on current property uses and future real estate needs would help STREAM ensure that state-owned properties are used efficiently and determine which real estate assets may be potential surplus property that could be put to a better use—whether public or private. For example, because program requirements and agency initiatives should

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drive real estate strategies, STREAM attempted to partner with all of the 23 cabinet-level state agencies to develop strategic real estate plans, but only 12 agencies actively collaborated with STREAM to develop the plans. Current law requires the Commissioner of General Services to maintain a complete inventory of all state-owned real property and requires state agencies to report their real property assets and acquisitions to the department, but agencies are not required to report property use information or develop strategic real estate plans with STREAM.

The federal government and several states have adopted policies intended to help them collect more information on the properties their agencies own and the current or planned uses for those properties. Federal agencies are required to submit real estate plans annually to the US General Services Administration that include

- an inventory of each agency's real estate assets,
- the properties' current uses, and
- future real estate needs.

At least 10 states have implemented similar reporting and planning requirements for their state agencies in coordination with their equivalent of STREAM, and another five states maintain an inventory and require state agencies to report their properties' current uses. But some of these states report that even with the legislative requirement to submit property usage and real estate plans, they have agencies that do not fully comply because there is no consequence for non-participation. For this reason, Georgia is moving to require agencies to submit their plans as a prerequisite for departmental budget approval. **To continue encouraging improvements in the management of state-owned real property in Tennessee, the state could require all state agencies to submit property use information along with annual real property plans to STREAM, as is required by the federal government and several other states, and it could consider making the reporting of property use and real estate plans a part of each agency's budget process, as Georgia is currently planning to do, as a prerequisite for departmental budget approval.**

Moreover, state-owned properties that are unused and have no planned, future use reported for them for a significant period are likely to be unneeded assets that warrant review. Some states require that real property acquired through eminent domain be first offered back to its prior owners if the property is not used within a specified period—generally around 10 years. TACIR staff have not found similar requirements for properties acquired through means other than eminent domain in other states, and there are currently no similar requirements in Tennessee for unused state-owned properties regardless of how they are acquired. **To supplement the improved**

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reporting process described above and to encourage that state-owned properties be put to their highest and best use, Tennessee could require that any state-owned properties that for 10 years are both unused and have no planned, future use reported to STREAM, regardless of how they were acquired, be either

- offered back to their prior owners or
- evaluated for sale as surplus.

Unlike other state-owned properties, excess transportation ROW—like the property developed in East Ridge—is not included in STREAM’s inventory and has not historically been quantified or actively managed by the state. TDOT is working to improve its ability to identify excess ROW through the implementation of its Integrated ROW Information System (IRIS). The department estimates that at the end of state fiscal year 2016-17 it owned approximately 217,962 acres of ROW, valued at approximately \$1.8 billion—most of which is in use or needed for highway purposes, according to TDOT. **To assist STREAM in developing a complete record of all state-owned real property in Tennessee, the state could require TDOT to report its ROW property to STREAM; this would require TDOT to first complete an inventory of all its ROW property and determine which properties are needed and which are not.** However, during the previous administration, TDOT said it lacked the dedicated staff resources it would take to prioritize the completion of a comprehensive inventory.

As in most other states, Tennessee’s department of transportation is the agency responsible for identifying and disposing of excess state ROW. Currently, TDOT is not actively marketing excess ROW property; instead, it responds to requests when contacted. In contrast, the departments of transportation in at least 26 states actively market surplus ROW, and in Connecticut, surplus ROW is marketed by the state’s equivalent of STREAM. **To facilitate identification and disposal of unneeded ROW property in Tennessee—similar to the property developed in East Ridge—TDOT could both actively market its surplus ROW property for sale—as is done in many other states—and work with STREAM to integrate surplus TDOT properties with the overall surplus property strategy for the state.**

Beyond these suggested improvements, stakeholders from STREAM, TDOT, and other state agencies have stressed the importance of expanding Geographic Information Systems (GIS) technology to facilitate the most efficient management of the state’s real property assets. The US General Services Administration relies on GIS to ensure the highest and best use of real property, and other states, including Georgia and Texas, report that GIS provides useful information to make decisions related to the highest and best use for real estate assets, describing it as “a hugely important tool for property management,” and “invaluable . . . a critical tool, relied upon by internal agency staff, as

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well as external companies and individuals.” Integrating GIS capabilities with real estate management could result in benefits across many different government functions in Tennessee, from property assessment, to facility management, public safety, risk management, and economic development. **To help achieve these benefits, the state could require that GIS tools be integrated with the STREAM inventory of state-owned property to provide for more robust analysis and help promote the highest and best use of the state’s real estate assets.**

STREAM currently lists state surplus real property for sale online. **In an effort to promote greater transparency and opportunities to better ensure the highest and best use is achieved for the public good, the state could also list the complete inventory of state-owned real property online.** A low-cost approach would be to simply post the current inventory of state-owned real property on the website hosted by STREAM. Alternatively, the state could provide a searchable GIS database of state-owned real property online, as is done in Arkansas, Indiana, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Ohio, Oklahoma, Texas, Washington, and Wyoming. In consultation with DGS, the Tennessee Department of Finance and Administration, and the Fiscal Review Committee an estimate of the cost for creating and operating a searchable GIS database of state-owned property was determined to include approximately \$93,000 in upfront, one-time costs with approximately \$85,000 in annual costs. The expense of developing and maintaining this GIS inventory could be partially offset by charging a fee—as is done for other GIS datasets, including orthoimagery, elevation, and parcel data.

Improving Intergovernmental Communication and Helping Local Governments Dispose of Surplus Property

In response to a 2018 Commission survey of all local governments in Tennessee and in testimony before the Commission, local government representatives said that most of their surplus property was acquired as tax-delinquent property, which can be difficult to sell because of the time and money needed to establish clear title for potential buyers. See appendix E and F for the survey questions, results, and analysis.

Land banks are one tool that can make the process of selling tax-delinquent property easier for local governments. Land banks are a special type of quasi-governmental entity created to help communities address issues with vacant, abandoned and tax-delinquent properties. They have statutory authority to establish “quiet title” (i.e., clear title) for properties that they hold and land banks have been used in some states for more than twenty years. A pilot Tennessee Local Land Bank Program was created in 2012, limited only to Oak Ridge. The General Assembly has since passed legislation that extended the authority to establish a land bank to a few other cities and counties,

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but the ability to establish land banks could be expanded. **The state could assist local governments with the management of real property—as suggested in the Commission’s 2012 report, *Dealing with Blight: Strategies for Tennessee’s Communities*—by providing legal authority allowing any city or county to establish a land bank.**

Aside from the challenges local governments have with disposal of unwanted property acquired after tax sales, interviewees said that some local governments may have a limited audience to whom they can market all types of surplus property. State law requires governments to advertise available property in local newspapers, whether for sale by sealed bid or public auction, disposal by online auction is allowed as well. But not all local governments have websites where they could advertise the surplus property. **The state could help local governments reach a wider audience of potential buyers by allowing local governments to post links to their surplus real properties—including tax-delinquent properties—on the state’s website where the state advertises its surplus real property.**

Further, surveys of local government officials indicated that a few would like for their government to acquire state-owned surplus property but think they may not be fully informed of potential surplus property the state has in their area. STREAM staff said they routinely notify local government officials of the surplus property in their districts, though not required to do so by law. While making STREAM’s existing inventory available as a searchable, online database would help local officials identify surplus state-owned properties in their communities, **the state could ensure this information is always conveyed to local officials by requiring that local officials be informed of surplus state-owned properties that are available in their jurisdictions before offering the properties to the public for sale—as is done in states like California, Connecticut, Georgia, Virginia, and Washington—formalizing practices STREAM staff are currently undertaking voluntarily.**

Finally, several local governments surveyed reported that they do not have any formal planning or management process for real property. At the federal level, the US General Services Administration offers training for federal employees on topics including real estate laws, asset management strategies, reporting requirements, disposal process, and regulations related to environmental and historic preservation compliance to ensure these officials have the knowledge necessary to effectively manage federal real property assets. In Tennessee, the University of Tennessee’s County Technical Assistance Service (CTAS) and Municipal Technical Advisory Service (MTAS) have researched government best practices and provided training programs for local government officials in many subject areas for decades. Through these two organizations, **the state**

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could offer additional training on best practices for real property management for county and city officials to promote the highest and best use of real property owned by local governments.

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Managing Government Real Property Efficiently and Responsibly

In July 2016, the city of East Ridge, Tennessee celebrated the grand opening of a Bass Pro Shops store, anchoring a 58-acre retail development that promised to bring jobs and tax revenue to the community.¹ Most of the development sits on property that the Tennessee Department of Transportation (TDOT) acquired when building a welcome center along Interstate 75; TDOT had no plans to use the excess land that remained once the welcome center was completed. In 1999, the City of East Ridge acquired several acres of this unused excess property for a fire station.² After it was approached by developers with a proposal to pay for the costs, the city relocated the site for the fire station and worked with TDOT to acquire the additional property needed for the Bass Pro Shop development. The developers and the city followed the standard process for requesting land from TDOT and did not require exceptions to any existing rules related to the sale of government-owned properties.³ The development now generates revenue from local sales taxes and property taxes for the city of East Ridge, along with more than \$4 million the state has returned to the city from a portion of the state sales tax as a result of the 2011 Border Region Retail Tourism Development District Act, passed by the General Assembly to incentivize retail competition near the state's borders.^{4,5}

Representative Mike Carter and Senator Bo Watson, who introduced the legislation that ultimately became Public Chapter 693, Acts of 2018, which requested this study, were familiar with the Bass Pro Shops development in East Ridge and wanted to know whether there were other opportunities to better use publicly held land not serving a current use or held for a future purpose. The Act directed the Commission to determine the amount of non-tax-producing properties held by state and local governments in Tennessee and include recommendations in its report as to the highest and best use of the properties and ways for making them productive (see appendix A).

¹ Pham 2016.

² Chattanooga 2010 and WRCB 2015.

³ Brian Dickerson, Excess Land Office Manager, Right of Way Division, Tennessee Department of Transportation. Email correspondence January 22, 2019.

⁴ Green 2016 and Peterson 2018.

⁵ Public Chapter 420, Acts of 2011.

Government-Owned Property in Tennessee: How Much Is There and What Is It Used for?

To determine the amount of non-tax-producing real property held by governments in Tennessee, TACIR staff sought to find a consistent source of information that included data on property owned by all levels of government—federal, state, county, and city. Datasets available include the property assessment database maintained by the Tennessee Comptroller of the Treasury Division of Property Assessments, geographic information system (GIS) parcel data collected by the Comptroller’s Office of Local Government, an inventory of state-owned property maintained by the Tennessee Department of General Services, and a database of federally owned property managed by the US General Services Administration. Each of these datasets, however, has limitations for the purposes of determining the total amount of all government-held real property in Tennessee.

The Division of Property Assessments within the Tennessee Comptroller of the Treasury collects property data from 84 of Tennessee's 95 counties and maintains an integrated database used by several state government entities and by county assessors of property to assess the value of real estate for property tax purposes.⁶ Although this dataset does have a consistent code for identifying the type of government that owns each property, these records are inconsistent in the way property acreage is reported and do not provide a consistently accurate measurement of the amount of land owned by various governments across Tennessee. Because the Comptroller manages data for only 84 counties, TACIR staff had to request permission from each of the 11 remaining counties to access their data and assemble a complete record for the state. County assessors were cooperative in this regard; however, similar inconsistencies regarding property acreage as well as additional inconsistencies regarding property ownership exist among these 11 county systems. Furthermore, because these data were originally collected for property assessment purposes, they were not intended to serve as a property management inventory and do not always include detailed information regarding a property’s use or whether it has been—or could potentially be—declared surplus.

While the State of Tennessee Real Estate Management Division of the Department of General Services (STREAM) currently maintains an inventory of state-owned real property, this database does not include all legislative and judicial branch properties,

⁶ Tennessee Comptroller of the Treasury. “What is IMPACT?” Counties not included are Bradley, Chester, Davidson, Hamilton, Hickman, Knox, Montgomery, Rutherford, Shelby, Sumner, and Williamson. These counties each have their own independent property assessment systems, but do provide GIS parcel data to the Office of Local Government.

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and it does not include state-owned right of way (ROW) controlled by the Tennessee Department of Transportation.⁷ In fact, neither property assessment records nor the inventory maintained by STREAM contain detailed information on ROW property, but an estimate provided by TDOT of 217.962 statewide ROW acres has been included as part of TACIR staff analysis.⁸

Another source of data TACIR staff considered, the US General Services Administration's Federal Real Property Profile (FRPP), excludes "land reserved or dedicated for national forest, national park, or national wildlife refuge purposes,"⁹ which, in Tennessee, covers a significant amount of territory. TACIR staff also found an error in the FRPP public data set for US Army property in Tennessee, incorrectly listing the 22,357-acre Milan Army Ammunition Plant as 224,919 acres.¹⁰

Because of the limitations of these various datasets, TACIR staff concluded that an analysis of GIS parcel data provided by each county to the Comptroller's Office of Local Government would provide the most consistent, complete, and accurate estimate of government property acreage for this report.

The total land area in Tennessee is approximately 26.4 million acres. Using the GIS parcel data, TACIR staff calculated that more than 2.8 million acres (10.7%) are owned by either federal, state, or local governments (see table 1, reposted). In most counties, less than 7% of the total county land area is government-owned, but there are a few where government-owned land makes up a third or more of the county. The National Forest Service, for example, controls more than 700,000 acres within Cherokee National Forest and the Land Between the Lakes.¹¹ The National Park Service covers another 370,000 acres.¹² See appendix B for a complete table of government-owned property in each county, by level of government.

⁷ See later in this report: "Tennessee maintains an inventory of state-owned real property, but it lacks information on property use and does not include TDOT right of way."

⁸ Paper copy was provided to TACIR staff at a meeting with TDOT staff on July 19, 2018.

⁹ US General Services Administration 2018a.

¹⁰ Figure for the plant's actual acreage from the US Environmental Protection Agency Superfund website, Accessed January 25, 2019. <https://cumulis.epa.gov/supercpad/cursites/csinfo.cfm?id=0404147>. Staff used GIS to calculate 24,688 acres of federal land in two large parcels at that location.

¹¹ USDA Forest Service 2018.

¹² US Department of the Interior National Park Service 2018.

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Sources: US Census Bureau Geography Division (total land acres), Tennessee Comptroller of the Treasury Office of Local Government, Tennessee Department of General Services STREAM, and several individual county governments (government-owned acres; see appendix B). State-owned acreage includes an estimate of right-of-way (ROW) from the Tennessee Department of Transportation.

The data provided in the STREAM inventory differed by only 4% from those in the GIS parcel data:

- For the majority of counties—58 of 95—the STREAM inventory is within $\pm 10\%$ of the GIS-calculated area.
- The STREAM inventory reports more state-owned real property than the GIS parcel data for 39 of 95 counties; the GIS-calculated area is greater in 56 counties.

Real property owned by government entities, including public schools, is exempt from property taxes;¹³ however, the state does make some payments in lieu of taxes (PILOTs) to local governments to compensate them for the loss in revenue when the Tennessee Wildlife Resources Agency (TWRA) or Tennessee Department of Environment and Conservation (TDEC) acquires land for wetland preservation, historic sites, or other natural areas.¹⁴ The Tennessee Valley Authority (TVA) also makes PILOTs to Tennessee, part of which are retained by the state and part distributed by the state to local governments in accordance with the Tennessee Revenue Sharing Act formula.¹⁵

Managing Government-Owned Property to Achieve Highest and Best Use

Determining a property’s highest and best use involves evaluating what uses are

- legally permissible for the property,

¹³ Tennessee Code Annotated, Section 67-5-203: “All property of the United States, the state of Tennessee, any county, or any incorporated town, city or taxing district in the state that is used exclusively for public, county or municipal purposes shall be exempt from taxation...”

¹⁴ The U.A. Moore Wetlands Acquisition Act of 1986, Tennessee Code Annotated, Title 11, Chapter 14, Part 4, and Section 67-4-109.

¹⁵ See “Tennessee Valley Authority’s Payments in Lieu of Taxes,” the Tennessee Advisory Commission on Intergovernmental Relations annual report to the Tennessee General Assembly. January 2018 report available at https://www.tn.gov/content/dam/tn/tacir/2018-publications/2018TVA_AnnualReport.pdf.

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- possible based on site characteristics,
- financially feasible, and
- produce the highest value.¹⁶

A property's highest and best use could include public purposes, including schools, courts, and recreational or other green space. But in other cases, a property's highest and best use may be achieved through private ownership. A 2013 Harvard University study on government property management found that, because of budget constraints on governments, real property assets must be utilized in the most effective manner possible to help governments fulfill their responsibilities to the public. The study recommended that to the greatest extent possible, excess land and buildings should be returned to the private sector to generate economic, social, and other benefits.¹⁷ Describing efforts to reduce unneeded real property owned by the federal government in 2016, the US Government Accountability Office's (GAO) director of physical infrastructure said that excess and underutilized properties "represent wasted resources as they are costly to maintain and, in some cases, could be exchanged for other needed properties or sold to generate revenue."¹⁸

These issues are not limited to the federal level. The director of California's Department of General Services said that "selling surplus state properties will help pay down Economic Recovery Bonds, possibly return these properties to local tax rolls, and relieve the state of future liabilities and the expense of maintaining the property."¹⁹ And the New York State Department of Transportation's Office of Right of Way has explained that "some benefits [from] disposing [of] excess properties include getting the property into the hands of people that can use it, to eliminate liabilities, eliminate maintenance responsibilities, recoup some of the original investment and put the property back on the local tax rolls."²⁰ In fact, many governments, including Tennessee, are already working to identify properties they own that could be put to better use.

¹⁶ Brown 2009.

¹⁷ Garmenddia and Kapur 2013.

¹⁸ Wise 2016.

¹⁹ Close-Up Media 2011.

²⁰ New York State Department of Transportation n.d. "Surplus Property for Sale."

Tennessee maintains an inventory of state-owned real property, but it lacks information on property use and does not include TDOT right of way.

Since the 1940s, “a complete inventory of all state-owned property” has been required to be maintained under Tennessee law, but statute provides little detail as to the information that must be included and has not been substantively amended in decades.²¹ The state has taken steps toward a more strategic approach to managing state-owned property over the past several years. In 2011, Governor Haslam's Executive Order 7 consolidated real property management under the Tennessee Department of General Services (DGS), which then established the State of Tennessee Real Estate Asset Management (STREAM) Division to manage the state's real estate portfolio.²² STREAM's mission is to “create and maintain a real estate portfolio that effectively provides for the program requirements of state agencies while minimizing the total cost of the portfolio.”²³ To achieve its mission, STREAM adopted these four strategies in 2017:

- Manage real estate efficiently.
- Implement real estate industry best practices.
- Improve recurring building maintenance funding.
- Develop and implement strategic real estate plans.²⁴

Deeds to all real property acquired in the name of the state are to be reported to the commissioner so that a permanent record of state-owned property can be maintained.²⁵ STREAM is tasked with the ongoing maintenance of this inventory. Although state agencies are required to report real property they own to STREAM, they are not required to report how those properties are used, and completing real estate management plans is a voluntary process.

²¹ Tennessee Code Annotated, Sections 12-2-102 and 103.

²² Governor Haslam, with the statutory authority to transfer functions between departments (Tennessee Code Annotated, Section 4-4-102), issued Executive Order 7, which transferred the Division of Real Property Administration (RPA) from the Department of Finance and Administration to the Department of General Services (DGS), effective October 1, 2011.

²³ Tennessee Department of General Services 2018.

²⁴ Ibid.

²⁵ Tennessee Code Annotated, Section 12-2-104, states, “it is the duty of each state official who acquires real property by deed, lease or otherwise for the state of Tennessee” to “immediately” transmit documentation to the commissioner of General Services.

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Moreover, TDOT ROW property—which is included in these statutory inventory and reporting requirements—is not currently reported to STREAM; TDOT also lacks a detailed inventory of its ROW. TDOT estimates, based on design criteria and number of highway miles in its system, that it controls 217,962 acres of ROW statewide, valued at approximately \$1.8 billion—most of which is in use or needed for highway purposes.²⁶ STREAM’s inventory does include TDOT properties, such as maintenance buildings and offices, but even if TDOT reported ROW to STREAM, ROW property, unlike other property, is not assigned a parcel identification number—which is the primary key for the STREAM inventory—and because of this, it would be difficult to integrate an inventory of TDOT ROW with the property inventory maintained by STREAM.

STREAM manages state-owned properties that are included in the Facilities Revolving Fund (FRF)²⁷ and partners with other agencies to manage the state’s other real property with optional real estate planning support from STREAM.²⁸ STREAM developed real estate plans for the state’s 23 cabinet-level agencies. Twelve of the agencies collaborated with STREAM to develop their plans. STREAM developed the remaining 11 plans on its own, and six of these 11 agencies reviewed and concurred with the plans STREAM prepared, while the other five—TDOT, the Department of Tourist Development, the Department of the Military, the Department of Economic and Community Development, and the Department of Corrections—did not provide feedback to STREAM regarding the plans it developed for them. The legislative and judicial branches of Tennessee government have the option to partner with STREAM to manage real estate assets, as they do with the War Memorial and the Supreme Court buildings. But in other cases, the legislative and judicial branches may choose to manage real estate assets independently, as the Tennessee General Assembly has done with the Cordell Hull building.²⁹ Higher education institutions—schools governed by the

²⁶ Fiscal Year 2017 ROW acres report provided by the Tennessee Department of Transportation in a meeting with TACIR staff, July 19, 2018.

²⁷ Public Chapter 332, Acts of 1993 established the State Office Buildings and Support Facilities Revolving Fund to provide payments for leased space occupied by state agencies and operating expenses for office buildings and support facilities, among other purposes. Tennessee Code Annotated, Section 9-4-901 et seq.

²⁸ Tennessee Code Annotated, Section 4-3-1105(12), gives the Department of General Services the power and duty to “exercise general custodial care of all real property of the state.” Not all state-owned properties are in the FRF: “Within the general government portfolio, agencies typically maintain direct jurisdiction over program-specific real estate.” Tennessee Department of General Services 2018.

²⁹ Phillip Murphy, STREAM Assistant Director of Strategy, email correspondence January 10, 2019. See also: Tennessee Code Annotated, Section 4-3-102. Public Chapter 1031, Acts of 2016, removed the

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Tennessee Board of Regents, the University of Tennessee, and the six independent universities—prepare their own real estate plans in coordination with the Tennessee Higher Education Commission (THEC).

The federal government requires agencies to report current usage of real property assets and evaluate their future property needs.

The federal government has established a real property management program that focuses on

- using excess property effectively and disposing of surplus real property,
- reducing the use of leased space,
- collecting reliable real property data to support decision making, and
- protecting the security of federal facilities.³⁰

As part of this program, federal agencies are required to report information annually on the properties they own, with some exceptions,³¹ to the US General Services Administration (GSA). The information that federal agencies are required to report to the GSA goes beyond what Tennessee’s state agencies are required to report to STREAM and includes more than 40 data elements, in particular,

- property use,
- whether a property has been declared excess or surplus, and
- whether it meets current agency missions.³²

Federal agencies are also required to submit plans known as Real Property Efficiency Plans annually to the Office of Management and Budget (OMB) that

- (1) set annual square foot . . . reduction targets for federal domestic buildings over a rolling five-year period;
- (2) adopt an office space design

Cordell Hull Building and others “occupied predominantly by the legislative branch and the judicial branch” from the FRF and jurisdiction of STREAM.

³⁰ US Government Accountability Office 2017.

³¹ Exclusions include real properties on military installations, Coast Guard installations, properties excluded because of national security, Indian and Native American properties, Tennessee Valley Authority properties, US Postal Service properties, and other Federal properties defined under Public Law 114-287.

³² US General Services Administration 2018a and n.d. (website) “Federal Real Property Public Dataset.” Also the Federal Property Management Reform Act of 2016 (Public Law 114-318) and the Federal Assets Sale and Transfer Act of 2016 (Public Law 114-287).

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standard to optimize federal domestic office space usage; and, (3) maintain agencies' office and warehouse portfolios below their fiscal year (FY) 2015 . . . baselines.³³

These Real Property Efficiency Plans and the information reported in GSA's inventory are used by the Federal Real Property Council—a group that includes representatives for GSA, OMB, and other executive branch agencies—to increase efficient real property use, control cost, and reduce the real property holdings of the federal government.³⁴

According to OMB and GSA,

the 11.2 million [square foot] reduction achieved in FY 2016 resulted in \$104 million of annual cost avoidance through reduction to rent, operations, and maintenance costs. This builds upon the cost avoidance achieved under the [Freeze the Footprint] policy, which resulted in an estimated savings of more than \$370 million annually.

OMB and GSA anticipate further net reductions to [federal property holdings] and generation of significant cost avoidance in future years.³⁵

Many states require all state agencies to complete real estate plans and report property use information.

At least 10 states have implemented similar reporting and planning requirements for their state agencies in coordination with their state's central real estate management office, which sometimes has authority to determine whether any state-owned property should be disposed of as surplus. Another five states maintain an inventory and require agencies to report how their properties' are currently used, though they don't require reporting of future needs. Representatives interviewed from other states said the requirements that they have implemented have been useful for managing state-owned property. For example, Connecticut requires all state agencies to provide information on their use of real property to its Office of Policy and Management, which

³³ US General Services Administration 2018b.

³⁴ 69 FR 5895. Executive Order 13327 of 2004, <https://www.federalregister.gov/executive-order/13327>. At least one state, Louisiana, has a similar advisory group, but it has never had an official meeting, according to the state's public lands administrator, though some members meet to discuss specific real estate transactions; Jonathan Robillard, OSL Administrator, Office of State Lands, Louisiana Division of Administration. Phone interview November 8, 2018.

³⁵ US General Services Administration 2018b.

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has the authority to determine the most appropriate use of the property.³⁶ In interviews with TACIR staff, the policy director of Connecticut's Office of Policy and Management said that "the requirement for all agencies to work with us on asset management provides us with the tools to obtain the necessary information to ensure that our property is used efficiently, properly, and in the best interests of the state."³⁷ See table 2 for other states' real property inventory and state agency reporting requirements.

However, some of these states report that even with the legislative requirement to submit property usage and real estate plans, they have agencies that do not fully comply because there is no consequence for non-participation. California, for instance, requires all state agencies to submit an annual real property report, including uses, to its Department of General Services.³⁸ While the state's chief of asset management stressed the importance of annual reporting, he also noted that "this requirement has been in place since the 1980s, and we still do not have 100% participation because there is no penalty for nonparticipation. We have about 90% of the agencies information, but we need stronger enforcement of the requirement to get 100%. Having utilization information is critical for us to make effective decisions about highest and best use of our real property assets."³⁹ Georgia law also requires each state government entity to maintain a real property inventory—including information on property use—and send the information to the State Properties Commission (SPC).⁴⁰ The SPC maintains an inventory of state property, reviews the individual property needs of all state agencies, and provides the governor with a list of state-owned properties that have been identified as unused or underused and a set of recommended real estate transactions. Staff interviewed from SPC said that "Georgia does require every state agency to submit real estate documents that include utilization information. It is critical to know how the properties are being used if we are going to make informed decisions about best use." Furthermore, SPC staff told TACIR staff that, "even with the statutory requirements, several agencies are slow and fairly unresponsive."⁴¹ For this reason, he

³⁶ Connecticut General Statutes, Title 4, Section 4-67g.

³⁷ Paul Hinsch, Director, Connecticut Office of Policy and Management, Bureau of Assets Management. Phone interview November 6, 2018.

³⁸ California Government Code, Section 11011 et seq.

³⁹ Jim Martone, Branch Chief, California Department of General Services, Real Estate Services Division, Asset Management Branch. Phone interview November 13, 2018.

⁴⁰ Official Code of Georgia Annotated, Section 50-16-120 et seq.

⁴¹ Frank Smith, Deputy Executive Director, Georgia State Property Commission. Phone interview November 13, 2018.

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said Georgia is moving to require agencies to submit their plans as a prerequisite for departmental budget approval.⁴²

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⁴² Ibid. See also Official Code of Georgia Annotated, Section 50-16-41(i): "...[state] entities shall be accountable in the budgetary process for administrative space assigned to and utilized by them."

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**Table 2. States Requiring a State-Owned Real Property Inventory:
Requirements for State Agencies to Report Property Use
or Future Plans for Real Property Needs**

State Agency Responsible for Real Estate Management	Has a Required Inventory of State- Owned Real Property?	Agencies Required to Report Property Usage (Annually or Other Regular Basis)?	Agencies Required to Report Future Needs or Strategic Plans? *
Tennessee STREAM, Dept. of General Services	Yes Tennessee Code Annotated, Section 12-2-103	No	No
Alabama Dept. of Finance, Office of Space Management	Yes Alabama Code, Section 41-4-18	No	No
Arkansas Dept. of Finance and Administration, Building Authority Division	Yes Arkansas Code, Section 22-2-121	No	No
California Dept. of General Services	Yes California Government Code, Section 11011.15	Yes California Government Code, Section 11011.15	Yes* California Government Code, Section 11011.15
Colorado Office of the State Architect	Yes Colorado Revised Statutes, Section 24-30-1303.05	Yes Colorado Revised Statutes, Section 24-30- 1311	Yes* Colorado Revised Statutes, Sections 24-30-1311 and 24-1- 136.5
Connecticut Office of Policy and Management	Yes Connecticut General Statutes, Section 4-67g	Yes Connecticut General Statutes, Section 4-67g	Yes* Connecticut General Statutes, Section 4b- 23
Florida Dept. of Environmental Protection and Dept. of Management Services	Yes Florida Statutes, Section 216.0152	Yes Florida Statutes, Section 216.0152	Yes* Florida Statutes, Section 216.0158
Georgia Georgia State Properties Commission	Yes Code of Georgia, Section 50-16-124	Yes Code of Georgia, Section 50-16-121	No
Idaho Land Board / Department of Lands	Yes Idaho Code, Section 58-119	Yes Idaho Code, Section 67- 836	No

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State Agency Responsible for Real Estate Management	Has a Required Inventory of State- Owned Real Property?	Agencies Required to Report Property Usage (Annually or Other Regular Basis)?	Agencies Required to Report Future Needs or Strategic Plans? *
Indiana Dept. of Administration, State Land Office	Yes Indiana Code, Section 14-18-1.5-3	No	No
Kentucky Division of Real Properties, Finance and Administration Cabinet	Yes Kentucky Revised Statutes, Section 42.425	No	No
Louisiana Division of Administration, State Land Office	Yes Louisiana Revised Statutes, Section 39:13	Yes Louisiana Revised Statutes, Section 39:13	Yes Louisiana Revised Statutes, Section 39:13
Massachusetts Division of Capital Asset Management and Maintenance	Yes Annotated Laws of Mass. Chapter 7C, Section 39	Yes Annotated Laws of Mass. Chapter 7C, Section 39	No
New York Office of General Services	Yes N.Y. Public Lands Laws, Article 2, Section 2	No	No
North Carolina Department of Administration, State Property Office	Yes N.C. General Statutes, Section 143-341.2	Yes N.C. General Statutes, Section 143-341.2	Yes N.C. General Statutes, Section 143-341.2
Ohio Ohio Geographically Referenced Information Program (OGRIP)	Yes Ohio Revised Code, Section 113.41	Yes Ohio Revised Code, Section 125.902	No
Oklahoma Office of Management and Enterprise Services, Division of Capital Assets Management	Yes Oklahoma Statutes, Title 62, Sections 901 - 908	Yes Oklahoma Statutes, Title 62, Sections 901 - 908	Yes* Oklahoma Statutes, Title 62, Sections 901 - 908
South Carolina Dept. of Administration, Division of Facilities Management & Property Services	Yes S.C. Code, Section 1-11-58	Yes S.C. Code, Section 1-11- 58	Yes S.C. Code, Section 1- 11-58
Texas Texas General Land Office	Yes Texas Natural Resources Code, Section 31.154	Yes Texas Natural Resources Code, Section 31.156	No

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State Agency Responsible for Real Estate Management	Has a Required Inventory of State- Owned Real Property?	Agencies Required to Report Property Usage (Annually or Other Regular Basis)?	Agencies Required to Report Future Needs or Strategic Plans? *
Virginia Department of General Services, Bureau of Real Estate Services (BRES)	Yes Virginia Code, Section 2.2-1153	Yes Virginia Code, Section 2.2-1153	Yes* Virginia Code, Section 2.2-1153
Washington Office of Financial Management Facilities Oversight Program; Department of Enterprise Services	Yes Code of Washington, Section 43.82.150	Yes Code of Washington, Section 43.82.150	Yes Code of Washington, Section 43.82.055

Source: TACIR staff analysis of state websites and LexisNexis review of state statutes and administrative rules.

* These states require agency-level, multi-year strategic plans. States marked “Yes” without an asterisk (*) require agencies to report projected future property needs to a lesser extent.

GIS software can be used to help manage their real property.

A geographic information system (GIS) is a framework for gathering, managing, and analyzing many types of data, which can be used to analyze spatial location and organize layers of information into visualizations using maps and 3D scenes, providing insight into data that might be missed in a spreadsheet.⁴³ GIS technology can allow users to create interactive maps that can include detailed information regarding each location. The federal government and several states, which have begun using GIS maps as part of their efforts to improve the management of their real property holdings, have found that using GIS can provide useful information to help make real estate decisions. For example, US General Services Administration staff say that “GIS has been an important tool because it helps federal agencies, looking for office space, to identify possible locations nearby where they can get space from another federal agency.”⁴⁴

Similarly, a number of states, including Georgia, Idaho, Indiana, Massachusetts, Ohio, and Texas, are using GIS to assist them in managing government-owned property. According to Idaho’s Department of Lands, which maintains a complete geospatial database available to the public of all state-owned lands administered by the agency,

⁴³ Esri. “What is GIS?” Accessed January 28, 2019. <https://www.esri.com/en-us/what-is-gis/overview>.

⁴⁴ Chris Coneaney, Acting Director, Real Property Division, US General Services Administration. Phone interview September 18, 2018.

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GIS helps us answer questions and solve problems by capturing, analyzing and displaying our data in a way that is quickly understood and easily shared [and] allows us to view, question, and visualize data in ways that reveal relationships and trends in the form of maps, charts and illustrations.⁴⁵

One Georgia official interviewed called GIS “a hugely important tool for property management,” saying that

the visual aspect of GIS allows us to see whether we have a state property near leased property and allows us to see the level of use at the state property so we can look at consolidating to get out of a lease. We can also see the lease rates, and if we have multiple leases in the same area, we can compare the costs to find the best value.⁴⁶

The Director of GIS in the Texas General Land Office says their GIS application is “invaluable . . . a critical tool, relied upon by internal agency staff, as well as external companies and individuals.”⁴⁷

GIS can also increase transparency for the general public. Indiana’s State Land Office Parcel Viewer maps all state-owned parcels, and lets users see the agency responsible for the property and other details,⁴⁸ while the Massachusetts’ Interactive Property Map, “enables developers, banks, realtors, businesses, and homeowners to view seamless property and tax information across the Commonwealth.”⁴⁹ In addition to Indiana and Massachusetts, Arkansas, Idaho, Louisiana, Maine, Maryland, Minnesota, Ohio, Oklahoma, Texas, Washington, and Wyoming maintain online, searchable GIS databases that are available to the public.

Another state, California, is currently working to integrate GIS functionality into its property inventory, according to one official interviewed, who added that GIS is a cost-

⁴⁵ Idaho Department of Lands (website) “Maps & Land Records.” Idaho Code Annotated, Section 58-119 directs the department to, “organize a central land records unit within the department for the purpose of establishing and maintaining an inventory and plat of all lands owned, leased, or held in trust by the state or any of its agencies, departments, institutions or instrumentalities...”

⁴⁶ Frank Smith, Deputy Executive Director, Georgia State Property Commission. Phone interview November 13, 2018.

⁴⁷ Scot Friedman, GIS Director, Texas General Land Office. Email correspondence November 7, 2018.

⁴⁸ Indiana Department of Administration 2019. “Interactive State Property Map & Records.”

⁴⁹ MassGIS 2019. “Massachusetts Interactive Property Map.”

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effective tool that will be very beneficial, particularly in risk management and emergency response, to help state agencies know where their assets and people are located.⁵⁰

To provide a searchable GIS database of state-owned property in Tennessee, the Department of General Services, in consultation with the Department of Finance and Administration and the Fiscal Review Committee, estimates there would be approximately \$93,000 in upfront one-time costs and approximately \$85,000 in recurring costs. The expense of developing and maintaining this GIS inventory could be partially offset by charging a fee to non-government users for access.⁵¹ The Comptroller's Office of Local Government already offers "a wide variety of GIS data products for sale in both digital and paper formats." These range from \$650 for basic parcel data for a single county to \$80,000 for a complete statewide parcel dataset.⁵² The state's GIS office also makes some GIS datasets available for purchase by private, commercial organizations for use in contractual work deemed beneficial to the State of Tennessee.⁵³

Some states require eminent domain properties to be offered back to the previous owners if not developed within a specified timeframe.

At least a few states have laws that require properties taken by governments through eminent domain to be offered back to the previous owner for purchase, if they aren't developed for their intended public purpose within a certain number of years:

- Kentucky—development must begin within eight years or the condemning government must offer the property back to the owner at the original price the government paid.⁵⁴
- Texas—if "no actual progress [as defined] is made toward the public use for which the property was acquired" within 10 years of the date of its acquisition by condemnation, or the public use for the property is otherwise canceled, the property owner or successors may repurchase the property at its fair market

⁵⁰ Jim Martone, Branch Chief, California Department of General Services, Real Estate Services Division, Asset Management Branch. Phone interview November 13, 2018.

⁵¹ See "Right to inspect public records -- Public records having commercial value." Tennessee Code Annotated, Section 10-7-506(c).

⁵² Tennessee Comptroller of the Treasury "GIS Data Sales – Parcel Data."

⁵³ Tennessee Department of Finance and Administration "GIS Data Sales and Contacts."

⁵⁴ Kentucky Revised Statutes, Section 416.670.

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value at the time the public use was cancelled.⁵⁵ The government must notify the owner of this right within 180 days from the cancelation of the project or the end of the 10 years.

- Louisiana—within one year of the completion of a project where land was acquired through eminent domain, the government must identify as surplus any part of the property not needed for the given public purpose, and within two years offer this surplus property at current fair market value to the original owner or successor. The state also gives original property owners, their heirs, and successors a 30-year right of first refusal (compared to Tennessee’s 10-year, non-transferrable right) before the condemning government can sell property taken by eminent domain. The owner must be willing to pay the fair market value at the time the sale is offered, or the property can be sold to the general public by competitive bid.⁵⁶
- Georgia—if a government has not put property acquired through eminent domain to public use (defined as having made “substantial good faith effort” towards the project, even if it has not been completed) within five years, the former owner has the right to buy it back for the original price or may request additional compensation from the condemning authority in the amount the fair market value of the property has increased since its taking. Furthermore, with the exception of specific blight remediation purposes, “no condemnation shall be converted to any use other than a public use for 20 years from the initial condemnation.”⁵⁷

TACIR staff have not identified similar requirements for properties acquired through means other than eminent domain in other states.

In Tennessee, there is no requirement that unused state-owned land revert to its previous owner after a set amount of time, regardless of whether it is acquired through eminent domain. But for TDOT ROW property, the owner from whom the property was purchased has the right of first refusal to purchase the property back from TDOT at its current fair market value if it is sold by TDOT within 10 years of its acquisition.⁵⁸

⁵⁵ Texas Property Code Annotated, Section 21.101 et seq.

⁵⁶ Oswald 2007 and Louisiana Constitution, Article I, Section 4H.

⁵⁷ Oswald 2007 and Georgia Code Annotated, Section 22-1-2.

⁵⁸ Tennessee Code Annotated, Section 12-2-112.

Surplus Property in Tennessee and Methods for its Disposal

Tennessee does not define surplus government-owned property in state law, and STREAM does not have the authority to dictate agency property needs or declare state-owned property as surplus. For state-owned real property, with some exceptions for TDOT ROW, each agency determines whether its real estate assets are needed. When a state agency determines that it has an unneeded real property,

- (1) the agency notifies STREAM by submitting a Real Estate Transaction Request Form (see appendix C);
- (2) because property cannot be sold “if there is any feasible use for the property by any state agency,”⁵⁹ STREAM notifies all other state agencies of the property;
- (3) at the same time that STREAM notifies other state agencies, it also notifies the house of representatives and senate member or members from the district in which the property that is being considered for disposal is located;⁶⁰
- (4) if the property has improvements that are more than 50 years old, STREAM notifies the State Historical Commission to determine whether there are archaeological or historical preservation issues related to the property; and
- (5) property is submitted to the Executive Subcommittee of the State Building Commission (SBC)⁶¹ for the SBC’s review and approval of the property as surplus.

Although not required, STREAM staff typically notifies local government officials of the potential surplus property prior to any agreement of sale or conveyance of state-owned real property, as well.⁶²

⁵⁹ Tennessee Code Annotated, Section 12-2-112(a)(1).

⁶⁰ Tennessee Code Annotated, Section 12-2-112(b).

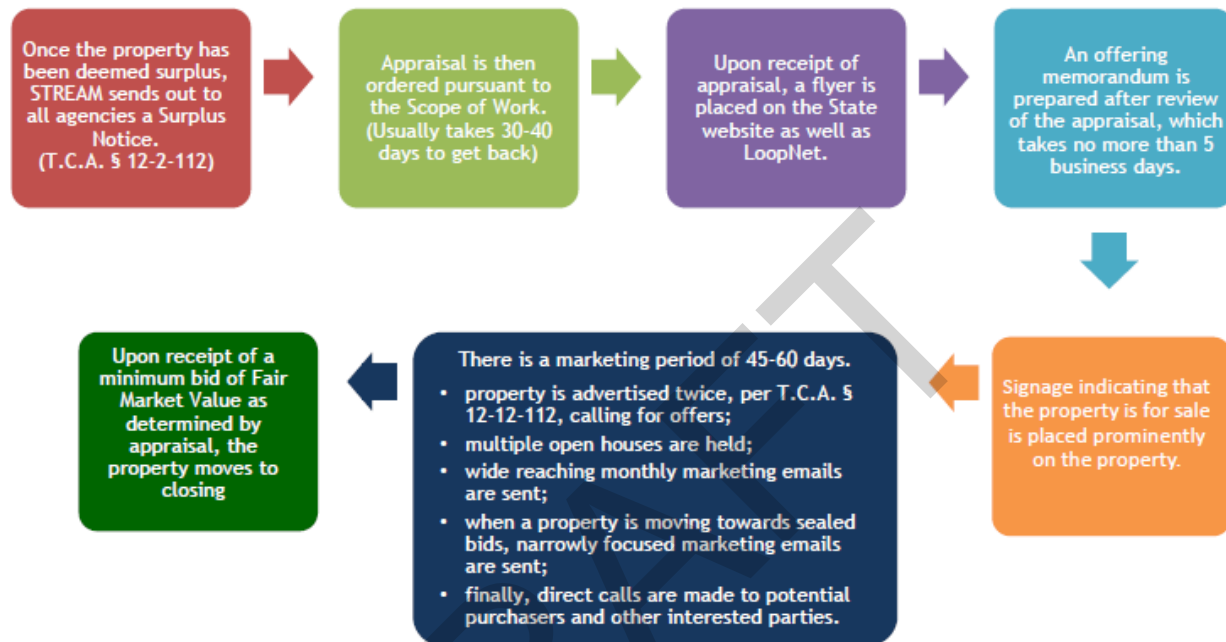
⁶¹ State Building Commission of Tennessee 2018. Under Item 1, Article V-1, there are seven members of the SBC Commission—the Governor, Secretary of State, State Comptroller, State Treasurer, the Commissioner of Finance and Administration, Speaker of the Senate, and the Speaker of the House of Representatives. Article V-2 delegates much of the Commission’s authority to its four-member Executive Sub-Committee (ESC) that includes the Secretary of State, State Comptroller, State Treasurer, and the Commissioner of Finance and Administration.

⁶² Bruce Nelson, Director of Special Projects, Acquisitions and Dispositions, State of Tennessee Real Estate Asset Management Division, Tennessee Department of General Services. Interview with TACIR staff, October 8, 2018.

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STREAM guides the process, but the SBC has ultimate approval authority to sell state-owned property. Once the SBC has approved state-owned property to be sold as surplus, the process for disposing of it is illustrated in figure 1.⁶³

Figure 1: State Real Property Management Process



Source: Bruce Nelson, Director of Special Projects, Acquisitions and Dispositions, State of Tennessee Real Estate Asset Management Division, Tennessee Department of General Services. Email correspondence November 6, 2018. For properties where no marketing is required, the DGS Land Transaction Office will complete the disposal process.

The SBC requires quarterly status updates from DGS and higher-education institutions regarding capital projects, leases, and land transactions it has approved.⁶⁴ Some approval authority—like the preliminary approval of capital improvements under \$100,000—is further delegated jointly to the State Architect and the Commissioner of Finance and Administration. But all of these delegated approvals are reported at the next SBC meeting or the next meeting of the SBC’s Executive Subcommittee.⁶⁵

⁶³ Tennessee Code Annotated, Section 4-15-101 et seq. established the State Building Commission, exercises approval authority over all state property acquisitions (except TDOT rights-of-way) and disposal of surplus real property described in Tennessee Code Annotated, Section 12-2-112.

⁶⁴ State Building Commission of Tennessee 2018. See items 2.03 and 2.04.

⁶⁵ Ibid. Item 2.04.

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TDOT ROW is managed and disposed of separately from other state property. TDOT does not actively designate unneeded ROW as “excess” and market it for sale. Instead, it responds to requests from interested parties, who must contact one of four regional excess land office coordinators. The regional coordinator contacts other TDOT staff to determine whether the property meets the department’s criteria for declaring it as excess. These criteria, listed in the department’s Right of Way Manual, require that

- the land will not be needed for highway purposes in the foreseeable future;
- the right-of-way being retained is adequate for the present day standards of the facility involved;
- the release of the lands will not adversely affect the highway facility or the traffic thereon;
- the lands to be disposed of are not suitable for retention in order to restore, preserve or improve the scenic beauty and/or environmental quality adjacent to the facility; and
- there are either no indications that the area should be considered as having potential use for park, conservation, recreational or other similar purpose; or if the potential exists, that the property was made available to appropriate agencies and no interest was generated.

If the TDOT ROW property is determined to be excess, a report is submitted to the central excess land office for further review. Requests accepted by the excess land manager are placed on the agenda for the next meeting of the department’s Excess Land Committee.⁶⁶ A flow chart illustrating the complete excess land process is included as appendix D.

TDOT maintains an inventory of “uneconomic remnants” acquired in the ROW process.⁶⁷ An uneconomic remnant is a “parcel of the real property in which the owner is left with an interest after the partial acquisition of the owner’s property, and which the acquiring agency has determined has little or no value or utility to the owner.”⁶⁸ If

⁶⁶ Tennessee Department of Transportation 2015. According to email correspondence with Brian Dickerson, Excess Land Office Manager, Tennessee Department of Transportation, April 5, 2018, the Excess Land Committee consists of the TDOT Assistant Chief Engineer of Design, Assistant Chief Engineer of Operations, Director of Roadway Design, Director of Strategic Transportation Investments, and the directors of the ROW Division, Environmental Division, Maintenance Division, Civil Rights Division, and Traffic Operations.

⁶⁷ Tennessee Department of Transportation 2015.

⁶⁸ Code of Federal Regulations, Title 49, Section 24.2.

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the acquisition of only a portion of property would leave the owner with an uneconomic remnant, the acquiring agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. While the acquiring agency is required to make an offer for the remnant, the property owner is under no obligation to sell the remnant to the acquiring agency.

For ROW properties with fair market values no greater than \$75,000, TDOT may sell the property to the

- owner from whom the property was acquired,
- owners of adjoining properties, or
- another government body, if the property is to be used for a public purpose.

The owner from whom the property was acquired has a right of first refusal, which expires after ten years and is not transferable. If the surplus ROW does not meet these criteria, then it must be disposed of through the general surplus real property disposal procedure described above, which is subject to approval by the SBC.⁶⁹

The Tennessee Department of Transportation (TDOT) has taken steps to improve right-of-way (ROW) management. For example, in 2004 TDOT retained Barge Waggoner Sumner and Cannon, Inc. (BWSC) to examine and assess excess ROW that could be used by local governments for public purposes.⁷⁰ The report recommended that TDOT continue to improve its computerized inventory system and integrate GIS capabilities to improve ROW management.⁷¹ A 2011 report from the National Cooperative Highway Research Program (NCHRP) also found that it is vital to include spatial and visual capabilities in the management of real property. Having information on ROW and excess property in a GIS enabled database facilitates easier public access to meaningful information for the potential public purchase of surplus ROW.⁷²

⁶⁹ If ROW was acquired using some federal funds and then sold, the revenue from the sale will be used to reimburse the federal government. Rather than transferring funds back to US Department of Transportation, Federal Highway Administration (FHWA), the next federal distribution of transportation funds to Tennessee is reduced by the amount of the revenue from the sale that was due to the federal government.

⁷⁰ BWSC 2004.

⁷¹ Ibid.

⁷² National Academies of Sciences, Engineering, and Medicine 2011.

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A 2011 performance audit by the Tennessee Comptroller of the Treasury found that TDOT still lacked a fully functional and readily accessible ROW inventory.⁷³ In 2012, TDOT reviewed its ROW management processes and noted that staffing turnover and staffing shortages resulted in ineffective control and management of ROW in accordance with TDOT's Right of Way Manual.⁷⁴

In 2015, TDOT's Right of Way Division implemented a custom, web-based application—Integrated ROW Information System (IRIS)—to better manage TDOT's ROW.⁷⁵ TDOT staff said that although they are working to identify any excess ROW, they lack the dedicated staff resources it would take to prioritize the completion of a comprehensive inventory.⁷⁶ However, most of the excess ROW that is potential surplus is primarily from older roadway projects. According to TDOT, this was the case with the East Ridge Bass Pro Shop project in Hamilton County. TDOT staff say that they currently work with STREAM when identifying properties that might be sold as surplus to determine marketability.⁷⁷

Most States Departments of Transportation Take a More Active Approach to Right-Of-Way Management

Twenty six states—Arizona, California, Colorado, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New York, Ohio, Oregon, North Carolina, South Carolina, South Dakota, Texas, Utah, Virginia, Washington and Wisconsin—have departments of transportation that actively inventory their ROW. The DOTs in these states identify and market surplus property and normally manage this process separately from general government surplus property. For example, the South Carolina Department of Transportation (SCDOT) Property Management section of the Right of Way Office is responsible for the sale and disposition of SCDOT's surplus real property. This includes maintaining an inventory of surplus property and records of surplus property dispositions. SCDOT listings include "Economic Parcels"—parcels large enough to be developed, are free standing, have access, have monetary value, and comply with local zoning ordinances. According to California's Chief of Asset Management,

⁷³ Tennessee Comptroller of the Treasury 2011.

⁷⁴ Tennessee Department of Transportation 2012.

⁷⁵ Tennessee Department of Transportation 2017.

⁷⁶ Jeff Hoge, Director, Right of Way Division, Tennessee Department of Transportation. Interview with TACIR staff, July 19, 2018.

⁷⁷ Ibid.

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“CALTRANS markets surplus ROW separately. This is the best approach because only the DOT has the transportation knowledge that is needed to effectively manage these properties.”⁷⁸

Connecticut also actively manages its state-owned ROW properties but markets its surplus ROW through its equivalent of STREAM.

Surplus Federal Property and Methods for Its Disposal

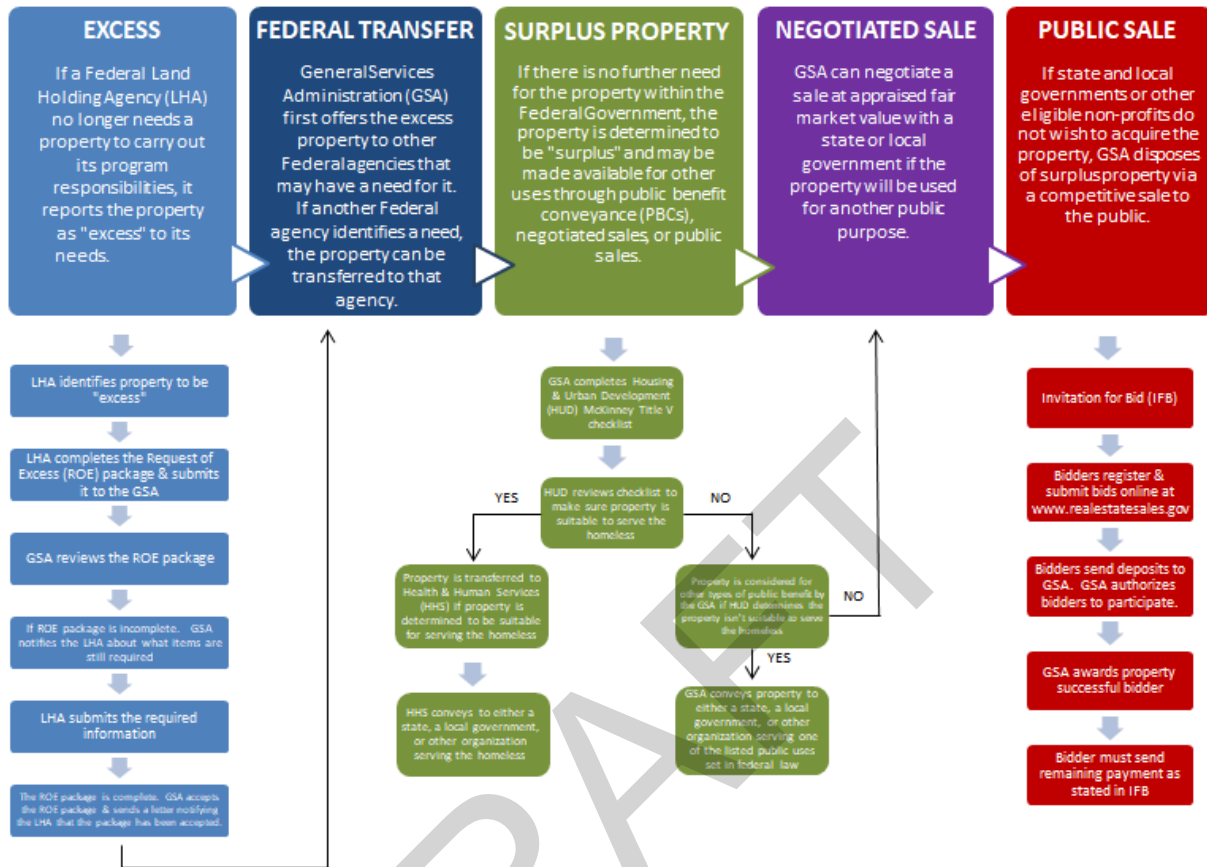
The US government also has a process for the disposal of government-owned real property (see figure 2). Although federal land holding agencies (LHA) can have their own disposal authorities, many choose to work with the GSA Office of Real Property Utilization and Disposal (RPUD) to assist with developing strategies to address real property disposition.⁷⁹ Regardless of whether LHAs rely on their own disposal authorities or work with the RPUD to dispose of their unneeded properties they must follow the process outlined in figure 2.⁸⁰

⁷⁸ Jim Martone, Branch Chief, California Department of General Services, Real Estate Services Division, Asset Management Branch. Phone interview November 13, 2018.

⁷⁹ US General Services Administration “Real Property, Real Solutions.”

⁸⁰ United States Code, Title 40, Section 102(3).

Figure 2: Federal Real Property Management Process



Source: US General Services Administration "Real Property, Real Solutions."

Once the building, structure, or piece of land has been classified as excess, it is offered to other federal agencies that may need it. If another federal agency identifies a need, the property is then transferred to that agency. If there is no further need for the property within the federal government, the real property is determined to be surplus and is then made available to state and local governments as well as eligible non-profits serving the public. Based on the property's location, the governor of the state or territory and any local or regional officials that may be concerned with the property's ultimate use are notified.⁸¹

Surplus real property is disposed of via a competitive sale to the public if no state or local governments or eligible non-profits apply for the real property. An invitation for bid is created and bidders register and submit bids online.

⁸¹ US General Services Administration "Real Property Utilization and Disposal."

How Local Governments in Tennessee Manage Real Property

City and county governments in Tennessee have broad powers to buy and sell real property, acting through their legislative bodies and guided by their form of charter. All local governments are permitted to transfer real property to other public entities, for public purposes, without sale or competitive bidding,⁸² and are authorized to negotiate direct private sales of property to nonprofit historic preservation organizations.⁸³

The purchasing process for cities varies depending on the type of city charter, according to the Tennessee Municipal Technical Advisory Service (MTAS).⁸⁴ Cities governed by a Mayor-Aldermanic Charter or City Manager-Commission Charter are specifically authorized by general law to purchase, hold, manage and sell real property,⁸⁵ and home rule and private act charters all contain some version of the same basic corporate powers. Cities in Tennessee can be incorporated under one of five kinds of municipal charter. Most were chartered by private act, 14 have home rule charters, and the others have adopted one of three types of general law charters: Mayor-Aldermanic charter, Manager-Commission charter, or Modified City Manager-Council charter.⁸⁶

County Real Property Management and Disposal

Under Tennessee law, the county mayor and county staff may determine when the property is no longer needed,⁸⁷ but the county legislative body has the final approval.⁸⁸ Although there are several different forms of local government, the disposal process is fundamentally the same for all; unless something specific has been written into the government's charter, or a county has adopted one of the specific purchasing and financial management laws in statute, the legislative body determines the method of disposal.⁸⁹

In counties operating under the County Financial Management System of 1981, the director of finance has statutory responsibility for "the public sale of all surplus

⁸² Tennessee Code Annotated, Section 12-9-110.

⁸³ Tennessee Code Annotated, Section 12-2-501.

⁸⁴ MTAS "Purchasing Procedures."

⁸⁵ Tennessee Code Annotated, Sections 6-2-201(11) and 6-19-101(a)(8).

⁸⁶ MTAS "Charters by Type."

⁸⁷ Tennessee Code Annotated, Section 5-6-108.

⁸⁸ Tennessee Code Annotated, Section 5-5-121.

⁸⁹ State of Tennessee, Office of the Attorney General and Reporter, Opinion 03-131 (2003) and 13-84 (2013).

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materials, equipment, buildings and land.” These counties also have the option to create a purchasing department and separate purchasing director, who would then be the one responsible.⁹⁰ In counties operating under the County Purchasing Law of 1957, surplus property must be disposed of: 1) by the county purchasing agent, and 2) specifically by sale at auction or by competitive bid.⁹¹

To comply with requirements of the Governmental Accounting Standards Board (GASB) Statement 34, counties are required to capitalize their assets and report this information in their financial statement annually.⁹² That is how they maintain an inventory of fixed assets. However, these financial statements are only for accounting purposes designed to report capital assets and infrastructure at their historical cost and not a detailed property inventory reported at the current market or appraised value. CTAS has developed a model Capital Asset Policy for all counties to meet GASB-34 requirements.⁹³

Surveying Local Governments to Understand Their Process for Managing Real Property

In response to a 2018 Commission survey of all local governments in Tennessee, local officials were asked how much and what types of real property their local governments owned and how their local governments approach property management and disposal. See appendix E for a copy of the survey questions and appendix F for full results and analysis. Because of a low online survey response, staff conducted follow-up telephone interviews with a sample of cities and counties across the state. Table 4 and figure 3 in appendix F show the distribution of respondent cities and counties by the regions of Tennessee. Seventeen percent (17%) of the respondent counties and 33% of the respondent cities were from East Tennessee, 61% of the respondent counties and 42% of the respondent cities were from Middle Tennessee, and 22% of the respondent counties and 24% of the respondent cities were from West Tennessee.

Survey analysis shows that approximately 47.3% of the total number of respondent counties and, approximately 51.7% of the total number of respondent cities report no surplus property in their jurisdictions. See table 5 in appendix F. The table also shows the distribution of responses from the 52.6% of respondent counties and, the 48.3% of respondent cities that reported some number of surplus parcels.

⁹⁰ Tennessee Code Annotated, Section 5-21-118.

⁹¹ Tennessee Code Annotated, Section 5-14-108(o).

⁹² CTAS “GASB-34.”

⁹³ CTAS “Sample County, Tennessee, Capital Assets Policies and Procedures.”

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Some of the local jurisdictions provided additional details on the number and type of surplus properties they own. The survey analysis (table 6 in appendix F) shows that around 56.3% of the respondent counties and, 38.1% of the respondent cities described their surplus properties as tax-delinquent properties. Twelve percent (12.5%) of the respondent counties described their surplus properties as formerly used for law enforcement purposes (e.g., jail site and former sheriff headquarters) or are located in floodplains. Thirty-three percent (33.3%) of the respondent cities described their surplus as an abandoned cemetery, flat parcels in residential areas, ROW purchases, community development block improvement areas, and floodplain properties.

The majority of the survey respondent counties and cities reported that the amount of real property owned by the local government has remained stable overall. Approximately, 70% of the respondent counties reported they do have some real estate management policy, compared with only 27% of respondent cities (table 8 in appendix F). Further, many of the local government respondents reported they had not purchased or received any state-owned property in the past and have no interest in acquiring state-owned property (table 9 and 10 of appendix F).

When asked about tax-delinquent, abandoned, or condemned properties, 53.3% of respondent counties reported that they do not have problems, but 46.7% said they do. Most cities responding to the survey said that they do not face significant challenges in dealing with tax-delinquent, abandoned, or condemned properties. Table 7 in appendix F shows the reported change in the real estate holding of the survey respondent jurisdictions.

Land banks can help local governments dispose of tax-delinquent properties.

Although not a problem for all jurisdictions, disposing of tax-delinquent, abandoned, or condemned properties can be quite challenging for some. In survey responses and in testimony before the Commission, representatives of several local governments reported that most of their surplus property was acquired as tax-delinquent property and that it can be difficult to sell these properties because of the time and money needed to establish clear title for potential buyers and developers.

According to the Center for Community Progress, a nonprofit organization focused on revitalizing vacant properties in communities, land banks “are public or community-owned entities created for a single purpose: to acquire, manage, maintain, and repurpose vacant, abandoned, and foreclosed properties—the worst abandoned houses,

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forgotten buildings, and empty lots.”⁹⁴ Land banks have been used in some states for more than twenty years. The enabling legislation for Tennessee’s Local Land Bank Pilot Program declared an “overriding public need to confront the problems caused by vacant, abandoned and tax-delinquent properties through the creation of new tools to be available to communities throughout the state” and that “[l]and banks are one of the tools that can be utilized by communities to facilitate the return of vacant, abandoned and tax-delinquent properties to productive use.”⁹⁵ Under the law, a corporation created to operate a land bank “is declared to be performing a public function on behalf of the local government with respect to which the corporation is created and organized and to be a public instrumentality of such local government.”⁹⁶

Tennessee’s land bank program, which was created in 2012 as a pilot, was initially limited to Oak Ridge. TACIR published a report that same year, recommended that, after the Tennessee Comptroller completed its duty to monitor the pilot program, “extending this authority to other jurisdictions is an option that should be considered.”⁹⁷ In fact, the General Assembly has since passed legislation extending the authority to establish a land bank to a few other cities and counties, including

- home rule cities (Chattanooga, Clinton, East Ridge, Etowah, Johnson City, Knoxville, Lenoir City, Memphis, Mt. Juliet, Oak Ridge, Red Bank, Sevierville, Sweetwater, and Whitwell);
- the three consolidated metropolitan counties (Hartsville—Trousdale County, Lynchburg—Moore County, and Nashville—Davidson County); and
- other local governments based on population (Blount County, Sevier County, Hardeman County, and the cities of Kingsport and Cleveland).⁹⁸

Although not required under current law, Tennessee Code Annotated, Section 13-30-111(e), encourages local governments that establish land banks to prioritize that properties in the land bank be used for

- purely public spaces and places;
- affordable housing;

⁹⁴ Kildee and Hovey 2010. Part of the US Department of Housing and Urban Development Neighborhood Stabilization Program Land Banking Toolkit found at <http://www.hudexchange.info/programs/nsp/nsp-land-banking-toolkit/>

⁹⁵ Tennessee Code Annotated, Section 13-30-102.

⁹⁶ Tennessee Code Annotated, Section 13-30-104.

⁹⁷ Tennessee Advisory Commission on Intergovernmental Relations 2012.

⁹⁸ Tennessee Code Annotated, Section 13-30-103.

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- retail, commercial and industrial activities; or
- wildlife conservation areas and such other uses and in such hierarchical order as determined.⁹⁹

Tax sales require a cash transaction, but subsequent buyers have difficulties obtaining financing for the purchase because of the difficulty of getting title insurance. The Shelby County Land Bank says land banks are able to get quiet titles from courts and market tax-delinquent properties more effectively than most local governments. Representatives of title insurance companies interviewed by TACIR staff said that land banks are part of the solution to selling tax-delinquent properties. These companies do not want to risk insuring the title on tax-sale properties because of the potential that the sale could be challenged in court.¹⁰⁰ Tennessee's land bank statutes provide a clear legal process for land banks to notify interested parties and quiet potential challenges to the title and for land banks to combine many properties in a single suit to quiet title.¹⁰¹

One of the primary reasons that normal market forces do not reach vacant, abandoned, and tax-delinquent properties is that there are numerous problems with the title to the properties. If title to the property is not marketable, it usually is uninsurable, and if uninsurable, it has little if any value to prospective owners.¹⁰² A 2016 article in the University of Memphis Law Review highlighted the importance of clear titles, saying "This ability to clear any cloud on the title is essential to making the property an attractive target once placed back onto the open market and ensuring its future vitality."¹⁰³

Georgia's director of the State Property Commission told TACIR staff that their land bank program works well. According to Georgia's Land Bank Act,¹⁰⁴ "[l]and banks are one of the tools that can be utilized by communities to facilitate the return of dilapidated, abandoned, and tax-delinquent properties to productive use." The act¹⁰⁵ also states that "[a]ny county, municipal corporation, or consolidated government may elect to create a land bank."

⁹⁹ Tennessee Code Annotated, Section 13-30-111(e).

¹⁰⁰ Eugene McCullough, telephone interview with TACIR staff October 1, 2018.

¹⁰¹ Tennessee Code Annotated, Section 13-30-117.

¹⁰² Alexander 2015.

¹⁰³ Shah 2016.

¹⁰⁴ Official Code of Georgia Annotated, Section 48-4-101.

¹⁰⁵ Official Code of Georgia Annotated, Section 48-4-103.

State Assistance for Local Governments: Marketing, Communication, and Training

Through the online survey and telephone interviews, local government officials shared various suggestions on the role of the state government in helping cities and counties manage their surplus real properties, including that

- the state government should give local government more autonomy and interfere less with their real estate management;
- local government should be consulted before passing of new laws;
- state government should closely coordinate with local governments, including notifying local governments of state-owned surplus properties in their jurisdictions;
- local governments must have the first right to refusal for state-owned surplus properties;
- state government should make disposal of surplus property an easy and speedy process; legislation should allow clear titles to properties defaulted to a governmental entity via tax sales; and
- state government should streamline the sale of properties by providing a website, best practices guidelines, marketing assistance, and removing administrative barriers.

While TACIR staff discussions with local government officials indicate a commitment to maintaining local decision-making control when it comes to government-owned property, there are aspects of property management and surplus disposal that could be improved with state help. Aside from the challenges local governments have with returning unwanted property acquired after-tax sales, interviewees also said that some local governments may have a limited audience to whom they can market all types of surplus property. State laws require governments to advertise available property in local newspapers, whether for sale by sealed bid or public auction, and allow disposal by online auction as well. But not all local governments have websites where they could advertise the surplus property.

The city administrator in Sparta¹⁰⁶ said that local governments could use assistance from the state when selling properties, helping local governments with marketing, and streamlining the way they sell properties. Officials from McKenzie also said they would find it useful for the state to help them with marketing. And, as STREAM staff shared in testimony before the Commission, there is no prohibition or legal barrier that

¹⁰⁶ Chris Dorsey, City Administrator, Sparta, Tennessee. Phone interview October 25, 2018.

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would prevent the state from allowing local governments to advertise surplus properties through the state's website.

Intergovernmental communication promotes a more comprehensive approach to the management government-owned properties.

In response to the 2018 survey, a few local government officials said they would like for their government to acquire state-owned surplus property but feel they may not be fully informed regarding the potential surplus property the state has in their area. California, Connecticut, Georgia, Virginia, and Washington have formal requirements to notify local governments when state surplus property is available in their jurisdiction.

Tennessee Code Annotated, Section 12-2-112(b), requires the Commissioner of General Services to “notify the house of representatives and senate member or members from the district in which the property to be sold or conveyed is located in, and the notification shall be a least twenty (20) days prior to the agreement of sale or conveyance.” Other states require additional notifications for local officials. California has a formal notification process between the state and local jurisdictions. According to California's Chief of Asset Management, “Local governments get priority on state surplus properties in California. The state notifies local officials if there is state surplus real property in their jurisdiction; however, the local government must agree to use this property for a public purpose and they must pay market value.”¹⁰⁷ Similarly, in Connecticut the state has a statutory mandate to notify local municipalities when surplus real property is available.¹⁰⁸ Under Louisiana law,

the state or any of its boards, commissions, departments or agencies, prior to disposing of any real property held by it, except buildings, shall give notice to the governing authority of the parish and/or municipality in which the property is located. The notice shall be in writing and shall advise such authority of the intention to dispose of the property and shall include a description of the property, the manner in which such property

¹⁰⁷ Jim Martone, Branch Chief, California Department of General Services, Real Estate Services Division, Asset Management Branch. Phone interview November 13, 2018.

¹⁰⁸ Connecticut General Statutes, Section 4b-21(b): “Any state agency . . . shall inform the Secretary of the Office of Policy and Management and the municipality where the land is located, in writing, not less than six months before the date when the agency, department or institution anticipates such land, improvement or interest or any part thereof is not needed by the agency, department or institution.

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shall be disposed of, and the terms and conditions upon which such disposition is proposed to be made.¹⁰⁹

Likewise, the Georgia State Properties Commission sends e-mail notifications to local officials offering state surplus properties. But in Georgia this is an opt-in system where local government may choose to subscribe to the notification service for surplus properties.

In Virginia, if no state department, agency or institution has a need for a surplus property, the county and municipality where the property is located are given 30 days to purchase it at its fair market value for public use.¹¹⁰ And Washington state law requires that the state provide a 60-day notice to local governments if surplus state property is available in their jurisdiction.¹¹¹

Training on best practices for real property management for county and city officials could promote the highest and best use of property owned by local governments.

Representatives of the Tennessee Economic Development Council (TEDC) said that local governments must be prepared to compete in the marketplace, if they want to sell surplus properties. TEDC emphasized that for surplus property to be marketable, the sites need to be “shovel ready” with access and utilities and no mitigation or permitting issues.¹¹² Private real estate developers interviewed also said that they expect to have a short time line—less than six months between site selection and groundbreaking—when investing in a new real estate project. According to a global location manager with KPMG Developers, “the government must make the properties ready for the market. Evaluate the property before putting it out on the market and not start the process when a party approaches them or shows interest in the property.”¹¹³

However, representatives for local governments surveyed—including Trousdale, Cannon, Jackson, Lincoln, and Dyer counties and the cities of Huntsville, Kingsport, Alcoa, Sparta, Paris, and Watertown—reported that they do not have any formal planning or management process for real property.

¹⁰⁹ Louisiana Revised Statutes, Section 41:139.

¹¹⁰ Virginia Department of General Services “How Virginia Sells Surplus Real Estate.”

¹¹¹ Revised Code of Washington, Section 43.17.400.

¹¹² Jamie Stitt, Assistant Commissioner of Business and Workforce Development, Tennessee Department of Economic and Community Development. Interview with TACIR staff, May 21, 2018.

¹¹³ Brad Maul, Manager, Global Location and Expansion Services, KPMG, LLP. Phone interview August 2, 2018.

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The University of Tennessee's County Technical Assistance Service (CTAS) and Municipal Technical Advisory Service (MTAS), which provide technical support and assistance to local governments, have researched best practices and provided training programs for local government officials in many subject areas for decades, including some aspects of real property management. In interviews with TACIR staff, representatives for CTAS and MTAS expressed willingness to develop additional training on issues related to real property management.¹¹⁴

The federal government has implemented a training program on best practices for real estate management to ensure that personnel have the tools and knowledge needed to effectively manage federal real property. The US General Services Administration developed the program for federal agencies to help them understand how to manage their underutilized properties better and dispose of unneeded real property assets. The federal training is a three-day program that covers real estate laws, asset management strategies, reporting requirements, disposal process, and regulations related to environmental and historic preservation compliance. Training participants have said that the training provided them with the information needed to manage federal properties effectively.¹¹⁵

¹¹⁴ Robin Roberts, Executive Director, CTAS. Email correspondence November 16, 2018 and Abb Oglesby, MTAS, Email correspondence November 30, 2018.

¹¹⁵ US General Services Administration 2017.

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