

TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations

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MINUTES OF THE TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

5 December 2016

Meeting Called to Order

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

Present 18	Absent 6
Mayor Tom Bickers	City Commissioner Betsy Crossley
County Mayor Ernest Burgess	Representative Harold Love Jr
Mr. Charles Cardwell	Representative Antonio Parkinson
Representative Mike Carter	Representative Charles Sargent
Assistant Commissioner Paula Davis	Senator Jim Tracy
Ms. Christi Gibbs	Mayor Larry Waters
Mayor Brent Greer	
County Executive Jeff Huffman	
Mayor Kenny McBride	
Regional Director Iliff McMahan	
Senator Randy McNally	
Senator Mark Norris	
Mayor Tom Rowland	
Councilwoman Kay Senter	
Comptroller Justin Wilson ¹	
Representative Tim Wirgau	
Senator Jeff Yarbro	
Mr. Kenneth Young	

¹ Russell Moore represented Justin Wilson

1. Call to Order and Approval of the Minutes

Chairman Mark NORRIS called the meeting to order at 1:03 p.m., dispensed with the calling of the roll, and requested approval of the minutes of August 30-31, 2016. Mr. McMAHAN moved approval, and Representative CARTER seconded the motion, which passed unanimously.

2. Commission and Staff Updates

Dr. Lippard congratulated Senior Research Associate Michael Mount for completing the LEAD Tennessee program, becoming the fourth member of our staff to graduate from this comprehensive leadership course for state employees.

3. Broadband Internet Deployment, Availability and Adoption in Tennessee—Draft Report for Review and Comment

Senior Research Associate Matthew OWEN presented the draft report on broadband internet deployment, availability, and adoption in Tennessee for review and comment. The report is in response to a request from Chairman NORRIS for a comprehensive study of broadband internet service in Tennessee. At the Commission's June 2015 meeting, he asked the Commission to study the status of broadband in the state, assess where there are gaps in coverage, evaluate best practices in other states for encouraging deployment and adoption, and recommend ways that Tennessee can increase broadband availability and adoption in the future. Dr. OWEN said that the draft report found that there are already several government and private initiatives to address both broadband access and broadband adoption, supporting the recommendation that Tennessee should focus its efforts on supporting and coordinating these existing initiatives and on addressing any remaining coverage and adoption gaps.

Dr. OWEN discussed the report's other draft findings, including its finding that approximately 89% of Tennesseans live in census blocks where at least one provider reported offering wireline or fixed wireless service with a capacity of 25/3 according to data collected by the Federal Communications Commission (FCC). And more than 93% live in census blocks where at least one provider reported offering wireline or fixed wireless service with a capacity of 10/1. But rural areas are still less likely to have access than urban areas. Dr. OWEN said that this represents the maximum extent of wireline and fixed wireless broadband coverage as of December 2015, adding that the data do not say whether everyone in these census blocks has access to service at the reported capacities and that the data and the maps do not show expansions of coverage that have occurred in the last year. Overall, Tennessee ranked 29th in the nation for coverage of at least 25/3 and 5th among southeastern states including the eight states that border it and South Carolina, Louisiana, and Florida again according to the FCC's 2016 Broadband Progress Report.

In response to Chairman NORRIS' question about whether courthouses and other community anchor institutions across the state have access to broadband, Dr. OWEN said that staff would need to conduct more research and would include these findings in the final report.

Councilwoman SENTER asked whether broadband coverage could affect the implementation of text-to-911 services or emergency management services involving text or email alerts. She said she did not support 911 using text and email services. Dr. OWEN said that staff would reach out to the Tennessee Emergency Management Association and the Emergency Communications Board to address these concerns in the final report. Providers currently report offering mobile wireless service and satellite service in almost every census block in the state.

Dr. OWEN also discussed the reports finding that rates of broadband adoption lag availability. Only 40% of households located in census blocks where providers reported offering at least 25/3 broadband subscribed to the service according to the FCC's 2016 Broadband Progress Report. Tennessee is tied for 19th out of 45 states for which the FCC reports adoption data but is second among the twelve southeastern states. Dr. OWEN described existing resources and programs for encouraging more Tennesseans to adopt broadband service, including discount programs for broadband service that are available from internet providers, the federal government's expansion of its telephone service discount program for low-income populations to include broadband, and programs in Tennessee's libraries and schools that provide access to training as well as service and devices for those who cannot afford their own.

In response to Chairman NORRIS' question about how much it would cost to expand one of the programs—the hotspot lending program that some libraries have implemented—Dr. OWEN said that providers now offer hotspot devices to libraries at no cost for the device itself while broadband service for the devices costs approximately \$32 per device per month. [Note: The Tennessee State Library and Archives has told staff that a reasonable ratio to use for calculating the number of devices needed to expand these hotspot lending programs statewide is one device for every 1,500 residents. With approximately 6.4 million residents, Tennessee would need around 4,267 devices, which would cost approximately \$1.6 million per year.] In response to Senator YARBRO's question about whether libraries in mostly unserved areas could be a resource for small businesses by providing shared workspace or broadband access, Dr. OWEN said that though he was unaware of specific programs in unserved communities, Chattanooga's library already offers such a program.

Dr. OWEN also discussed Connected Tennessee, a non-profit organization that has worked with communities in the past to develop technology action plans that included assessments of their existing resources for encouraging broadband adoption. In response to Chairman NORRIS' question about whether Connected Tennessee was still active, Dr. OWEN said that the organization was primarily funded through the American Recovery and Reinvestment Act and that its funding has run out.

In response to a question from Senator YARBRO about whether programs specifically for encouraging adoption could be more cost effective for increasing the percentage of Tennesseans that use broadband rather than programs for expanding coverage, Dr. OWEN said that a study by New York Law School professors Charles Davidson and Michael Santorelli concluded that broadband adoption programs are low hanging fruit for increasing rates of broadband use. Research shows that these programs are most effective when they are tailored to remove the

specific barriers to adoption faced by individual demographic groups such as families with schoolchildren and the elderly. Dr. OWEN cautioned, however, that it can be difficult to assess the effectiveness of individual broadband adoption programs because many of them only report their overall number of participants and do not follow up to determine how many participants ultimately become broadband users. Chairman NORRIS requested that an inventory of the existing broadband adoption programs and resources in Tennessee be included in the final report. Senator YARBRO requested that information on the cost of these programs also be included in the final report for purposes of comparing them to programs for expanding coverage and to inform future policy discussions.

Dr. OWEN also described existing resources and programs as well as other alternatives for expanding broadband coverage in Tennessee. The FCC is already offering grants through the Connect America Fund phase II (CAF II) to large telephone companies to expand broadband coverage in unserved parts of their traditional telephone service areas. In Tennessee, all three providers offered funding through CAF II accepted. Their funding totals approximately \$30 million per year for up to seven years for a grand total of \$210 million in exchange for expanding coverage to more than 93,000 homes and businesses. In response to Representative WIRGAU's question about requirements and oversight for the program, Dr. OWEN said that providers are required to expand service of at least 10/1 with data caps that in most cases have to be at least 150 gigabytes per month at prices that are comparable to those charged in urban areas of the state. [Note: These prices must be no greater than either a benchmark set annually by the FCC or the non-promotional prices the provider charges for comparable fixed wireline service in urban areas located in the same state. Providers must file paperwork with the FCC annually in which they certify whether the prices they offer meet these requirements. The FCC audits a sample of the filings every year to verify the accuracy of the information provided.] In response to Chairman NORRIS' question about whether the CAF II program is funded by the federal government, Dr. OWEN said that it is funded through the federal Universal Service Fund, which is funded by a tax on wired and wireless telephone service.

In response to Mayor BURGESS' question about why some rural counties that appear to be unserved aren't eligible for CAF II, Dr. OWEN said that the CAF II program is only available for unserved communities in the telephone service areas of telecommunications companies classified as price cap carriers. In response to Chairman NORRIS' question about whether other federal programs could subsidize the expansion of coverage to unserved areas that are ineligible for CAF II, Dr. OWEN said there are two additional Connect America Fund grant programs in the process of being finalized. The Connect America Fund alternative model, similar to CAF II, would provide grants to smaller telephone companies to expand coverage to in parts of their traditional telephone service areas without access to broadband, while the FCC is also in the process of finalizing an auction process for awarding grants to providers for expanding coverage in other unserved areas not covered under CAF II or the alternative model. Chairman NORRIS said that these additional programs might help meet some of the state's broadband needs without requiring state funding or the expansion of municipal providers. He requested that the final report include information showing the effect these additional programs could have on the number of remaining unserved households in Tennessee.

Dr. OWEN also discussed concerns by some broadband providers that pole attachment fees may affect the ability to expand service in some areas. Fees for attachments on poles owned by for-profit utilities are subject to FCC guidelines so long as a state has not opted out and Tennessee has not. Regardless of whether a state has opted out, attachments on poles owned by non-profit or government owned utilities are not subject to the FCC's guidelines. The Tennessee Valley Authority (TVA), however, adopted a new formula in 2016 for calculating fees for attachments not subject to joint use agreements on poles owned by the municipal utilities and electric cooperatives to which it provides power. [Note: TVA has not yet finalized criteria for determining which pole attachment agreements between other attaching entities and the municipal utilities and electric cooperatives it serves will qualify as joint use agreements.] This formula will apply to most of the utility poles in Tennessee and results in higher pole attachment fees than would be charged under FCC guidelines. Because TVA has sole authority to regulate the electric rates of the utilities and cooperatives it serves, Tennessee likely lacks authority to override TVA's formula according to a 2014 opinion by the state's attorney general.

In response to Chairman NORRIS' question about whether TVA had enforced its regulatory authority over pole attachments before, Dr. OWEN said this was the first time TVA had adopted a specific formula. Chairman NORRIS' asked whether an electric cooperative making a broadband attachment to its own poles either individually or as part of a joint venture would affect the formula and reduce pole attachment fees; Dr. OWEN said staff would need to reach out to TVA to answer the question. [Note: TVA says that if a municipal utility or electric cooperative builds communications infrastructure, such as fiber-optic cable, in the space reserved for its electric attachments on its poles, then the new attachments would not change the fees paid by other attachers. But if a municipal utility or electric cooperative places communications infrastructure in the space reserved for telecommunications attachments on its poles, then it would reduce the attachment fees paid by other attachers. This is because a municipal utility or electric cooperative that places communications infrastructure in the space reserved for telecommunications attachments on its poles has to 1) allocate to itself the amount of space on the pole actually used by its communications attachment in addition to its electric attachment; 2) allocate to itself, like any other attacher in the space reserved for telecommunications attachments, an equal share of the space required to separate electric attachments from telecommunications attachments for worker safety—so-called “safety space”—which is not allocated to attachers that only attach in the electric space; and 3) reduce by one foot the space below the lowest attachment, which is allocated equally among all attachers including the municipal utility or electric cooperative—the municipal utility or electric cooperative does not count as multiple attachers for purposes of allocating this support space.] In response to Mayor BICKERS' question about whether TVA's method for calculating annual pole costs assumed an 8.5% return on investment for pole owners, Dr. OWEN said that it did.

Mayor BICKERS said that TVA's pole attachment formula, though consistent with its mandate to maintain electric rates that are as low as feasible, does not support the state's need to expand broadband coverage. He asked whether the state could regulate pole attachment fees if it declared electric power to be a commercial service and granted the Tennessee Regulatory Authority, rather than TVA, the authority to regulate electric rates of municipal utilities and

electric cooperatives in Tennessee. But TVA's authority as the sole regulator of electric rates for the utilities and cooperatives it serves is established in federal law. [Note: TVA cites as the basis of its authority section 10 of the TVA Act (16 US Code, section 831i), which authorizes TVA "to include in any contract for the sale of power such terms and conditions, including resale rate schedules, and to provide for such rules and regulations as in its judgment may be necessary or desirable for carrying out the purposes of this Act [16 US Code, section 831 et seq.], and in case the purchaser shall fail to comply with any such terms and conditions, or violate any such rules and regulations, said contract may provide that it shall be voidable at the election of the Board . . ." TVA also cites *Tennessee Electric Power Company, et al. v. Tennessee Valley Authority, et al.*, 306 U.S. 118 (1939); and *Tennessee Valley Authority, et al. v. Energy Regulatory Commission of Kentucky*, Civil Action No. 79-0009-P (W.D. Ky. September 25, 1979).]

In response to Mayor BURGESS' question about whether the state's existing initiatives will fill the remaining gaps in broadband availability and adoption, Dr. OWEN said that one of the draft report's recommendations is to support these existing initiatives and that any remaining gaps could be addressed through efforts coordinated in part by a working group. Chairman NORRIS asked staff to look into the role that the state's Joint Economic and Community Development boards could play in supporting and coordinating efforts at the local level.

4. Court Fees and Taxes In Tennessee: Uses, Collections, and Legislation—Draft Report for Review and Comment

Senior Research Associate Jennifer BARRIE presented the draft report on court fees for review and comment. The report responds to a request from Senator Jon Lundberg, former Chairman of the House Civil Justice Committee to study court fees. She said that several legislators have questioned whether it is fair to fund agencies and programs, regardless of their worth, through the court system, or whether they should be funded through some other mechanism. Ms. BARRIE said that the draft report says that Tennessee could, as is done in Louisiana, provide more thorough analysis of court costs and related earmarks through the use of a judicial committee that reviews and makes recommendations on bills proposing to add or increase court costs.

She said the draft report also says that many stakeholders and court clerks emphasized that collecting fees and taxes can be problematic, especially in criminal cases. However, there is little collections data available to help determine the scope of the issue. According to the most comprehensive and recent collections data available from the Administrative Office of the Courts (AOC), from 2012, the collection rate was 72% in civil courts and 30% in criminal courts. In 2008, the Tennessee Fiscal Review Committee surveyed court clerks about criminal collection rates as part of a study, but only 15 clerks responded. The Committee staff recommended that the AOC be required to send an annual report of uncollected criminal case assessments from each county to the Committee. The draft says that the Commission agrees with this recommendation.

During discussion of the draft report, Senator YARBRO expressed concern about the effect of court debt on people and the amount of debt we are creating for the value. Senator YARBRO asked **whether** there has been any national research done on whether collection rates increase or are static when fines are lower.

Also during discussion, Representative CARTER said that there is nothing wrong with the programs that are getting money from court fees, but the court system is burdened. He said Knox County stayed with the old fee system, but Hamilton and the other counties went with the new flat fee system. Hamilton County lost money last year while Knox County made money. Representative CARTER said the courts, particularly the civil courts, should be self-supporting, but if you tag cost after cost on the court system is not going to work.

Members also expressed concern about the number of driver's license revocations and their effect on the public. Chairman NORRIS said any additional information or recommendations staff could include on these revocations would be helpful.

Representative CARTER said collections of an expungement fee went down dramatically after the fee was raised. He said there is a point of diminishing returns, but he is not sure where that is. Dr. LIPPARD suggested the recommendation for an annual report of uncollected criminal case assessments be expanded to say that the information collected by AOC be used to compare the amount of fees with collection rates. Chairman NORRIS agreed.

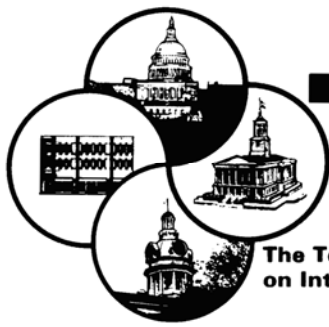
5. Legislative Compensation: Comparing Tennessee to Contiguous and Peer States— Final Report for Approval

Senior Research Consultant Ethel DETCH presented the final report comparing legislative compensation in Tennessee to that of its contiguous and peer states. She reviewed changes made since the draft was presented at the commission's August 2016 meeting, including the addition of more specific recommendations. Ms. DETCH said that the report discusses the possibility of paying legislators that live in geographically large districts more or the possibility of providing an intra-district travel expense. The report also says the capital city or county boundary could be used in determining travel reimbursement and that legislators could be allowed by law to decline all or part of their travel expense reimbursement. Also, the report says Tennessee could, as is done in several other states, create an independent legislative compensation commission tasked with recommending fair and appropriate compensation.

Mayor ROWLAND asked whether any other states have a compensation commission and said that he thought having a commission with binding authority would take a burden off the members. Ms. DETCH said the report lists the states that have a commission and indicates the authority to enact, some of which do have binding authority. Senator MCNALLY asked whether any other states have differential pay for leadership positions other than the speakers. Ms. DETCH explained that several states pay an additional salary supplement to other leadership positions such as majority and minority leaders. Mayor ROWLAND moved

approval of the report, Mr. Iliff McMAHAN seconded the motion, and it was unanimously approved.

Chairman NORRIS adjourned for the day at 3:38 p.m.



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6 December 2016

Meeting Called to Order

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

Present 16	Absent 8
Mayor Tom Bickers	Mr. Charles Cardwell
Mayor Ernest Burgess	City Commissioner Betsy Crossley
Representative Mike Carter	Representative Harold Love Jr
Assistant Commissioner Paula Davis	Representative Antonio Parkinson
Ms. Christi Gibbs	Representative Charles Sargent
Mayor Brent Greer	Councilwoman Kay Senter
County Executive Jeff Huffman	Senator Jim Tracy
Mayor Kenny McBride	Mayor Larry Waters
Regional Director Iliff McMahan	
Senator Randy McNally	
Senator Mark Norris	
Mayor Tom Rowland	
Comptroller Justin Wilson ¹	
Representative Tim Wirgau	
Senator Jeff Yarbro	
Mr. Kenneth Young	

¹ Russell Moore represented Justin Wilson

6. The Privilege Tax in Tennessee: Taxing Professionals Fairly—Final Report for Approval.

Senior Research Associate Michael MOUNT presented the final report on Tennessee’s professional privilege tax for approval. The report is in response to Public Chapter 1024, Acts of 2016, which directs the Commission to study the history and intent of the professional privilege tax, other states’ laws imposing a professional privilege tax or similar tax, and alternatives for eliminating or phasing it out.

Noting the report had only minor, technical changes from the draft version presented at the August 2016 meeting, Mr. MOUNT briefly summarized its findings. Mr. MOUNT said that arguments made in favor of the tax when it was enacted were that some professionals make higher than average incomes, so they should bear some of the burden of raising the required revenue, and legislators knew most of the tax burden would fall on professionals that live outside the state. He said others argue that the tax is not equitable because some professions that aren’t taxed have higher incomes than those that are taxed, incomes vary within professions, but all have to pay the same \$400 tax, and with the extension of the franchise and excise taxes in 2000 to limited liability entities, some professionals are double taxed. Mr. MOUNT said, although no legislation has been introduced to specifically eliminate this concern, a common approach in such instances with other taxes is to provide a credit for one of the taxes against the other.

Mr. MOUNT concluded by saying that five other states’ laws impose professional privilege taxes, and if Tennessee were to eliminate its tax all at once as Texas did, it would cost the state an estimated \$88 million a year in revenue. If instead the tax were phased out over five years as it would have been by the original version of Senate Bill 556, House Bill 678, state revenue would decrease by \$17.6 million in the first year and by \$264 million over five years. This is \$176 million less over the five years than the total decrease from eliminating the tax all at once; extending the phase-out period over a longer time would reduce the cumulative loss in revenue further.

Mayor ROWLAND moved approval of the report, and Representative WIRGAU seconded the motion, which passed unanimously.

7. Emergency Communications Services Funding (Public Chapter 795, Acts of 2014)—Update and Panel Discussion.

Senior Research Associate Jennifer BARRIE explained that Public Chapter 795, Acts of 2014, created a new funding mechanism for emergency communications services in Tennessee and requires the Commission to study the funding, functionality, and other effects of the Act and report its conclusions to the joint committee on government operations by September 15, 2017. She said that the Commission would hear from two panels, the first comprising state and local government officials who work in the emergency communications field at this meeting, and the second comprising telecommunications industry representatives at the January 2017 meeting. The panelist of state and local government officials included:

- Chuck Haston, director, Warren County Emergency Communications District;
- Jamison Peevyhouse, director, Weakley County 911 Communications Center 2nd vice president, National Emergency Number Association (NENA) and committee member, Tennessee Emergency Number Association (TENA);
- Randy Porter, county executive, Putnam County, former 911 director, former chair of the Tennessee Emergency Communications Board (TECB);
- John Stuermer, executive director, Hamilton County 911 Emergency Communications District, vice chairman, Tennessee 911 Association; and
- Curtis Sutton, executive director, Tennessee Emergency Communications Board (TECB).

Mr. SUTTON gave an overview and history of the TECB. He said that the 2014 law made it the sole receiver of 911 funds and guarantees that the emergency communications districts (ECDs) receive a base amount plus at least 50% of excess revenue. At the most recent TECB meeting, it authorized distribution of 100% of last year's \$5.3 million excess revenue to the ECDs.

Mr. PEEVYHOUSE said it is important to consider the cost of services and equipment maintenance and improvements when analyzing what the \$1.16 911 surcharge rate covers and planning for future growth. He provided a handout showing the cost of equipment and services that are either required or allowed and said that in a recent survey conducted by the Tennessee Emergency Number Association (TENA), 2/3 of respondents reported that required equipment is at or beyond its end of life, which is typically 5-7 years. The ECDs need to set funds aside for upgrade and replacement of equipment.

He said Tennessee made the right decision 20 years ago, saving local tax payers' dollars by integrating public safety answering points (PSAPs) and 911 services into existing communications centers in local jurisdictions. The Federal Communication Commission's (FCC) 2016 report, *Taskforce on Optimal PSAP Architecture*, said that the consolidation of any current 911 districts or PSAPs into a 911-only PSAP model would result in increased costs, duplication of services, delayed response times, and decreased operational efficiencies. The National Emergency Number Association's (NENA) CEO, Brian Fontes, has said that cost savings from NG911 should come through the sharing of services, networks, data, training, common technology, and policies under a single form of governance, which is the current model in Tennessee under the TECB's policies and direction. The \$5.3 million excess revenue is based on the 2012 fiscal year \$112 million revenue total, representing a nominal growth rate of 4.6% in the last five years. 911 is the only public safety entity that collects payment, through the surcharge, before the service is received, rather than when the service is received like most other emergency services.

Mr. HASTON said that communications districts operate financially like quasi-utility structures—legally they are utilities, but the rate is written into statute and they can't adjust their rates like utilities can. Because the rate does not fully fund operations, city and county

governments help fund 911 through property taxes. Local government funding is not guaranteed and can vary from year to year. ECDs need the same rate flexibility as other utilities. The 2014 law provides revenue stability. He said that the base funding amount is based on 2012 fiscal year revenue numbers and is not sufficient. Out of 100 districts, 31 saw negative net assets in the 2015 fiscal year. ECDs are at minimum staffing levels, and it is harder to attract qualified staff. Unification allows for a seamless response, while regional consolidation is not the answer. There is no substitute for local 911 call takers with local knowledge. Mr. HASTON said that the state needs a model that funds the unified systems that provide dispatch in addition to the ones that just take calls. He added that TECB is best suited to have authority to set the rate.

In response to a question from Mr. McMAHAN about what are the best practices for operational models from other states, Mr. HASTON said that both NENA and the Association of Public-Safety Officials (APCO) provide guidelines and best practices. Mr. McMAHAN said he is concerned about Tennessee's rural and challenged counties having quality operations, training, and technology. Mayor ROWLAND added that the state should consider that many 911 calls come from people who are not local and are passing through.

Mayor BURGESS said funding may not go as far in districts that don't have operations consolidated in one location and asked whether the panel could provide information on how they could do something different. Mr. HASTON acknowledged that ECDs use different models. Although there is a great advantage to having everything under one roof, this should be a local decision because it might not work everywhere. He said we need more study on the optimal model for 911 centers in Tennessee.

Mr. SUTTON said there are always issues about whether the ECD dispatches or whether another agency does it for them, about whether the ECD employees dispatch or another local government department's employees dispatch, and about how far the money can go. The legislature lets local governments decide how to operate their ECDs. He also clarified that the \$5.3 million in excess funds was in excess of TECB's budget, but does not translate to ECD budgets. The amount isn't a lot considering there are 100 districts, and the most populous districts get the bulk of it. It does not translate to a big benefit to the smaller, rural districts.

In response to Representative CARTER's question about what a quasi-utility is, Mr. HASTON responded that, financially speaking, ECDs are quasi-utilities because utilities set and adjust rates based on their operational need, but ECDs can't. Representative CARTER asked what the financial problem was with the ECDs. Mr. HASTON said that rates were capped in 1998 and didn't change until the 2014 law passed. The rates are written into the law. He said ECDs should have rate flexibility, and TECB should have the power to determine the rates.

Representative CARTER asked what the money from the surcharge can be used for. He had heard that state money can only be used for equipment and hardware. Mr. HASTON said the money can be used for expenses other than just equipment and hardware. Representative CARTER asked if the ECDs were given rate flexibility, would this reduce local government

expenditures on 911. Mr. STUERMER answered that it depends on how 911 is conducted in that county. For example, in Hamilton County they provide all call taking and dispatching for all emergency services in the county. If fully funded by the state, the local government wouldn't have to help fund a unified service. Representative CARTER said he thought 911 should be self-supporting. Chairman NORRIS clarified that state funding must be used for equipment, but ECDs can also use other funding sources for equipment.

Mayor HUFFMAN asked what the state money can be used for, and said it is a murky area where there is confusion about funding rules and regulations. Many local governments provide funding for ECDs, and the push comes when an ECD asks a local government for additional funding, but the local government says why can't you use the money you've got. Mr. SUTTON said they have revenue standards that require the money to be used for equipment. If there is money left over, the money can be spent on other permissible uses, such as salaries. He said that under the new law, the TECB does not consider depreciation when determining whether an ECD is financially distressed. The TECB removes the ECD from distressed status if it is primarily because of depreciation. The law has a maintenance of effort provision, meaning that when the local government removes funding support, the state can also reduce the base amount by the same level, which will prevent an increase in 911 revenue from becoming an increase in local government operating revenue.

Mayor HUFFMAN asked about catastrophic emergency funding for things like wildfires. Mr. SUTTON said TECB would provide catastrophic funding if the equipment is insured and the state would be repaid. If the equipment is not insured, the policy does not apply.

Mayor HUFFMAN asked how many ECDs provide dispatch and medical advice. Mr. SUTTON said he doesn't think anyone on the panel has that information. He explained that every ECD, except one, does some form of direct call taking dispatch, but it varies.

Mayor HUFFMAN asked whether there was ever a year where districts did not get funding. Mr. SUTTON said no he was not aware of any. Mayor HUFFMAN asked how many ECDs have debt and debt that is backed by general obligation bonds. Mr. SUTTON said he did not know, but he will try to get that information and get back to him.

Mr. YOUNG asked what is being done to ensure that the surcharges are being properly collected and remitted by providers. Mr. SUTTON answered that under a new law, beginning July 1, 2017, the Department of Revenue will collect the surcharge and will be able to audit providers. TECB will no longer collect any surcharges.

Mayor BICKERS asked about emergency public notification and who funds it. Mr. PORTER said this is a function and responsibility of emergency management, not 911, although 911 funding can help pay for it, and 911 centers can be involved. Mayor BICKERS said he hopes that they will look at ways to utilize 911 to communicate with people during emergencies.

Mayor PORTER said he thought Tennessee has a great 911 system and they should look carefully before changing laws that could jeopardize the current system. He said the thinks decision-making should be kept at the local level.

Mr. STUERMER said that there are concerns about the new rate because it is based on fiscal year 2012 numbers, and the rate does not meet current needs as shown by the 31% of PSAPs in a net negative position in 2015. This is unprecedented. After the law passed, revenue collections in Hamilton County were \$374,000 less compared to the first half of the fiscal year under the old rate. ECDs are teetering on the edge of being able to provide good service. Mismanagement of funds is not the problem with PSAPs who are net negative. We need to look at whether the 1984 definition of 911 still holds true, and we also need a uniform statewide standard for 911 first, then we can figure out the amount of funding. We need to clarify the role and standards of 911 and TECB's role. Depreciation and amortization of assets decrease the operational revenue, and operational reserves are used to replace assets or upgrade to new technologies. It is harder now for ECDs to use reserves for capital because they need emergency reserves to ensure they can operate. Most ECDs don't have sufficient reserves. ECDs need to be able to adjust rates like other utilities and TECB should be able to do it.

8. State Prisoners in County Jails—Update and Panel Discussion

Senior Research Associate Bob MOREO reviewed the updated research plan for the study of issues related to state prisoners housed in county jails. The study was initially requested by the Commission at its May 2016 meeting and will be an update to the Commission's 2007 report, *Beyond Capacity: Issues and Challenges Facing County Jails*. Mr. MOREO highlighted relevant changes since the 2007 report and provided background information on the Public Safety Act of 2016, including how it may affect county jails. Mr. MOREO then introduced the panel of stakeholders:

- Debbie Inglis, deputy commissioner and lead counsel, Tennessee Department of Correction
- Wes Landers, chief financial officer, Tennessee Department of Correction
- Ellen Abbott, director of criminal justice services, Tennessee Department of Mental Health and Substance Abuse Services
- Terry Ashe, executive director, Tennessee Sheriffs' Association
- Jeff Box, sheriff, Dyer County
- David Connor, executive director, Tennessee County Services Association
- Jim Hart, jail management consultant, University of Tennessee County Technical Assistance Service

Debbie INGLIS, deputy commissioner and lead counsel for the Tennessee Department of Correction (TDOC), and Wes LANDERS, TDOC chief financial officer, presented first. Mr. LANDERS said that reimbursement payments to counties would total \$173 million for fiscal

year 2017, about 18% of the department's budget. He said the state reimburses counties for the two types of state prisoners: locally sentenced offenders and jail backup offenders. Locally sentenced offenders are felons ordered by the judge to serve their sentence at the local level—generally a one to three year sentence or one to six years in Shelby or Davidson counties. Jail backup offenders are convicted felons sentenced to TDOC custody but awaiting transfer to a TDOC institution. TDOC does not reimburse for pre-trial detainees, inmates held for federal or city ordinances, or convicted misdemeanants. Non-reimbursable prisoners make up two-thirds of the local jail population, with pre-trial detainees comprising half of that. In addition to payments for housing felons, the state also funds contract medical reimbursements for those offenders and approximately \$4 million in miscellaneous costs at the local level including jury sequestration, offender transport, and emergency hospitalization, etc. Mr. LANDERS said the local jail population peaked in July 2012, and has decreased by 18% since, leading to reductions in the locally sentenced and backup populations as well. The department has added about 2,500 beds since 2007. Since the peak in 2012, the number of locally sentenced state prisoners in jails has dropped 10% and the number in backup has dropped about 17%.

Mr. LANDERS said the rate of “backfill” is important to understand—for example, Site 1 at the West Tennessee State Prison was recently converted from a male facility to a female facility. The female backup population in the county jails was 873 on August 1. Between August 1 and October 31, TDOC moved 374 females from jails to Site 1. On October 31st, the female backup population was still 728—meaning that moving 374 females out and into a state bed only reduced the population in the jails by 145 beds. The other 229 beds were immediately “backfilled” by other females sentenced to TDOC custody. This illustrates that simply adding state prison capacity is not the most effective way to manage or solve population concerns.

Mr. LANDERS explained why he believes the Public Safety Act of 2016 will help manage the local jail population. New graduated sanctions and incentives will target the large pre-trial detainee population. He said that about 40% of TDOC new admissions come from “technical” violations of conditions of probation or parole, or some sort of noncompliant behavior while under probation, parole, or community corrections—where no new crime has been committed. The Public Safety Act lets a supervising officer address these violations without automatically revoking the person's probation and sending them to jail to await a hearing before a judge—an often lengthy process. Reducing this portion of the jail population will save money at both the state and local level. Mr. LANDERS then discussed the reimbursement rate, currently \$37 per day per inmate, with three notable exceptions. Shelby and Davidson counties have contracts for the reimbursement of actual costs of housing locally sentenced felons, with Shelby capped at \$73 a day. Johnson City receives \$38.75 a day for housing female offenders. The general reimbursement rate is set by the General Assembly each year. The rate increased from \$32 to \$35 in 2006 and from \$35 to \$37 in 2013. Each dollar the rate is increased would cost the state about \$2.7 million annually. Mr. LANDERS added that, if the state were to reimburse counties for pre-trial detainees—using FY 2016 numbers with an average pre-trial sentence credit of 136 days multiplied by the actual average jail cost of \$49.36 per inmate day—it would cost the state more than \$88 million. Mr. LANDERS then explained why the department pays a higher rate to house inmates in private prisons—Core Civic (formerly Corrections Corporation of America)

facilities are contracted to provide the same level of services and standards as state-owned prisons, including medical services, mental health treatment, and other programming. The average daily cost at these facilities in FY2016 was \$56.61 per inmate day—lower than the TDOC average of \$74.80 per inmate day.

Mayor HUFFMAN asked for clarification about how treating parole and probation violations differently would save state and local governments money. Ms. INGLIS explained that, under current laws, violators are arrested and placed in jail to await a revocation hearing. The Public Safety Act of 2016 allows for other sanctions. Mayor HUFFMAN asked whether it was true that the state’s liability for the cost of that jail time doesn’t start until after the probation is revoked and that local jails are not reimbursed for time spent awaiting hearing. Ms. INGLIS agreed, adding that the new law will keep some violators from going back to jail. Some judges want TDOC to bring all issues of noncompliance back to court—under the new act TDOC will not always have to do so. Mayor HUFFMAN asked **whether** it would be different for parolees or probationers who commit a crime. Ms. INGLIS said yes, sanctions would not be available when the person commits a new crime. Mayor HUFFMAN recalled a study that said violators spent an average of 75 days in jail awaiting hearings. Working with judges to get violators into court faster, he said, along with these new sanctions, would save locals a lot of money. Mayor HUFFMAN and Ms. INGLIS clarified that the state does become financially responsible for parole violators immediately, as opposed to probation violators.

Vice Chairman ROWLAND asked how state compensation for housing prisoners compares to federal compensation to local governments. Mr. LANDERS said that the federal government’s ICE (Immigration and Customs Enforcement) pays up to \$75 per day. He added that the state’s rate of \$37 compares very favorably to other states.

Mayor BICKERS asked **whether** \$49.36 was the average daily cost for housing state prisoners; Mr. LANDERS said it is the average of what they reimburse the counties. Mayor BICKERS asked **whether** TDOC knows the actual cost for counties to house state prisoners, compared to the \$37 reimbursement rate. Mr. LANDERS said there is a gap, but they don’t know what each county’s expense is. In general, it is about \$43 to \$45 per day. Mayor BICKERS asked how the \$37 rate is determined by the legislature. Mr. LANDERS said his department doesn’t make any recommendations but would advise the legislature if asked for information. Mayor BICKERS brought up pre-trial detainees indicted and being prosecuted for felonies; they are in jail because they were denied bail or could not afford it. He asked, and Mr. LANDERS affirmed, that it was an \$88 million burden on counties to pay for these detainees. Mayor BICKERS asked who bears the burden of medical care for these inmates, and Mr. LANDERS said that the state does not pay for it. Mayor BICKERS asked who decides whether the state or counties are responsible for these pre-trial felon medical costs. Ms. INGLIS said it is a legislative decision (meaning in statute). They agreed that changing this policy would require legislation.

Mayor BICKERS asked about medical costs for “backup” inmates. Mr. LANDERS answered that the state’s responsibility depends on whether there is a contract with a county. The state pays for overnight emergency hospitalization of inmates in backup and for locally sentenced

state inmates. Counties with TDOC contracts cover the first \$1,000 of any medical care for state inmates in their custody, and then the state pays beyond that. Mayor BICKERS asked **whether** TDOC has tried to determine the total medical cost that counties are paying for care of pretrial felons and backup prisoners. Mr. LANDERS answered “no.” Mayor BICKERS then asked how the department decides which “backup” inmates are transferred first and which are kept locally. Ms. INGLIS said it is determined by the local jail administrators—TDOC lets counties know when space is available, and the locals decide which prisoners to send. She also explained the four “Roberts” counties that are subject to a court ruling giving them priority for relieving overcrowding in their jails, and that TDOC communicates with the local jail administrators to prioritize transfer of backup prisoners. Mayor BICKERS asked who decides which prisoners stay in a jail at sentencing and which ones move to a state institution. Ms. INGLIS said that TDOC staff work with local officials to decide which ones to move. Mayor BICKERS asked about the use of state inmates for certain jobs, and explained that prisoners working in the Blount County Jail were taken away, with Blount County officials not given a choice about which ones were transferred—costing the county money to hire staff to replace the trustees moved to TDOC facilities. Ms. INGLIS reiterated that TDOC relies on local administrators to make those decisions.

Bob McKEE, local jail resource coordinator for TDOC, was introduced to address this question. He said TDOC prioritizes taking in violent inmates and those with longer sentences. He also said that he was familiar with the situation in Blount County, and took responsibility for the department’s attempt to relieve overcrowding resulting in too many useful inmates being removed. Mayor BICKERS commented, and Mr. McKee agreed, that it helps jails operate efficiently when they can keep certain inmates for jobs. Mayor BICKERS said he wants to make sure there is a better process to accommodate this need.

Representative CARTER emphasized the need to study the mental health aspect of jails housing the indigent mentally ill, saying that the state’s reduction in the number of beds in state mental institutes lead to jail crowding as the jails were forced to accommodate those with mental health problems. Chairman NORRIS responded by introducing the next speaker, Ellen ABBOTT, Director of Criminal Justice Services for the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS), to discuss TDMHSAS programs and resources available to local jails. The Criminal Justice Liaison program provides liaison workers in jails and courts in 32 counties to help with diversion and release plans to keep some offenders out of jail and from going back after release, screening inmates to connect them with treatment and training where available. There are 18 Criminal Justice Liaisons and 12 Case Managers. She said that the liaisons have developed close to 1,200 long-term release plans, and since 2014 diverted (for at least six months) 8,779 offenders from going to jail. Outreach efforts across the state have reached more than 84,000 individuals in an attempt to prevent their return to the criminal justice system. Ms. ABBOTT discussed the Community Treatment Collaborative, which receives funding from TDOC to serve parole and probation violators with substance abuse issues instead of sending them back to jail. The program uses social workers to refer offenders to treatment agencies. In both 2015 and 2016, this kept more than 2,100 offenders from going to

jail. She also said the department supports two re-entry programs (Dyer and Hardin counties) that provide services.

Terry ASHE, executive director of the Tennessee Sheriffs' Association, began his remarks by referring to the Commission's 2007 report and said several recommendations in the report should have been acted upon but were not. He discussed the daily challenges that face sheriffs operating jails across the state, noting first that in 2007 the corrections community did not foresee the rapid growth of the female inmate population. Until very recently, jails were not properly designed to accommodate this change. Design and specific population needs in jails force staffing decisions that lead to increased costs. Sheriff ASHE said that real-time tracking (ankle monitors) has gained acceptance since 2007 as an alternative to incarceration. He noted that, while corrections training has improved, turnover is high and morale is low. This can increase costs at the local level. From a county government perspective, Sheriff ASHE said that sometimes jails are not a county priority, but that they are a county's number one potential liability. Jails can often be neglected until there are problems. Another change since 2007, he added, has been PREA (the federal Prison Rape Elimination Act of 2003), which adds costs for the state and local jails to comply with changing rules and regulations. Regarding medical and health care, jails have outsourced it to professionals and professional organizations, which has added costs for care but reduced costs by decreasing liability. Mr. ASHE also advised that the Commission consider the future of immigration laws and how they may affect counties. In spite of what some people may think, there is not money to be made in running county jails. He commended TDOC for giving local jails some flexibility to deal with their inmates, but encouraged more communication between state and local officials.

Jeff BOX, Dyer County Sheriff, presented information about his county's pre-release program to reduce recidivism. He said that housing a state inmate in his jail costs \$48.59 per day, while they are reimbursed just \$37. Basic state inmate programming costs \$53.69, and \$64.72 is the cost for a state inmate in the re-entry program. Sheriff BOX discussed how pre-trial time served is credited towards inmates' sentences, but counties are not reimbursed for that time. He believes if the state counted pre-trial time towards a sentence served, it should compensate the county for housing the inmate. The Sheriff said that in 2013 his non-program inmates had a 60% recidivism rate, while currently program inmates are at 20% recidivism and re-entry program inmates are at just 10%.

Chairman NORRIS noted that Sheriff BOX had presented before the Senate Criminal Justice Subcommittee, and that there was interest in using increased reimbursement funds to help counties implement these kinds of programs. Senator YARBRO added to that, asking **whether** the state's payments should be structured to incentivize and reward departments and facilities to reduce recidivism.

Sheriff BOX continued, noting he knew there are good re-entry programs in Rutherford, Franklin, and Shelby counties. He listed some of the organizations that partner with his department to provide mental health counseling and workforce development, including the local community college, along with his district attorney and circuit court judge, as well as

churches and local businesses that provide opportunities for prisoners in the program to work. He said that there is high demand for workers from his program. Sheriff BOX gave some more details about the program and how inmates apply for it and are assessed. He listed some types of counseling and career training the inmates go through, and explained how his program had to work with the state parole board to coordinate the classes required of parolees. His staff was trained to conduct those classes so that parolees in his program didn't have to miss work. In closing, the sheriff said that his county built a new jail in 2003 in response to state mandates to relieve overcrowding, and this capital expense added \$13.87 per day to the overall costs. Reimbursement for housing state prisoners helps to offset that fixed cost, but it would be good to get serious and violent pre-trial detainees out of local jails quicker, because the counties are not compensated for them. The same goes for felons who violate probation; they were sentenced and it should be TDOC's responsibility to pay to hold them until they can get a hearing. He advocated for a higher reimbursement rate since it costs the counties more than \$37 per day to house the state's inmates. He also suggested a program per diem rate that could be earmarked to fund additional programs.

Chairman NORRIS stepped out, yielding the chair to Vice-Chairman ROWLAND.

David CONNOR, executive director of the Tennessee County Services Association, thanked Representative CARTER for calling attention to mental health, as that is the biggest issue that has changed since the 2007 Commission report. Mr. CONNOR recounted the history of when counties began housing state prisoners to relieve overcrowding in state prisons. Counties were initially reimbursed for actual costs documented, until the legislature instead imposed a flat cap. One of the recommendations from the 2007 Commission report that was implemented was to have the state simplify the county cost reporting process. As documented costs for most counties rose beyond \$35 per day, they felt it wasn't necessary to keep submitting detailed cost sheets if they were only getting back the flat amount. The drawback to this, according to Mr. CONNOR, is that current, detailed cost information is not available for many counties. He said that, based on the latest TDOC reports, 43 jails are at or above 100% capacity—some above 200%. Even when a jail is not at 100% capacity, appropriately segregating men, women, and special needs inmates can be difficult to manage. Mr. CONNOR said that the backup population awaiting transfer to TDOC facilities continues to grow, dipping when space becomes available but filling back up again after, agreeing with Mr. LANDERS that this is not a problem we can build our way out of. Right now, implementing programs to reduce recidivism, like what Sheriff BOX has done in Dyer County, takes a lot of people in place to work together. Such cooperation is not always in place in every county. For example, 42 out of 95 county sheriffs were newly elected two years ago. Turnover is a challenge when it takes time to understand these programs and build support. Lack of coordination in general is a problem; there are sheriffs, county commissioners, county mayors, judges, district attorneys, public defenders, TDOC, etc. that all have to work together. Regardless of policies and jail capacity, when someone is arrested and brought to jail, the jail has to take them in and house them. The sheriff alone does not control who comes into and who can leave the jail. Regarding mental health, Mr. CONNOR said that there are criminals that also have mental health issues, but

others simply have a mental episode and the only way to respond is to send law enforcement. As a result, the person ends up in the criminal justice system when they shouldn't.

Mr. CONNOR cited a report that said there are 6,188 inmates in the state prison system with diagnosed mental health issues, and he estimated there to be another 7,000-8,000 such people in county jails. However, the state has fewer than 600 psychiatric institution beds. Keeping the mentally ill and the nonviolent probation violators out of jails would be the most effective in reducing population. However, providing drug treatment and mental health facilities may not be something that each individual county needs to do; Mr. CONNOR suggested that programs could be coordinated on a regional level. He mentioned the 21st Century Cures Act currently moving through the US Congress [the bill had already passed the House and passed the Senate the day after his testimony, awaiting the President's signature] that includes initiatives for mental health treatment in correctional facilities. In conclusion, Mr. CONNOR summarized the issues he hears from counties: a need for higher reimbursements, not being paid for all the state inmates they house and related medical costs, and finally the drug addiction and mental health problems.

Jim HART, jail management consultant for the University of Tennessee County Technical Assistance Service, began his presentation with a discussion, echoing Mr. CONNOR, of the many layers involved in jail crowding: police officers making arrests, probation and parole officers reporting violations, courts and judges determining sentences, bonding companies, the legislature, and more. His experience from doing jail assessments around the state has shown him how some counties more effectively manage their jail populations. Issuing citations instead of arrests is one example for diverting misdemeanor offenders from custody. Some jails only set bail once a day, so people get held until the next day. Having prescreening up front for indigent inmates allows them to quickly get assigned a public defender who can begin to plea bargain if possible. According to Mr. HART, many jails don't document their process enough to be able to identify where people get held up in moving through the system. He mentioned the Tennessee Corrections Institute's County Corrections Partnership, which works with decertified county jails, and several counties that have established criminal justice coordinating committees, both of these being ways to bring different components of the justice system together. Sometimes, though, these initiatives struggle because of lack of resources and monitoring. Jails often have to rely on volunteers from the religious, education, and substance abuse communities. Piecemeal programs don't allow for tracking to see how they affect recidivism. Mr. HART identifies community involvement and connection as the critical component for successful diversion and reentry programs; integrating offenders back into the community.

Continuing on the topic of mental health, Mr. HART spoke about jails becoming the convenient place to take citizens with mental health crises; it's an easier process for an officer to arrest them on a nuisance charge at their local jail than to try and get them to a mental health facility, often far across the state. However, most jails do not have mental health services to help those people; there are crisis response teams, but they are often overwhelmed. Without advocacy and assistance, inmates with mental health issues spend more time in jail, often because of

disruptive behavior related to their illness. Mr. HART spoke favorably of the mental health criminal justice liaison program described by Ms. ABBOTT. He also said the lack of adequate space in most jails to house inmates with mental health problems. Mr. HART discussed other medical care issues facing county jails. Because jails cannot refuse to take an arrestee, they are often brought in with serious injuries that become the jail's responsibility to get treated. A city police officer may bring an injured criminal to jail, rather than take them to a nearby hospital, in order to transfer responsibility and cost. Jails often do not have adequate space to house or treat injured inmates. Privatizing jail medical care has been positive, but it needs better monitoring to ensure best results. Mr. HART also discussed the growing female population. In addition, while classifying offenders into different risk and needs groups is a good thing, many jails aren't capable of housing different groups separately, especially among female inmates. He said that a jail, to be able to handle fluctuations in population, is already "crowded" when it is at 85-90% capacity. In October 2016, there were 65 jails exceeding 90% capacity, with 43 of them over 100%. Mr. HART supported increasing the per diem reimbursement, but he also suggested connecting dollars to increased programming. He mentioned the lack of support for regional jails, but thought that a regional workhouse could be a possibility. He also discussed problems with sentence computation, and the multiple statutes and rules that decide how to calculate sentences. Each county and judge can do it differently. He encouraged the Commission to revisit the recommendations in the 2007 report.

Other Business

Dr. LIPPARD discussed the recently completed sunset report, dated November 2016, which contained one finding: TACIR did not design and monitor internal controls in three specific areas. Because of the information security measures proscribed by Tennessee Code Annotated, Section 10-7-504(i), he was not allowed to discuss the details of the finding. Dr. LIPPARD characterized all three items as relatively minor and had been extremely easy to remedy. He informed the commission that the sunset audit hearing was scheduled for December 13, 2016, at 9:00 am, but that the one finding would not be discussed until the December 14, 2016, Information Technology Council's closed hearing.

Henry County Mayor Brent GREER suggested that, in response to the audit report's observations about the Public Infrastructure Needs Inventory, the Commission request representatives of the development districts to come speak at the next meeting on ways to improve the survey.

The next commission meeting dates were set for January 26 and 27, 2017. The subsequent meeting was tentatively set for May 16-17 or May 23-24, 2017.

Vice-Chairman ROWLAND adjourned the meeting at 12:06 p.m.