Report of the Tennessee Advisory Commission on Intergovernmental Relations

Intergovernmental Challenges and Achievements

Biennial Report

Fiscal Years 2014-15 and 2015-16

TACIR

AUGUST 2016

TACIR
Publication Policy

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August 30, 2016

The Honorable Ron Ramsey
Lt. Governor and Speaker of the Senate

The Honorable Beth Harwell
Speaker of the House of Representatives

Members of the General Assembly

State Capitol
Nashville, TN 37243

Ladies and Gentlemen:

Transmitted herewith is the biennial report for fiscal years 2014-15 and 2015-16 pursuant to Tennessee Code Annotated § 4-10-108. This report was approved by the Tennessee Advisory Commission on Intergovernmental Relations on August 30, 2016, and is hereby submitted for your consideration. It outlines the hard work and effort of the Commission in aiding local governments, the General Assembly, and the State of Tennessee.

Sincerely,

Senator Mark Norris
Chairman

Lynnisse Roehrich-Patrick
Executive Director

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MEMORANDUM

TO: Commission Members

FROM: Cliff Lippard
Interim Executive Director

DATE: 30 August 2016

SUBJECT: Biennial Report for Fiscal Years 2014-15 and 2015-16—Final Report for Approval

The biennial report on the Commission's work for fiscal years 2014-15 and 2015-16 is submitted for your approval. The report, required by the Tennessee General Assembly, follows the general framework established in previous reports and provides an overview of important program areas—municipal boundary changes and growth policy, low-income-housing tax credits, the rights of homeowners in planned developments, lodging taxes, homestead exemptions, broadband internet access and adoption, and infrastructure —addressed over the two-year period. The full scope of the Commission's work is evidenced in the lists of publications, presentations, relevant legislation, and meeting summaries included in the appendixes.

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Message from the Chairman and Executive Director

Senator Mark Norris
Chairman, TACIR

This Biennial Report of the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) describes the accomplishments and primary activities of the Commission during fiscal years 2014-15 and 2015-16. The Commission takes its mandate to provide a future-oriented perspective to public policy and intergovernmental relations seriously, focusing the efforts of its research and support staff on exhaustive, deliberative efforts to ensure that its recommendations and observations to the state's elected leaders and officials are both well informed and solidly grounded. The expertise and hard work of the talented individuals who serve on the Commission and shape the reports developed by its staff are essential to TACIR's success. Commission members for fiscal years 2014-15 and 2015-16 are listed in appendix A.

Lynnisse Roehrich-Patrick
Executive Director, TACIR

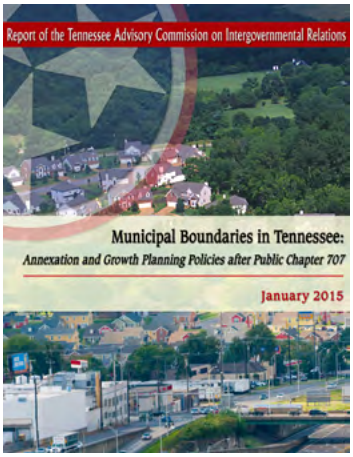
The report describes the work of the Commission in aiding local governments, the General Assembly, and the State of Tennessee and offers a focused overview of key issues the Commission addressed during the period covered—including municipal boundary changes and growth policy, low-income housing tax credits, the rights of homeowners in planned developments, lodging taxes, homestead exemptions, broadband internet access and adoption, and infrastructure. The broader scope of the Commission's work is seen in the lists of publications, presentations, relevant legislation, and meeting participation included in the appendixes.

Focus Issues

The Commission and its staff addressed a variety of issues during fiscal years 2014-15 and 2015-16. Highlights include municipal boundary changes and growth policy, low-income-housing tax credits, the rights of homeowners in planned developments, lodging taxes, homestead exemptions, broadband internet access and adoption, and infrastructure. These issues demonstrate the wide range of topics that fall within the purview of the Commission's mission to

> *serve as a forum for the discussion and resolution of intergovernmental problems; provide high quality research support to state and local government officials to improve the overall quality of government in Tennessee; and to improve the effectiveness of the intergovernmental system to better serve the citizens of Tennessee.*

Municipal Boundary Changes and Growth Policy



Annexation disputes among counties, cities, and affected residents, a recurring theme in Tennessee's history, surfaced again in 2013 when concerns from citizen groups prompted debate in the 108th General Assembly over whether changes should be made to the state's municipal annexation laws. To allow adequate time for proper consideration of the complex issues raised in the debate, the legislature enacted Public Chapter 441, Acts of 2013, which established a moratorium on non-consensual annexations of agricultural and residential property and called for a comprehensive review of state policies related to growth planning and municipal boundary changes. This Commission released an interim report to the legislature in January 2014 comparing and contrasting current and proposed laws in Tennessee with those in other states and recommending extension of the moratorium for another year to allow for further consideration of options presented in the report. The General Assembly responded with Public Chapter 707, Acts of 2014, strengthening the annexation moratorium established by Public Chapter 441 and instructing the Commission to continue its review of state policies but also repealing cities' authority for unilateral, nonconsensual annexation.

Although Public Chapter 707 settled the issue of non-consensual annexation, its passage raised new questions, including how to determine which agricultural properties require written consent for annexation, and left others laid out in the Commission's interim report unresolved. Issues that remained unresolved included non-resident owners' ability to participate in annexation decisions, accommodating requests for annexation of non-contiguous properties, requirements

for plans of services, initiating deannexation, informing residents of mutual boundary adjustments, and proper allocation of tax revenue after annexation. Also unresolved were the status of counties' growth plans, including the need to review and update them periodically, allowing cities to unilaterally retract their urban growth boundaries (UGBs), and the duties and responsibilities of joint economic and community development boards. Other changes made by the act required further revision to remove references to deleted sections and clarify statutes made ambiguous by the changes.

The Commission addressed these issues in its January 2015 report Municipal Boundaries in Tennessee: Annexation and Growth Planning Policies after Public Chapter 707, which explained the annexation process going forward, identified sections of the code requiring clarification, and made several recommendations including allowing non-resident participation in annexation decisions, allowing cities to annex non-contiguous areas at the request of an owner—an alternative to corridor annexation—and under certain conditions, and allowing residents to initiate deannexation in certain circumstances, as well as requiring cities to give notice and hold public hearings before unilaterally adjusting their boundaries and requiring county coordinating committees to periodically review growth plans.

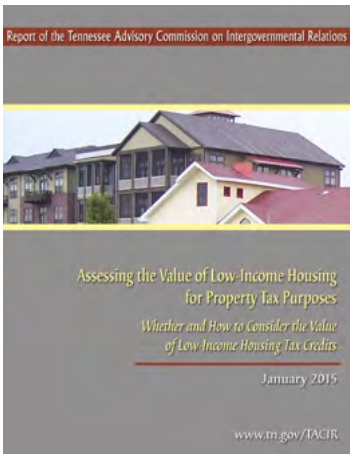
Based in part on the Commission's recommendations, the General Assembly passed Public Chapter 512, Acts of 2015, which removed obsolete language and corrected inconsistencies in the code created with the passage of Public Chapter 707. The Act added a provision allowing non-contiguous annexation at the request of owners of non-contiguous properties contained entirely by that city's urban growth boundary and to be used for industrial or commercial purposes or future residential development but only in Williamson County. This legislation was based on suggestions in the Commission's 2015 report to help cities and counties alleviate the problems created by corridor annexation to reach areas appropriate for commercial or industrial development without affecting residents or landowners who don't want to be annexed.

Other legislation addressing alternatives and recommendations in the Commission's report was introduced in the 108th General Assembly but did not pass. The 109th General Assembly in turn considered four bills related to topics discussed in the Commissions reports on annexation and growth policy. Consistent with recommendations in the Commission's January 2015 report, Senate Bill 2583 by Norris and House Bill 2587 by Todd, which passed in the Senate but not in the House, would have allowed cities to unilaterally retract their urban growth boundaries subject to county approval and required existing county growth plans to be reviewed periodically.

Also largely consistent with recommendations in the 2015 report, Senate Bill 749 by Watson and House Bill 779 by Carter, which was referred to summer study, would have required county approval and municipal compensation for deannexation of roads and other public rights of way and allowed citizens to initiate deannexation from cities by referendum. Counter to the Commission's recommendation, the proposed legislation would not have required failure to provide services as a pre-condition for deannexation by referendum nor would it have limited deannexations to areas on the city border—a policy recommended to avoid creating donut holes—and entire areas as originally annexed rather than scattered individual parcels.

An amendment to the Senate bill would have prohibited donut holes. Amendments in the House would have limited deannexations to specific cities in Marshall, Washington, Sullivan, Hamilton, Knox, and Shelby counties and would have extended to all cities permission granted to those in Williamson County by Public Chapter 512 to annex with owner permission areas inside their growth boundaries but not adjacent to the city. Two other bills would have extended similar authorization to cities in the state's other non-metropolitan government counties. Senate Bill 1817 by Jackson was recommended by the Senate State and Local Government Committee, but its companion, House Bill 2307 by Carter, was withdrawn when similar provisions for non-contiguous annexation were added as an amendment to House Bill 779 by Carter. Senate Bill 2428 by Crowe, which contained similar provisions, was assigned to General Subcommittee; its companion, House Bill 2242 by Van Huss, was taken off notice.

Low Income Housing Tax Credits



Low-Income Housing Tax Credits (LIHTC) are the most significant federal incentive to support affordable housing for low-income Americans. Although the program has broad support at all levels, there is wide disagreement about the approach local property assessors should use to value the properties they help fund. The LIHTC program promotes investment in low-income housing with federal tax credits granted in return for restrictions on rent and tenant income. Without the credits, which are the primary source of income for investors in these projects, they likely would not be built.

Because the credits would be included in determining fair market value if the property were sold, Tennessee property assessors consider them when determining the value of these structures for property tax purposes. But including their value can cause cash flow problems for the taxpayers because the amount they add declines

over time as the credits phase out. The tax bill starts high the first year and drops each year until the tax credits run out after ten years.

Legislation proposed by the 108th General Assembly in 2014, House Bill 1390 by Faison and Senate Bill 1671 by Southerland, would have prohibited considering the tax credits for property tax purposes. The bills were referred to the Commission for study by the House Finance, Ways and Means Subcommittee and by the Senate Finance, Ways and Means Committee. In its January 2015 report Assessing the Value of Low-Income Housing for Property Tax Purposes: Whether and How to Consider the Value of Low-Income Housing Tax Credits, the Commission found that while the change in valuation method proposed by the legislation would have eliminated the cash flow concern, it would have failed to account for the full value of LIHTC properties and would have reduced local government revenue.

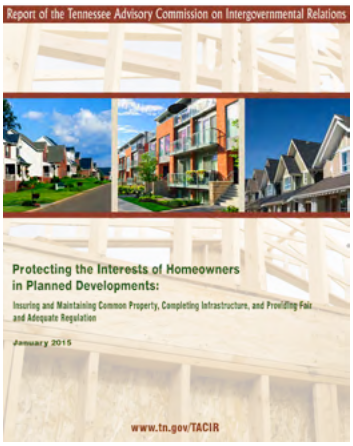
In the report, the Commission described two other alternatives to the current method, both of which would make it easier for property owners to budget for taxes while still recognizing the properties' market values. The first alternative, currently used in Idaho, spreads the total amount of credits allocated to the project evenly over the life of the 30-year restricted-rent agreement. This alternative levels out the tax payments and brings in slightly more in total taxes over 30 years than excluding the credits completely but much less than the way it's done now. The second alternative discounts the remaining credits to their current value, sums them, and spreads the total evenly over the restricted-rent period. This alternative would not change the total amount paid over time but would ease the cash flow problem.

Prompted by concerns noted in the report about the difficulties of gaining approval for PILOTs, the 109th General Assembly enacted Public Chapter 519, Acts of 2015, which eliminated county legislative approval for LIHTC PILOT agreements. Those agreements now require only the assent of the chief executive of the municipality where the property is located. The PILOT must be payable to all applicable taxing jurisdictions in which the project is located, it must not be less than the taxes that would have been paid to each in the prior tax year, and the chief executive of the municipality must file a letter of support for the project with the health, educational, and housing facility corporation. Public housing authorities may enter into these agreements subject to these conditions if the municipality does not have a health, educational, and housing facility corporation. A related new law, Public Chapter 222, Acts of 2015, removed a provision prohibiting Davidson County from delegating power to its public housing authority to negotiate and accept PILOTs from lessees that operate publicly owned LIHTC properties.

The 109th General Assembly also enacted Public Chapter 642, Acts of 2016, which clarified that non-governmental entities such as low-income housing developers are required to pay property taxes when they are the lessee of a housing authority and are contractually able to acquire the property for a nominal charge before or at the end of the lease. Before this Act, it was clear that lessees of cities and counties had to pay property taxes in such situations but not clear that lessees of housing authorities had to. Two other pieces of legislation discussed but not passed—Senate Bill 2600 by Norris and its companion House Bill 2036 by Faison and Senate Bill 2599 by Norris, which had no House companion—concerned housing properties that qualify for federal low-income-housing tax credits. Senate Bill 2600 and House Bill 2036 would have limited the appraised value of LIHTC properties, as well as certain properties purchased with loans from the US Department of Agriculture, to the present-use value determined by the property's gross income from rents, which by law and contract are restricted. Senate Bill 2599 by Norris would have capped the appraised value of LIHTC properties at the value indicated by an income approach that utilizes market or unrestricted rent for comparable property.

The Rights of Homeowners in Planned Developments

A number of issues and concerns related to properties governed by homeowners associations (HOAs) have surfaced in recent years, from incomplete infrastructure to overzealous regulation. Responding to some of these concerns, the House of Representatives of the 107th General Assembly passed House Resolution 170 by Moore asking the Commission to study HOA rules and regulations and their responsibility to insure their obligations and the House Local Government Subcommittee of the 108th General Assembly asked the Commission to study House Bill 2070 by Farmer (Senate Bill 2110 by Bowling), which would have required owners to disclose to buyers whether developments are complete or when they will be completed.



Because the issues overlap, the Commission chose to study a third bill, Senate Bill 2198 by Johnson and its companion, House Bill 2060 by Durham, which would have prevented HOA-imposed restrictions on parking on public streets and on political signs on private property without the approval of the city or county legislative body and HOA-imposed fines in excess of the monthly dues owed by property owners. The Commission responded with its January 2015 report Protecting the Interests of Homeowners in Planned Developments: Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair and Adequate

Regulation, which included observations and recommendations on several issues raised by the resolution and the two bills.

Requiring Adequate Insurance

The Condominium Act of 2008 requires HOAs for condominiums created after January 1, 2009, to maintain property and liability insurance on common areas. Adopting such a provision for condominiums built before January 2, 2009, and for single-family developments would help ensure that adequate funds are available to make necessary repairs and pay liability claims for these developments as well as for condominiums built after that date, should the need arise.

The Condominium Act of 2008 also requires all condominium HOAs to provide notice of coverage to all residential condominium owners upon request, but there is no similar requirement for single-family developments. Adopting such a provision for single-family developments in Tennessee would ensure that all homeowners have access to information about the insurance carried by their HOAs.

Ensuring Maintenance of Common Areas and Completion of Infrastructure

In order to protect their investment, developers maintain control over HOAs during construction until a date or event specified in the declaration, the governing document of the community. If a developer has become insolvent and does not maintain the common areas, taking it to court might not work because an insolvent developer won't have the resources. Florida, a state with a long history of HOA developments, deals with this problem by requiring transfer of control of HOAs from developers to homeowners when developers abandon their responsibility to maintain the common property or become insolvent. While this gives homeowners control over the common areas, it does not ensure that they have the financial means to maintain them. Nevertheless, the Commission said that providing homeowners this option could increase the likelihood that the common areas will not deteriorate.

In order to ensure that funds are available to complete infrastructure when homes in new developments don't sell rapidly enough to pay for it, counties and municipalities routinely require developers to guarantee that funds will be available, usually through letters of credit or surety bonds, to avoid having to use taxpayers' dollars to complete the development. Unfortunately, there have been several instances where developers were unable to finish the infrastructure and local governments had allowed the bond or letter of credit to

lapse. One way to avoid a lapse is to use automatically renewing letters of credit rather than surety bonds.

Regulating Homeowners' and Others' Conduct

Some HOAs forbid parking on the streets within their boundaries, even where those streets are public, for safety and aesthetic reasons. Vehicles parked along the street obscure the view of drivers, potentially endangering pedestrians, and narrow streets are difficult for emergency vehicles to navigate. Forbidding HOAs to prohibit all parking on public streets would shift the burden of keeping them clear for safety reasons to local governments. Only two states limit HOAs' power to regulate parking on public streets. HOAs in Nevada can prohibit parking only of certain large vehicles, while HOAs in Arizona cannot prohibit any parking on public streets. Restrictions like these would seem to increase the potential for safety problems. Consequently, the report says that allowing local governments to decide whether HOAs can restrict parking on public streets would seem more prudent.

Although they are have many similar characteristics, HOAs are contractual, not governmental, entities and are not subject to the constraints placed on governmental entities by the Constitution and can ban political signs. A number of states restrict their right to do this. The Commission's report suggests that any similar legislation in Tennessee include authorization to determine the time, place, size, number, and manner of display of those signs but cautions against entangling Tennessee's cities and counties unnecessarily in the business of HOAs by subjecting such requirements or prohibitions to local government control.

Imposing and Collecting Fines and Other Assessments

HOA members may be subject to fines if they fail to pay assessments or otherwise don't comply with rules and regulations. Failure to pay fines or assessments can lead to liens or even foreclosures on owners' property. For condominiums governed by the Condominium Act of 2008, fines must be reasonable, but liens for nonpayment of fines or assessments attach automatically and without notice. In other developments governed by HOAs, the same thing may be allowed by the declaration, the contract governing of the community. An HOA could foreclose on a property for failure to pay even a small fine, and the ease with which liens are attached could lead to abuse. The report includes three suggestions to avoid that:

- extending the reasonableness limitation on fines for newer condominiums to older condominiums and single-family

HOAs would protect owners while leaving some discretion to HOAs setting fines,

- HOAs should also be required to notify homeowners when liens attach for unpaid fines and assessments, and
- foreclosure on liens for unpaid fines and assessments should be limited to some minimum amount and some minimum length of time unpaid.

Public Chapter 866, Acts of 2016, added lienholders, nominees of record, and other interested parties to the list of parties that HOAs must notify before publication of an advertisement of a foreclosure sale but did not change the timing of the notification.

Local Governments Owning Property Subject to HOA Dues

When property owners fail to pay taxes, local governments must hold a tax sale, and if no one bids on the properties, the local governments are required to purchase them for the taxes owed and related costs. Although liens that attach for HOA assessments, like all non-tax liens, are extinguished when properties are bought at tax sales, the requirements of HOA declarations, including requirements to pay assessments, apply to the new owners even if they area governments. In some communities, paying these assessments has become burdensome for local governments.

Bills that attempted to empower local governments to deal with this issue in different ways failed to pass in 2012 and 2013. One would have exempted state and local governments from HOA assessments. The other was much broader and would have allowed local governments to force the sale of tax delinquent properties for less than the amount of taxes owed and related costs. The Commission's report notes that allowing local governments to do this would increase the likelihood that they could avoid buying these tax delinquent properties and assuming responsibility for future HOA assessments.

Subsequent Action by the General Assembly

Since the report, the General Assembly has continued to address concerns related to HOAs and property owners. Two bills sent to summer study by the 109th Generals Assembly, Senate Bill 405 by Overbey and its companion, House Bill 610 by Carter, and Senate Bill 1950 by Yager as amended and its companion, House Bill 1883 by Daniel, were comprehensive bills governing many aspects of HOAs for single family developments. Another bill sent to summer study, Senate Bill 1908 by Gardenhire and its companion, House Bill 2384 by Carter, would have created various causes of action for members

against their HOAs and authorized developers to retain full control of their subdivisions until they are transferred to the control of the HOAs.

Public Chapter 866, Acts of 2016, broadened the requirement that HOAs notify homeowners before advertising foreclosure sales to require notice to any other interested parties. The Act also lowered the priority of liens and encumbrances placed on properties by condominium HOAs for delinquent assessments due in the six months preceeding action to enforce the lien to below first or other contemporaneous mortgages or deeds of trust recorded before the assessment became delinquent.

Lodging Taxes

Although tourism is generally thriving in Tennessee, the hospitality industry has expressed concern that the relatively high lodging taxes in some parts of Tennessee turn visitors and developers away, harming the industry and the state's economy. Those concerns prompted legislation in 2015 (Senate Bill 850 by Tate, House Bill 951 by M. White) that would have required local governments to conduct economic studies before levying lodging taxes, earmarked at least 80% of future revenues for development of tourism, required audits to ensure that strict definitions of what constitutes "tourism development" were followed, and prohibited authorization of lodging taxes by private act. In response to opposition from local officials. The bill was amended and became Public Chapter 395, Acts of 2015, directing the Commission to study the effect of hotel occupancy taxes on the economy, tourism, and the hospitality industry; compare Tennessee's hotel occupancy tax structure with other states' and recommend whether to change it; and consider methods to require public input before adopting lodging taxes.

Like Tennessee, most states levy a state tax on lodging—either a lodging tax or a general sales tax or in ten cases both—and most allow their local governments to tax lodging as well. In fact, 28 states including Tennessee allow some or all local governments both to levy lodging taxes and to apply their sales taxes to lodging. This layering of taxes is not unusual, although allowing city and county taxes to overlap is less common. But most states do not make these authorizations county by county and city by city. Twenty-one grant broad authorization in general law for all local governments to levy lodging taxes, and seven others broadly authorize either cities or counties to levy lodging taxes. Most cap the rates, but a few allow rates to be set locally including a handful that require referendums. Only five require public hearings on lodging tax proposals.

The Commission's January 2016 report Structuring Lodging Taxes to Preserve the Economy and Encourage Tourism says that although there is little evidence that Tennessee's economy or the tourism and hospitality industries are adversely affected by its lodging tax structure, there may be other reasons to reduce its complexity. The report also says that it is not clear that the General Assembly's tradition of authorizing individual jurisdictions to levy lodging taxes by private act or by exception to general law is not an appropriate response to differences across the state that warrant differences in law. Moreover, this practice ensures an opportunity for all aspects of proposals to be thoroughly vetted. Nor is it clear that the General Assembly's practice of considering earmarks one case at a time rather than imposing a general earmark—especially in the absence of a general authorization to impose lodging taxes—is not an appropriate way to respond to disparate local situations and avoid unnecessarily restricting all local officials' discretion and hindering communities' efforts to set their own priorities and determine how best to meet their needs.

Even so, the report says that reducing the complexity in current law by granting general authorization for local lodging taxes, up to some specified rate or combination of rates for cities and counties, may be warranted and would not inherently limit the legislature's ability to respond to specific situations with exceptions to general law. The fact that many cities and counties either have not used their current authorizations or have rates below their authorized caps suggests that general authorization would not necessarily lead to more or higher taxes. But the report also says that even though there is no evidence that lodging taxes adversely affect the economy or the hotel industry, an uncapped general authorization may not be prudent even if it were politically acceptable and that while granting blanket authority to levy local lodging taxes would reduce individual requests for that authority, it should not be expected to eliminate them.

Homestead Exemptions

Tennessee, like other states, has laws protecting certain property from the claims of creditors. Called exemption laws, their goal is to ensure that debtors are not left destitute when they fall on hard times. These laws protect both real and personal property. A set of federal exemptions is available to debtors in all states unless the state has passed a law saying otherwise. Only 19 states allow their residents to choose between the federal and state sets of exemptions; Tennessee is one of the 31 that do not.

Real property protections are called homestead exemptions and typically protect a certain amount of equity held in an individual's

primary residence but in some states protect the entire residence regardless of its value. Whatever the amount protected, it is exempt from judgments that would otherwise allow creditors to force the sale of the debtor's property. Although the exemptions can be used to protect property from any judgment sought by a creditor, they are most often used in bankruptcy proceedings and were studied by the Commission primarily in that context. In fact, debtors sometimes file bankruptcy to protect their property from other types of judgments.

After several efforts to increase the individual and joint homestead exemptions over the last 20 years, the 109th General Assembly enacted Public Chapter 326, Acts of 2015, requiring the Commission to study the homestead exemption amounts in Tennessee and determine whether they should be increased to accurately reflect the cost of living. The act also requires the Commission to compare the various categories of homestead exemptions in detail to those of other states.

In its January 2016 report, Tennessee's Homestead Exemptions: Adjusting Them to Reflect the Cost of Living,the Commission takes note of the fact that Tennessee has the lowest homestead exemption of the states that do not allow the use of the federal homestead exemption and has the third lowest combined dollar value of all property exemptions—only Missouri's and Alabama's are lower. If Tennessee's homestead exemption amounts for individuals and joint owners had kept pace with inflation since last changed in 1978 and 1980, they would now be $18,513 and $21,907 instead of remaining at $5,000 and $7,500. Although many attempts have been made to increase these amounts, none have succeeded, but much higher amounts have been set for certain groups of debtors, including those over 62, in 2004, and those with custody of a minor child, in 2007. The report notes that a simple way to bring the amounts for other bankruptcy filers up to date and keep them up to date would be to adopt the federal homestead exemption amount, which is currently $22,975 for individuals and double that amount for joint bankruptcy filers and is adjusted for inflation every three years.

Broadband Internet Access and Adoption

At the its June 10, 2015, meeting, the Commission approved Chairman Mark Norris's request for a comprehensive study of broadband in Tennessee. The Federal Communications Commission (FCC) defines broadband as "high-speed Internet access that is always on and faster than the traditional dial-up access." Broadband includes several high-speed transmission technologies, including digital subscriber line (DSL), cable modem, fiber, wireless, satellite, and broadband over power lines (BPL). The FCC recently updated its benchmark broadband speed to 25 megabits per second (Mbps) from the previous

4 megabits per second set in 2010, finding the older standard to be "dated and inadequate for evaluating whether advanced broadband is being deployed to all Americans in a timely way."

The FCC's 2015 *Broadband Progress Report* found that a significant digital divide remains between urban and rural residents. Using the new standard, the FCC estimates that, while only 4% of Tennessee's urban population lacks access to high-speed broadband, 45% of rural residents do not have access. Industry and government reports rank Tennessee near the middle of the 50 states in broadband availability. Although availability of broadband access has improved significantly, many Tennesseans are not able to or choose not to take advantage of its benefits for various reasons, including lack of availability, inadequate speed, cost, and lack of digital literacy.

The Commission's report will include information about the extent and quality of coverage, factors that affect the cost of deploying broadband (including incentives to increase deployment), tax policy, and barriers to expansion (including pole attachment rates and governmental requirements) by public and private providers. It will also evaluate best practices in other states for increasing availability, deployment, and adoption, and it will recommend ways that Tennessee can increase access to broadband in the future. The Commission's intent is for the report to accomplish several tasks:

- Identify gaps in the availability of high-speed broadband and the effect on access to widely used applications (e.g., email, online business services and on business service-provision and location decisions.
- Where high-speed broadband is available, determine how widely it has been adopted by business, government, and residential customers and to the extent it has not been, why not. Identify effective means of promoting wider adoption.
- Compare (1) the cost to deploy high-speed broadband by type of broadband, geographic area, and customer and (2) the cost-effectiveness of actual and potential incentives to more widely deploy broadband.
- Identify broadband discounts provided to customers (such as the federal E-Rate program for discount service to schools and the Rural Health Care program) and determine their effectiveness in encouraging deployment and adoption of high-speed broadband.
- Identify actual and potential tax policies to encourage the deployment and adoption of high-speed broadband, in Tennessee and elsewhere, and determine their effectiveness.

- Identify and determine the effectiveness of efforts by state and local governments, in Tennessee and elsewhere, to streamline governmental requirements to encourage the deployment of high-speed broadband in unserved and underserved areas.
- Compare the pole attachment rates that broadband providers pay to municipal and cooperative electric providers in Tennessee to those approved by the FCC and by regulatory entities in other states and determine (1) the extent to which wider deployment of high-speed broadband is being encouraged or inhibited by rates in Tennessee and (2) the role the state should play in reducing high pole-attachment rates to encourage broadband deployment.
- Determine where, how, at what cost, and by what method of funding municipal electric expansion of high-speed broadband is occurring in Tennessee, what the tax implications are for the utilities providing the service, how providing the service affects and interacts financially with other services provided by the utility, and what oversight exists at the state level for the services when provided by cities.

As part of its information gathering process, the Commission heard from several panels of experts at its October 2015 and May 2016 meetings. Two panels at the October meeting, one representing the interests of broadband providers and the other the interests of users and the broader community, provided information on the current status of broadband availability, deployment, and adoption in Tennessee. Two additional panels, one representing providers and the other government agencies, presented information at the May 2016 meeting, discussing the regulatory landscape for broadband internet service, which includes factors that affect the ability of providers to deploy service.

In addition to the panels, at its January 2016 meeting Commissioners reviewed preliminary information related to the study, including maps showing examples of maximum advertised downstream speeds and typical downstream speeds reported by providers for census blocks, a 2015 survey conducted by Pew Research Center on the percentage of Americans with at-home broadband connections and factors affecting adoption, and technology guidelines adopted by the Tennessee Department of Finance and Administration's division of Strategic Technology Solutions for state employees working out of the office. The review also included a presentation by Victor Hazlewood, chief operating officer of the University of Tennessee Joint Institute for Computational Sciences, about technologies used to provide internet access, and the effects of connection speed and other factors on different online tasks.

The Commission will continue its study through the summer and fall of 2016 with the intent of completing the final report in early 2017.

Tennessee's Infrastructure Needs

Public Chapter 817, Acts of 1996 requires the Commission to compile and maintain an inventory of public infrastructure needed in Tennessee and present these needs and associated costs to the General Assembly during its regular legislative session. The inventory, by law, is designed to support development by state and local officials of goals, strategies, and programs to

- improve the quality of life of all Tennesseans,
- support livable communities, and
- enhance and encourage the overall economic development of the state through the provision of adequate and essential public infrastructure.

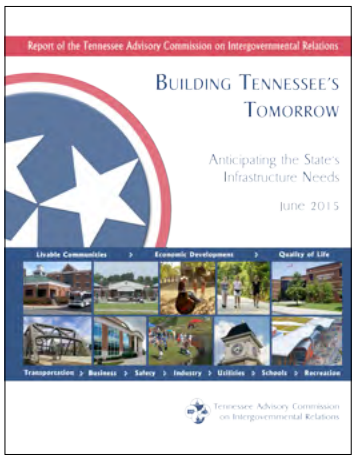
The Commission released the thirteenth report in the series, Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs, in June 2015. The fourteenth report was completed in May 2016, but presentation to the Commission was deferred because of meeting time constraints to the August 2016 meeting. These annual reports are the sole source of information about needed infrastructure improvements and the condition of elementary and secondary public school buildings.

The reports consistently show that, in general, the more people a county has and the more its population grows, the more infrastructure it will need and, fortunately, the more wealth it will likely have to pay for those needs. As has been the case throughout the history of the inventory, relationships among these factors are strong and well demonstrated by the variation reported for each Tennessee county, although they are not perfectly aligned in any county. Some counties are able to meet their infrastructure needs more easily than others, some continue to report the same needs year after year, and even fast growing counties can find it difficult to meet their needs. And, relative to county population, counties with small populations need and complete just as much or more infrastructure than counties with large populations.

The reports also show that the government that owns infrastructure typically funds the bulk of its cost, and a variety of revenue sources are tapped. For example, the state collects taxes and appropriates those funds to their own projects and provides grants to the local level through programs at various agencies. Cities and counties fund most of their infrastructure improvements with revenue from

property and sales taxes, while utility districts have a dedicated revenue source in the form of user fees. The federal government owns very little of the infrastructure in the inventory but provides substantial funding for transportation infrastructure.

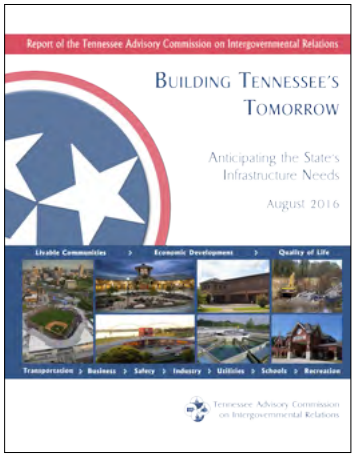
June 2015



According to the thirteenth report in the series, Tennessee needed at least $42.3 billion of public infrastructure improvements during the five-year period of fiscal years 2013 through 2018, up $4.1 billion (10.7%) compared with the year before mainly because bridges with remedial needs exceeding $50,000 were treated as immediate needs, consistent with all other project types in the inventory, regardless of when funds would likely be available to repair or upgrade them. Without those bridge projects, the total cost would have increased by only $369 million (1.0%). Costs for infrastructure needs included in the report fall into six general categories:

- Transportation and Utilities: $25.9 billion
- Education: $8.5 billion
- Health, Safety, and Welfare: $5.0 billion
- Recreation and Culture: $1.7 billion
- General Government: $721 million
- Economic Development: $508 million

May 2016



The fourteenth report in the series estimated the total cost of public infrastructure improvements that need to be started or completed in fiscal years 2014 through 2019 at $41.5 billion, a decrease of approximately $299 million (0.7%) from the previous report. This decrease resulted from a $611 million decrease in the Transportation and Other Utilities category that was driven by a $1 billion decrease in the estimated cost of road projects already in the inventory. The costs for infrastructure needs in this report fall into six general categories:

- Transportation and Utilities: $25.4 billion
- Education: $8.5 billion
- Health, Safety, and Welfare: $5.0 billion
- Recreation and Culture: $1.6 billion
- General Government: $614 million
- Economic Development: $379 million

Appendix A: Commission Members

Fiscal Year 2014-15 through Fiscal Year 2015-16

Legislative

- Senator Douglas Henry*
- Senator Jim Kyle*
- Senator Mark Norris
- Senator Jim Tracy
- Senator Jeff Yarbro
- Representative Mike Carter
- Representative Ryan Haynes*
- Representative Harold Love Jr.
- Representative Gary Odom*
- Representative Antonio Parkinson
- Representative Tim Wirgau

Statutory

- Senator Randy McNally, Chair, Senate Finance, Ways & Means
- Representative Charles Sargent, Chair, House Finance, Ways & Means
- Justin Wilson, Comptroller of the Treasury

Executive Branch

- Paula Davis, Assistant Commissioner of Administration, Department of Economic & Community Development
- Iliff McMahan, Jr., Regional Director, Department of Economic & Community Development

County

- Ernest Burgess, Mayor, Rutherford County
- Jeff Huffman, County Executive, Tipton County
- Kenny McBride, Mayor, Carroll County
- Larry Waters, Mayor, Sevier County

Municipal

- Troy Beets, Mayor, City of Kingston*
- Tom Bickers, Mayor, City of Louisville
- Betsy Crossley, City Commissioner, City of Brentwood
- Tom Rowland, Mayor, City of Cleveland
- Kay Senter, Mayor Pro Tem/Council Member, City of Morristown

Other Local Government

- Charlie Cardwell, Metropolitan Trustee, County Officials Association of Tennessee
- Brent Greer, Mayor, Henry County, Tennessee Development District Association

Private Citizens

- Rozelle Criner, Sr., Ripley*
- Christi Gibbs, Nashville
- Tommy Schumpert, Knoxville*
- Kenneth Young, Franklin

*Now a former Commission member.

Appendix B: TACIR Accomplishments by Research Area Fiscal Years 2014-15 and 2015-16

Fiscal Year 2014-15

Fiscal and Tax Policy Research:

- Continued to monitor and published a report on the Tennessee Valley Authority's payments in lieu of taxes and the effect of the Electric Generation and Transmission Cooperative Act of 2009 as amended in 2010 (Public Chapter 1035, Acts of 2010).
- Completed Commission report to the legislature on Senate Bill 1671 and House Bill 1390 considering how best to assess the value for property tax purposes of low-income housing that is paid for partially with federal tax credits.

Education Finance:

- Completed the fiscal year 2015-16 fiscal capacity model.
- Completed a report to the legislature on Senate Bill 1935 (House Bill 2250), regarding school budget authority and accountability.
- Executive Director served on the Governor's Basic Education Program Task Force.

Land Use, Transportation, and Growth Policy:

- Completed Commission report on municipal boundary changes and growth planning in Tennessee pursuant to Public Chapter 707, Acts of 2014.
- Continued to monitor implementation of Public Chapter 1101, Acts of 1998, Tennessee's growth policy law.
- Completed study on the impediments caused by foreclosures in dealing with blighted properties and how foreclosures affect the sale and reuse of properties.

Infrastructure:

- Continued the annual public infrastructure needs inventory. Collected information from 136 school systems, 95 counties, 347 municipalities, and 255 other entities.
- Completed annual report to the legislature on Tennessee's public infrastructure needs.

Other Research:

- Completed a report to the legislature on House Bill 1649 (Senate Bill 1749), which would have exempted some places of worship located in unincorporated areas without a water supply from the requirement to install automatic fire protection sprinkler systems.
- Completed a report to the legislature on House Bill 1855 (Senate Bill 1840), which would have created a new cause of action for capturing or attempting to capture an image, recording, or impression by using a visual or auditory enhancing device, regardless of whether the image or recording were published.

- Monitored intergovernmental tax, fiscal, and education legislation.

Using Technology for Public Information

- Disseminated all reports electronically and maintained detailed focus sections about continuing research on TACIR's web page (http://www.tn.gov/tacir/section/tacir-publications).
- Further disseminated information from the public infrastructure needs inventory through a partnership with the University of Tennessee to include the data on their state data explorer website (http://ctasdata.utk.tennessee.edu/statedashboard2/).
- Continued to update and enhance the profiles of Tennessee's counties, providing easy public access to detailed demographic, financial, and other information for each (http://www.tn.gov/tacir/section/tacir-county-profiles).
- Published timely information Tracking Tennessee's Economy in partnership with Middle Tennessee State University (http://capone.mtsu.edu/berc/tacir/tacir.html).
- Posted timely information to the agency's Facebook page notifying the public of new reports, elaborating on topics of interest, and pointing out relevant research by other organizations (https://www.facebook.com/TN.ACIR).
- Increased functionality of the agency's website (http://www.tn.gov/tacir).

Fiscal Year 2015-16

Fiscal and Tax Policy Research

- Continued to monitor and published a report on the Tennessee Valley Authority's payments in lieu of taxes and the effect of the Electric Generation and Transmission Cooperative Act of 2009 as amended in 2010 (Public Chapter 1035, Acts of 2010).
- Completed Commission's report to the legislature on Public Chapter 395, Acts of 2015, which directed the Commission to study the effect of hotel occupancy taxes on the economy, tourism, and the hospitality industry; compare Tennessee's hotel occupancy-tax structure with other states; and consider methods to require public input before adopting lodging taxes.

Education Finance:

- Completed the fiscal year 2016-17 fiscal capacity model.
- Served on the Governor's Basic Education Program Task Force.

Land Use, Transportation, and Growth Policy:

- Completed Commission's report to the legislature on Senate Bill 549 and House Bill 775, which would have required the written consent of owners for any rezoning affecting a parcel of private property.
- Continued to monitor implementation of Public Chapter 1101, Acts of 1998, Tennessee's growth policy law.

Infrastructure:

- Continued the annual public infrastructure needs inventory. Collected information from 142 school systems, 95 counties, 347 municipalities, and 255 other entities.
- Completed Commission's annual report to the legislature on Tennessee's public infrastructure needs, to be presented for Commission approval at its August 2016 meeting.

Other Research:

- Completed Commission's report to the legislature on Senate Bill 466 and House Bill 985, which would have would have disqualified all county government employees from serving on their county legislative bodies.
- Completed Commission's report to the legislature on Public Chapter 326, Acts of 2015, which required the Commission to study the homestead exemption amounts in Tennessee and determine whether they should be increased to accurately reflect the cost of living.
- Monitored intergovernmental tax, fiscal, and education legislation.

Using Technology for Public Information

- Disseminated all reports electronically and maintained detailed focus sections about continuing research on TACIR's web page (http://www.tn.gov/tacir/section/tacir-publications).
- Further disseminated information from the annual public infrastructure needs inventory through a partnership with the University of Tennessee to include the data on their state data explorer website (http://ctasdata.utk.tennessee.edu/statedashboard2/).
- Created a comprehensive new annexation resource tab on the Commission's web page (http://www.tn.gov/tacir/section/annexation), including information about recent changes in Tennessee's annexation laws as well as detailed information about the state's growth policy act, local population projections, and other state's annexation laws.
- Continued to update and enhance the profiles of Tennessee's counties, providing easy public access to detailed demographic, financial, and other information for each (http://www.tn.gov/tacir/section/tacir-county-profiles).
- Published timely information Tracking Tennessee's Economy in partnership with Middle Tennessee State University (http://capone.mtsu.edu/berc/tacir/tacir.html).
- Posted timely information to the agency's Facebook page notifying the public of new reports, elaborating on topics of interest, and pointing out relevant research by other organizations (https://www.facebook.com/TN.ACIR).
- Increased functionality of the agency's website (http://www.tn.gov/tacir/).

Appendix C: TACIR Publications

Fiscal Year 2014-15 and Fiscal Year 2015-16

Intergovernmental Challenges and Achievements: Biennial Report Fiscal Years 2012-13 and 2013-14—Commission Report, September 2014

Fire Sprinkler Requirements for Places of Worship: Protecting People and Property—Commission Report, November 2014

Municipal Boundaries in Tennessee: Annexation and Growth Planning Policies after Public Chapter 707—Commission Report, January 2015

Tennessee School Budgets: Authority and Accountability for Funding Education and Operating Schools—Commission Report, January 2015

Protecting the Interests of Homeowners in Planned Developments: Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair and Adequate Regulation—Commission Report, January 2015

Civil Remedies for Invasion of Privacy: Updating the Law to Reach New Technology—Commission Report, January 2015

Assessing the Value of Low-Income Housing for Property Tax Purposes: Whether and How to Consider the Value of Low-Income Housing Tax Credits—Commission Report, January 2015

Tennessee Valley Authority's Payments in Lieu of Taxes: Annual Report to the Tennessee General Assembly—Commission Report, January 2015

Dealing with Blight: Impediments Caused by Foreclosure—Staff Report, April 2015

Building Tennessee's Tomorrow: Anticipating the State's infrastructure Needs—Commission Report, June 2015

Community-based Land-use Decisions: Public Participation in the Rezoning Process—Commission Report, October 2015

Tennessee's Homestead Exemptions: Adjusting Them to Reflect the Cost of Living—Commission Report, January 2016

Structuring Lodging Taxes to Preserve the Economy and Encourage Tourism—Commission Report, January 2016

County Employees Serving on their County Commissions: Managing Conflict of Interest to Maintain Integrity and Trust—Commission Report, January 2016

Tennessee Valley Authority's Payments in Lieu of Taxes—Annual Report to the Tennessee General Assembly—Commission Report, January 2016

Appendix D: Staff Presentations

Fiscal Year 2014-15 and Fiscal Year 2015-16

"Intergovernmental Finance in Tennessee Part I: The BEP and the Financing of K-12 Education" to the Tennessee Legislative Leaders Academy: Newly-elected Legislators Workshop for the University of Tennessee (January 21, 2015)

"System-level Fiscal Capacity—Observations & Challenges, Redux" to Governor Haslam's Basic Education Program Task Force (September 17, 2015)

"Transportation Needs from Tennessee's Public Infrastructure Needs Inventory" to the Tennessee Infrastructure Conference (October 6, 2015)

Appendix E: Conference and Meeting Attendance

Fiscal Year 2014-15 through Fiscal Year 2015-16

American Society for Public Administration, Southeast Regional Conference

Association of Tennessee Valley Governments January Meeting

Council of State Governments National Conference

Cumberland Region Tomorrow Power of Ten Summit

Governor's Conference on Economic Development

Middle Tennessee State University Economic Outlook Conference

Southern Political Science Association

Tennessee American Planning Association Annual Conference

Tennessee American Planning Association Winter Retreat

Tennessee County Services Association Annual Fall Conference

Tennessee County Services Association Post Legislative Conference

Tennessee Development District Association Annual Meeting

Tennessee Development District Association Spring Conference and Meeting

Tennessee Digital Government Summit

Tennessee Municipal League Annual Conference

Tennessee Municipal Attorneys Association Summer Seminar

Tennessee Municipal Attorneys Association Winter Seminar

USDA Rural Development, TVA, and Tennessee Department of Economic and Community Development's Rural Development Conference

Appendix F: TACIR Organization, Mission, and Goals

Organization

Consisting of public officials from state and local government and private citizen members, the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) "serves as a forum for the discussion and resolution of intergovernmental problems."

The 25 members of the Commission capture the richness and diversity of perspectives of private citizens and officials representing different branches and levels of government. Of the 25 member commission, 22 members are appointed to four-year terms, while three are statutory members who hold membership by virtue of their positions. Statutory members include the chairs of the House and Senate Finance, Ways and Means Committees and the Comptroller of the Treasury.

Responsibility for the appointment of four state senators and four state representatives rests with the speaker of each respective chamber of the Tennessee General Assembly. Other appointments to the Commission include four elected county officials, one official nominated by the County Officials Association of Tennessee, four elected city officials, one elected development district nominee, two private citizens, and two executive branch officials. In total, ten members have local government as their primary affiliation, eleven represent the legislature, two are drawn from the executive branch, and two are private citizens.

Mission

In the late 1970's, legislative findings indicated the need for a permanent intergovernmental body to study and take action on questions of organizational patterns, powers, functions, and relationships among federal, state, and local governments. In pursuit of this goal, TACIR was created in 1978 (Tennessee Code Annotated § 4-10-101). TACIR's enabling act established what has remained the Commission's enduring mission (Tennessee Code Annotated § 4-10-104), to

> *serve as a forum for the discussion and resolution of intergovernmental problems; provide high quality research support to state and local government officials to improve the overall quality of government in Tennessee; and to improve the effectiveness of the intergovernmental system to better serve the citizens of Tennessee.*

Goals

Many specific duties and functions are required of the Commission by its enabling act, and additional duties are often assigned by the General Assembly. From its broad set of statutory obligations and special charges, the purpose for TACIR's existence can be summarized in four concise yet encompassing goals. The Commission strives to

1. advance discussion and deliberation of critical and sensitive intergovernmental policy matters;

2. promote action to resolve intergovernmental problems and improve the quality of government;

3. forge common ground between competing but equally legitimate values, goals, and interests; and

4. provide members of the General Assembly and other policymakers with accurate and timely information and analysis to facilitate reasoned decision-making.

Appendix G: What Does TACIR Do?

Objectives

TACIR provides a future-oriented perspective to public policy and intergovernmental relations, identifying and diagnosing policy problems that loom on the horizon. To facilitate the achievement of its mission and goals, TACIR is directed by statute to

- engage in activities, studies, and investigations necessary for the accomplishment of the Commission's mission and goals;
- consider, on its own initiative, ways of fostering better relations among local governments and state government;
- draft and disseminate legislative bills, constitutional amendments, and model ordinances necessary to implement the Commission's recommendations;
- encourage and, where appropriate, coordinate studies relating to intergovernmental relations conducted by universities, state, local, and federal agencies, and research and consulting organizations;
- review the recommendations of national commissions studying federal, state, and local governmental relations and problems and assess their possible application to Tennessee;
- study the fiscal relationships between the federal government and Tennessee's state and local governments; and
- study tax equivalent payments by municipally-owned electric operations to the various taxing jurisdictions within the state and study laws relating to the assessment and taxation of property (summarized from Tennessee Code Annotated § 4-10-104).

Additionally, the Commission is directed by statute to meet quarterly and report its research and findings. Commission meetings, with invited guests and experts, and lively and thoughtful debate, form the core around which virtually all commission activities are centered.

Given such broad tasks, the Commission adopts an annual work plan to guide its meetings and research. The work plan is designed to ensure the completion of objectives set forth in the Commission's enabling act, as well as the achievement of its mission and goals. From time to time throughout the year, the commissioners address problems that were not anticipated in the work plan. Generally such matters are addressed at the direction of the General Assembly.

Appendix H: Legislation Affecting TACIR

Fiscal Year 2014-15

- Public Chapter 326, Acts of 2015, directed the Commission to study whether homestead exemption amounts in TCA Title 26, Chapter 2, should be increased to reflect the cost of living.
- Public Chapter 395, Acts of 2015, directed the Commission to study the effect of hotel occupancy taxes on the economy and on tourism and the hospitality industry and amended Tennessee Code Annotated, Section 67-4-1401(6), to change the definition of "person" in the section to mean any individual or group of individuals that occupies the same room. The original legislation, Senate Bill 850 by Tate and House Bill 951 by Mark White, would have also required that 80% of the proceeds of any tax or expansion of the tax adopted after passage of the bill to be spent to promote tourism or tourism development, but this requirement was not included in the final version.
- Public Chapter 478, Acts of 2015, directed the Commission to evaluate the state's final plan submitted by the Department of Environment and Conservation to the US Environmental Protection Agency to establish and enforce carbon dioxide emission control measures adopted to implement the obligations of the state under federal emission guidelines, including its effects on the state's electric power sector, consumers, employment, economic development, competitive position, state and local governments, and state laws. However, the study was cancelled because the federal regulations prompting Public Chapter 478 incorporated two conditions in the law that if included in the regulations would eliminate the need for the study. The conditions concerned how nuclear power plants already built or under construction would be considered. The original legislation, Senate Bill 1325 by McNally and House Bill 868 by Keisling, would have required legislative approval of the plan and would have required the department to evaluate its own plan.
- Senate Bill 466 by Bell and House Bill 985 by Rogers, which would have prohibited county government employees from serving on a county legislative body, was referred by both the Senate State and Local Government Committee and the House Local Government Committee in 2015.
- Senate Bill 549 by Niceley, which would have required written consent of property owners for zoning amendments, was referred by the Senate State and Local Committee in 2015. The companion, House Bill 775 by Daniel, was taken off notice, but Chairman Wirgau, House Local Committee, asked the Commission to study the legislation.
- Three additional studies of legislation were requested by a single committee or subcommittee in 2015, but the Commission chose to not add them to the work program.
    - House Bill 477 by Beck, which would have required the edges of steps into certain state and local government-owned or -leased buildings be marked with yellow paint to assist persons with vision impairment, was referred to the Commission for study by the House State Government Committee. The companion, Senate Bill 836 by Yager, passed without amendment.
    - House Bill 967 by Shaw, which would have allowed the state to give preference to Tennessee bidders when the lowest bidder is from a contiguous state that gives its

own resident contractors preference, was sent to the Commission for study by the House State Government Subcommittee. The companion, Senate Bill 1081 by Harris, was referred to the Senate State and Local Committee.

- House Bill 241 by Todd, which would have deleted the requirement that local governments increase public defenders local funding by 75% of any increase they provide to the district attorney general, was referred to the Commission by the House Civil Justice Subcommittee. The companion, Senate Bill 1324 by McNally, was assigned to the general subcommittee of Senate Judiciary.

- The Commission completed a final report on municipal boundary changes and growth planning in Tennessee.
  - The report discussed Public Chapter 707, Acts of 2014, which eliminated unilateral, nonconsensual annexation, and found that while Public Chapter 707 settled many important issues surrounding annexation, its passage raised a few new questions and left others unresolved. The report made several recommendations to address those concerns.
  - A copy of the report was sent to both Speakers.
- The Commission completed a report dealing with the rights of homeowners in planned developments.
  - The report discussed issues and concerns related to planned developments and the homeowners associations that often govern them and made a number of recommendations related to insuring and maintaining common areas, regulating political signs and parking, imposing and collecting fines, and related issues.
  - A copy of the final report was sent to the House Local Government Subcommittee.
- The Commission completed a report on civil remedies for invasion of privacy.
  - The report evaluated a proposal to expand current common law rights to sue for invasions of privacy. The proposal would have created a new civil cause of action for capturing or attempting to capture an image, recording, or impression by using a visual or auditory enhancing device, regardless of whether the image or recording were published. The report explains how the bill proposing the new cause of action could be changed to address constitutional concerns and to explicitly cover the use of drones.
  - A copy of the final report was sent to the House Civil Justice Committee.
- The Commission completed a report on how to consider the value of low-income housing tax credits for property tax purposes.
  - The report compared methods for valuing properties receiving federal low-income housing tax credits, the largest federal program for providing affordable housing for low-income Americans. There is wide disagreement about the most appropriate approach to valuing these properties for property tax purposes, particularly whether to consider the value of the federal tax credits that help fund them. Legislation that would have prohibited consideration of the tax credits by assessors when valuing low-income housing for property tax purposes was sent to the Commission for study. The

report makes note of statutory authorization for payments in lieu of taxes that would avoid the issue and describes alternatives to the current assessment method that would result in relatively uniform annual tax payments that are easier for property owners to budget for while still recognizing that the credits are an indicator of fair-market-value that are properly considered when valuing LIHTC properties.

  - A copy of the final report was sent to the Senate Finance, Ways and Means Committee and the House Finance, Ways and Means Subcommittee.

- The Commission completed a report on school system budget authority and accountability.
  - The General Assembly has placed a heavy burden of accountability for school performance on local school boards and by statute and rule exerts considerable control over them. Local legislative bodies cannot alter or revise specific budget line items, but have complete control over budget totals and several ways to learn about and question proposed school expenditures before approving their budgets and through those means have considerable influence on the budgets' contents. Giving local legislative bodies more control over specific budget items would leave school boards with all of the accountability the state has imposed and less authority to allocate resources to meet those burdens and fulfill their other statutory responsibilities. The report recommended not changing the present approval processes for school system budgets.
  - A copy of the final report was sent to the Senate State and Local Government Committee.
- The Commission completed a report on fire sprinkler requirements for places of worship.
  - The report analyzed a proposal to change the state building code to exempt single-story places of worship that meet specific size, occupancy, and exit requirements and that are located in unincorporated areas without a water supply from the requirement to install automatic fire protection sprinkler systems. Few states make similar exceptions because of the risk they pose to the health, safety, and welfare of the public, firefighters, and property, and because reasonable means are available to support sprinkler systems where public water supplies cannot. The report recommended not changing the building code.
  - A copy of the final report was sent to the House Local Government Subcommittee.
- The Commission considered a draft model abusive conduct prevention policy due March 1, 2015, pursuant to the Healthy Workplace Act (Public Chapter 997, Acts of 2014) at its January 2015 meeting. The law allows state and local government employers to adopt policies to address abusive conduct in the workplace, and if their policies conform to the requirements set out in Tennessee Code Annotated, Section 50-1-503(b), makes them immune from suit for any employee's abusive conduct that results in negligent or intentional infliction of mental anguish. Commission staff convened a workgroup representing state, county, and city governments, as well as public sector employees to comply with the law's requirement that the Commission consult with the Tennessee Department of Human Resources and various interested municipal and county organizations to develop the model policy. Unable to reach a consensus on the policy, the Commission voted to request additional time from the General Assembly to create it.

- The Commission provided the House Transportation Subcommittee with a memorandum that summarized testimony before the Commission by two panels on a bill that would have made proof of compliance with the state's Financial Responsibility Law a requirement for vehicle registration and renewal and created an uninsured motorist identification database, maintained by a third-party contractor, for verifying compliance. One panel represented the insurance industry and experts on insurance verification systems and the other represented the state and local governments. The memorandum also included a summary of the Commission's discussion with the panels and detailed information about uninsured motorist rates in other states, the effects of poverty, household income, and verification systems on insurance rates, and material from the Senate Commerce and Labor Committee's summer study on the companion bill.
- Pursuant to Public Chapter 1101, Acts of 1998; Public Chapter 672, Acts of 2000; and Public Chapter 594, Acts of 2002, the Commission continued to monitor and report on implementation of the state's growth policy act.
- As directed by Public Chapter 817, Acts of 1996, the Commission completed the annual Public Infrastructure Needs Inventory and Report.

Fiscal Year 2015-16

- Senate Joint Resolution 463 directed the Commission to survey legislative bodies in states bordering Tennessee during fiscal year 2015-2016 to determine their members' salary, per diem reimbursement rates, mileage reimbursement rates, and other expenses and compare them to like categories of compensation and reimbursement paid to members of the Tennessee General Assembly during that same period to determine whether Tennessee legislators are being adequately compensated and fully reimbursed for expenses. The report is due January 1, 2017.
- Public Chapter 1024, Acts of 2016, directed the Commission to study and make recommendations relative to the professional privilege tax, considering the application of the tax—or its non-application as the case may be—to various occupations, businesses, and professions, including those not listed in Tennessee Code Annotated, Section 67-4-1702, and to both residents and nonresidents. The Commission was directed to study Senate Bill 1919 by Bowling and its companion, House Bill 1951 by Hazlewood, which would have exempted nonresident licensees from the professional privilege tax, Senate Bill 167 by Bowling and its companion, House Bill 601 by Durham, which would have exempted audiologists and speech pathologists from the tax, and the original language of Senate Bill 556 by Bowling and its companion House Bill 678 by VanHuss, which became Public Chapter 1024. As introduced, the legislation that became Public Chapter 1024 would have decreased the privilege tax annually by 20% over the next five years, eliminating it in 2019 and thereafter, and would have prohibited the tax from being applied more than once for a single person having multiple professions affected by the tax. It also would have prohibited any new tax upon the privilege of engaging in certain professions, businesses, and occupations. The current tax rate is $400 per year, and the Department of Revenue reports that there are approximately 200,000 taxpayers that would have been affected by this bill.

  Public Chapter 1024 also required the study to examine 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. The report is due January 1, 2017.

- One additional study was directed by legislation that passed in the Senate but not the House in 2016, and three were requested by single subcommittees. The Commission chose to not add these studies to the work program.
  - Senate Bill 1942 by Yager passed as amended, directing the Commission to study the effects that transitory vendors have on counties and local businesses and recommend solutions to assist county bodies in regulating those vendors. The companion bill, House Bill 2345 by Calfee, was taken off notice in the House Local Government Subcommittee.
  - House Bill 1522 by Matlock, which would have deleted various provisions that distinguish different types of trailers, redefined trailer, imposed the registration tax on all trailers, and changed the amount of the tax, was referred to the Commission for study by the House Transportation Subcommittee. The bill would have authorized county clerks to collect an additional fee of $1.00 for each initial issuance of registration and registration plates for trailers. The companion bill, Senate Bill 1634 by McNally, was referred to the Senate Transportation and Safety Committee.
  - House Bill 1962 by Camper, which would have established a franchise and excise tax credit equal to 2% of qualified transportation expenditures made by a shipper who establishes a turn-around policy that meets certain requirements, was sent to the Commission for study by the House Transportation Subcommittee. The companion bill, Senate Bill 2587 by Norris, was assigned to the general subcommittee of the Senate Finance Review Subcommittee.
  - House Bill 2209 by Powell, which would have required the Comptroller of the Treasury to create a report regarding cyber security, was sent to the Commission for study by the House State Government Subcommittee. The companion bill, Senate Bill 2411 by Yarbro, was sent to the Senate Judiciary Committee.
- The Commission completed a report on adjusting homestead exemptions to reflect the cost of living.
  - The report responded to Public Chapter 326, Acts of 2015, which required the Commission to study the homestead exemption amounts in Tennessee and determine whether they should be increased to accurately reflect the cost of living. The report, which focused on the use of homestead exemptions in bankruptcy, noted that Tennessee has the lowest homestead exemption of the states that do not allow use of the federal exemption and the third lowest combined dollar value of all property exemptions after Missouri and Alabama. It also noted that Tennessee's individual and joint homestead exemption amounts have remained at $5,000 and $7,500 since 1978 and 1980 but that, although none of the many attempts to change these amounts have succeeded, far higher amounts have been set for certain groups of debtors, including those over 62 and those with custody of a minor child. Finally, it noted that a simple way to bring the amounts for other bankruptcy filers up to date and keep them up to date would be to adopt the federal homestead exemption amount, which is adjusted for inflation every three years. If the federal amount were adopted, Tennessee's exemption amounts for debtors with

custody of a minor child, which are currently more than the federal amounts, would need to be grandfathered until the federal exemption amount caught up to it.

- A copy of the final report was sent to both speakers.

- The Commission completed a report on lodging taxes in Tennessee.
  - The report responded to Public Chapter 395, Acts of 2015, directing the Commission to study the effect of hotel occupancy taxes on the economy, tourism, and the hospitality industry; compare Tennessee's hotel occupancy tax structure with other states; and consider methods to require public input before adopting lodging taxes. In it, the Commission said that although there is little evidence that Tennessee's economy or the tourism and hospitality industries are adversely affected by its lodging tax structure, there may be other reasons to reduce its complexity. The report discussed advantages and disadvantages of doing so and also discussed various options, such as granting general authority up to some maximum rate, with or without an earmark, in order to reduce the number of individual requests that come to the legislature each year.
  - A copy of the final report was sent to both speakers.
- The Commission completed a report on public participation in the rezoning process.
  - The report responded to Senate Bill 549 and House Bill 775, which would have required the written consent of owners for any rezoning affecting a parcel of private property. It described issues raised by the legislation and suggested that, short of requiring the consent of owners for rezonings, some of the approaches already used by local governments in Tennessee to ensure that property owners are aware of rezonings could be required.
  - A copy of the final report was sent to the chairs of the Senate State and Local Government Committee and the House Local Government Committee.
- The Commission completed a report on county employees serving on their own legislative bodies.
  - The report responded to Senate Bill 466 and House Bill 985, which would have disqualified all county government employees from serving on their county legislative bodies; the restriction would not apply to members elected before December 1, 2015. The Commission chose not to recommend the legislation and instead offered ways to manage conflicts of interest beyond those required by Tennessee law, drawing on examples from existing practices of Tennessee counties, previously introduced legislation, and other states' laws.
  - A copy of the final report was sent to the chairs of the Senate State and Local Government Committee and the House Local Government Committee.
- Pursuant to Public Chapter 1101, Acts of 1998; Public Chapter 672, Acts of 2000; and Public Chapter 594, Acts of 2002, the Commission continued to monitor and report on implementation of the state's growth policy act.
- As directed by Public Chapter 817, Acts of 1996, the Commission completed the annual Public Infrastructure Needs Inventory and Report.

Appendix I: Summary of Commission Meeting Minutes

Fiscal Year 2014-15 Scheduled Commission Meetings

The following are summaries of the Commission's quarterly meetings. The dates are hyperlinked to meeting web pages containing supporting documents, and video. Full minutes for any particular meeting are located on the web page for the next meeting (for example, the full minutes for the September 3-4, 2014 meeting are located at tab 1 on the web page for the November 19-20, 2014 meeting).

September 3-4, 2014

Biennial Report for Fiscal Year 2012-13 and Fiscal Year 2013-14

The Commission adopted its biennial report for fiscal years 2012-13 and 2013-14.

Dealing with Blight: Impediments Posed by Foreclosure and Tax Delinquency—Final Report

The Commission received an update on the final staff report *Dealing with Blight: Impediments Posed by Foreclosure and Tax Delinquency*. The report was requested by the Commission based on concerns expressed by Senator Kyle about the damaging effect of the lengthy and costly foreclosure process on blighted areas. The final report addressed questions and comments from Commission members about the draft report from the presentation at the June meeting and included new information about tax-delinquent and tax-dead properties, which are worth less than the taxes owed on them and, therefore, are difficult to sell.

The report included a discussion of two approaches used by other states when addressing blight, mediation, and requiring banks to post bond at the beginning of the foreclosure process. It said that mediation to prevent foreclosure by helping the parties agree on loan modifications or other remedies may be expensive but can be effective. It also said that requiring banks to post a bond at the beginning of the foreclosure process can provide local governments the money to maintain homes that are in foreclosure if the bank does not; however, local governments in other states have found it difficult to get the authority to require bonds, and enforcing bonds can be administratively burdensome. Consequently, the disadvantages may outweigh the advantages where the peak of the foreclosure crisis has passed.

Requiring Sprinklers in Places of Worship (House Bill 1649 by Hill, T.)—Draft Report for Review and Comment

A draft report on fire sprinkler requirements for places of worship was presented to the Commission for review and comment. The bill prompting the study, House Bill 1649 by Representative Timothy Hill, was sent to the Commission by the House Local Government Subcommittee. If passed, it would have exempted single-story places of worship that meet specific size, occupancy, and exit requirements and that are located in unincorporated areas without a water supply from the requirement to install fire protection sprinkler systems. Because of the increased risk to the health, safety, and welfare of community members, firefighters, and property, staff recommends that the Commission not support exempting these churches from sprinkler requirements. Following discussion of the bill and the draft report in which members expressed concerns about the potential risks to the public and about the narrow focus of the legislation, Chairman NORRIS asked that staff make it clearer in the text of the report that the Commission does not support the bill.

Valuing Low-Income Housing Tax Credit Properties in Tennessee (Senate Bill 1671 by Southerland and House Bill 1390 by Faison)—Update

Senior research consultant Dr. Stan CHERVIN presented an overview of the issues involved in the Commission's study of how low-income housing tax credit (LIHTC) properties should be assessed. The study is in response to Senate Bill 1671 by Southerland and House Bill 1390 by Faison, which would have prohibited consideration of the value of tax credits when valuing low-income housing tax credit properties. As interpreted by the courts in 2003, Tennessee law recognizes the value of low-income housing tax credits and requires them to be considered when LIHTC properties are assessed for property tax purposes because they are not severable from the property itself and cannot be sold separately. The Division of Property Assessment and the Board of Equalization instruct local assessors to value LIHTC properties by adding a measure of the tax credits to the value calculated using traditional methods for assessing commercial rental properties.

The Commission also heard from two panels on Low-Income Housing Tax Credits (LIHTC). The first panel, on financing low-income housing, included presentations by

- Tennessee Housing Development Agency, Ralph PERREY, Executive Director;
- Tennessee Association of Housing and Redevelopment Authorities, Alvin NANCE, Executive Director and CEO of Knoxville's Community Development Corporation;
- Tennessee Bankers Association, David VERBLE, President and CEO of Citizens National Bank in Sevierville; and
- Tennessee Developers Council, Phil LAWSON, Chief Executive Officer of Lawler Wood Housing, LLC and Lawler Wood Housing Partners, LLC.

Mr. PERREY spoke first and asked whether it makes policy sense to tax the tax credits, noting that this is the only incentive there is to get the private sector involved in low-income housing. He said we don't tax other economic incentives. He said that state law does allow for taxation of the incentive and he stipulated that assessing officers are doing exactly what they think they ought to do. However, he would argue that some local assessors agree with supporters of the bill.

Mr. LAWSON said that his company has been building low-income housing for over 30 years and owns 37 properties in Tennessee and 22 in other states, all of them LIHTC properties. He said that the LIHTC program has been the most successful housing program in the history of our country. He said that developers are in crisis mode in this state and that he believes the inclusion of the tax credits puts low-income housing at risk. He referred to a map in his presentation and noted sporadic utilization of the methodology across nine states. No state contiguous to Tennessee is using this methodology.

Mr. LAWSON thinks the program will fall apart if Spring Hill is applied statewide. He contends that if you built two properties side by side, one market rent and one dedicated to serving low-income households, the Spring Hill method would cause the LIHTC property to pay more in taxes. He said that as far as he knows there is no attempt to tax historic tax credits, new markets tax credits, or energy tax credits, possibly because none of these programs annually publish a list of the projects affected. Those credits come early in the process, but these credits are over a ten-year period.

Mr. NANCE spoke next, saying that he represents the 85 housing authorities in Tennessee. He said that housing authorities have few resources and, while LIHTCs are only part of the funding for projects, they make many of these projects possible. They have to cobble together funding sources, and taxing the credits could potentially take away about half of the funds they rely on. He is concerned that the loss of the LIHTC projects could have negative effects on the ability to obtain other funding sources such as Community Development Block Grants (CDBGs), HOME funds, and emergency shelter dollars. Public housing authorities' mission is to serve individuals with little or zero income. Businesses are not going to meet this need and the housing authorities are not going to sell the property to someone else. And unlike private developers, housing authorities can't go to another state to pursue tax credits. He is worried about how including the tax credits in property values would affect the assessment for the new elderly low-income property in east Knoxville and is going to ask Knox County to instead authorize a payment in lieu of taxes (PILOT). He asked how they are supposed to handle increased assessments on existing units, saying that those costs might have to be offset by additional funds from local municipalities.

Mr. David VERBLE spoke last. In 1995, the City of Sevierville gave them a 47-unit complex in Sevierville called River Park for 30 years; after 30 years, ownership reverts to the city. They bought a majority interest in the partnership owning the property in order to qualify for the LIHTCs and provided the loan. He said a bank will not invest in low-income housing projects or make loans on such projects if the credits are included in the value for property tax purposes. Instead of adding to the taxes on these properties, we should be creating more incentives. Places without payment in lieu of taxes (PILOT) programs are going to be at a disadvantage compared to Memphis.

Mr. PERREY closed by saying that local leaders are concerned about the potential loss of revenue if these properties fail economically or don't get built or rehabilitated. The county realizes more taxes on these properties than they would get for vacant lots or older developments. At some point, including the credits in the property values is going to reduce housing authorities' ability to rebuild old housing projects and affect economic development efforts. This is workforce housing, and the credit is the only incentive to build it. Without it, the program withers on the vine. These properties can and should pay taxes but should be assessed without the inclusion of the credits.

Commission members questioned whether not taxing the credits would distort the assessed value of the property by neglecting part of the income stream and whether including the credits in the property values could be a local decision. Mr. LAWSON responded that there is going to be more tax after the project than before and that taxes are not shifted onto other taxpayers. He added that these low-income housing projects create construction jobs and that the vast majority of assessors have told them that they are not that interested in applying the Spring Hill approach. Senator MCNALLY asked whether these projects add local government expenses in terms of services provided, such as law enforcement. Mr. LAWSON said that in the six months since they took over a development in Nashville, the number of emergency response calls has decreased greatly. They have evicted many tenants who had criminal records.

The Commission also asked whether developers or partnerships can increase rents to offset increased property taxes caused by including the tax credits and whether most of the units are at the maximum. Mr. PERREY said a certain amount of taxes could be passed on to tenants through rent increases in larger cities where the rents are higher. This would not be possible in smaller cities. It is already hard to make these projects work in rural communities because of the income and rent restrictions. Mr.

LAWSON said that Section 8 rents are determined by HUD. You can seek adjustments periodically, based on analysis of what other rents are, not on expenses.

Mayor BURGESS asked whether tax credits are available for both new construction and rehabilitations and whether assessors valuing these properties know whether the credits are still in place. Mr. LAWSON clarified that both types of projects receive credits annually with about two-thirds for new construction and about a third for rehabilitations and that assessors know the credits are in place for ten years.

Chairman NORRIS thanked the first panel and seated the second panel to discuss valuing low-income housing for tax purposes:

- Tennessee Association of Assessing Officers, Will DENAMI, Executive Director
- Tennessee County Services Association, David CONNOR, Executive Director
- Tennessee Comptroller of the Treasury, Robert LEE, General Counsel
- Tennessee State Board of Equalization, Kelsie JONES, Executive Secretary

Mr. DENAMI spoke first and said that assessors are required to follow statutes, common law, and the administrative guidance of the Division of Property Assessments. The assessors' job is to be fair and equitable as constitutionally required. He argued that making an exception for one class of taxpayers creates a slippery slope. Mr. DENAMI gave the example of two identical properties across the street from each other competing for the same renters but one property has rent restriction because of LIHTCs and the other one does not have such restrictions. He says by lowering the tax rate on the LIHTC property that the tax burden would be passed to the market rate property owner across the street. He said that the taxpayers do not find themselves in this situation by accident, that these are sophisticated entities, the deals are complicated and well-thought out, and developers compete for this program. He said he is not aware of any county that is not valuing the credits other than Shelby County with the PILOT program that allows local governments to determine the amount of payments, like in economic development deals.

Mr. CONNOR said that everyone recognizes the importance and value of low-income housing and the critical work that THDA and local public housing authorities perform. He noted that the law has been settled for 11 years and it's hard to accept that developers are unaware of it. The demand for the LIHTC credits remains very competitive. Counties have little room to maneuver financially, and when you reduce property taxes on one sector, it shifts the burden to others. For this reason, the Tennessee County Services Association objects to these types of tax breaks for special groups of taxpayers.

Mr. LEE summarized a series of cases going all the way back to 1984 with the Briley Parkway case in Davidson County that found that you should limit valuation to the submarket of subsidized housing. The Division of Property Assessments views the LIHTC credits as enhancing factors and as income; the judge in the 2003 Spring Hill case agreed. Mr. LEE said he attends many property tax legal seminars nationally, and the Spring Hill decision has been held up as a model. Many states have legislatively removed the credits from valuation and there are still some court cases nationally that find that the credits should not be included in the valuation. The Comptroller's Office takes no position on the bill but considers the Spring Hill case the law of the land in Tennessee.

Mr. LEE said that appraisers view the credits as prepaid rent and consider them part of the income stream. They do a bifurcated appraisal, which values the actual income stream, then determines the present worth of the remaining tax credits outstanding, discounts it back to a present value, and adds it to the direct capitalization process of the income. He noted that assessors sometimes don't know a property is receiving LIHTCs until an owner appeals their appraisal.

Mr. JONES, answering an earlier question, said that in 2000, the state adopted a franchise and excise state tax credit for unanticipated property taxes, but that credit has since fallen by the wayside. Health, housing, and educational facility board PILOT programs have been around almost as long as industrial development board PILOT arrangements. Attorney General's Opinion 05-089 explains why providing PILOTs is within the legislature's authority and provides guidance on how to avoid constitutional problems. Most legislation over the years has been about disregarding the credits. However, one year there was an approach that mirrored the gross-rent-multiplier approach used for green-belt property.

There was a discussion about how the property credits are classified and whether there are any constitutional issues with including them in property tax appraisals. Mr. JONES said the approach upheld in the Spring Hill case treated the tax credits merely as an indication of value. The case was not about taxing the credits themselves; it was about recognizing the financial interests of all the owners of the property. The court said and two State Attorney General's Opinions in 2000 and 2005 agreed that it is within the constitutional authority of the legislature to define value for these kinds of property to account for the restrictions on use assumed by the owner. Mr. Jones said that the legislature could statutorily instruct assessors to disregard the credit or to take into account the restrictions, but could not constitutionally limit the value to the actual income in the limited use-market.

The Commission members discussed PILOT arrangements for low-income housing projects. Mayor HUFFMAN asked whether Memphis is the only local government using the PILOT approach and how a local government sets one of these up. Mr. JONES answered that the process is the same as the industrial development board process. Property is deeded to the health, housing, and educational facility boards, and the board leases the property to the business that will actually run the project. The business has an option to purchase the property at any time for a nominal amount and pays an agreed amount in lieu of taxes in the interim. Asked why other counties haven't followed Memphis' lead and established PILOTS for low- income housing projects, Mr. CONNOR said that, if a developer wants to transfer the ownership over to the local board, they already have the ability to do so.

Representative SARGENT asked what the difference is between subsidies for properties eligible for the Greenbelt formula and the credits for LIHTC properties. Mr. JONES said that the Greenbelt Law provides a formula that doesn't take the subsidy into consideration. [Staff note: According to the Division of Property Assessment, the income method for Greenbelt property is based on estimates of income from "best agricultural practices" applied to that property, not on the income from that particular parcel. Estimates are based on the characteristics of the property (e.g., soil quality) and market prices for commodities typically produced on similar properties.]

Mr. MCMAHAN asked whether there are actual examples of two properties physically close together but only one with LIHTCs truly competing to attract the same residents. Mr. DENAMI said that the example is a hypothetical, but there is a situation like it in Madison, Tennessee. Mr. MCMAHAN also asked whether building a LIHTC property contributes enough added value to offset any property taxes lost by not considering the tax credits and whether the members of the second panel agreed

that there are properties without the tax credits that are not contributing the way they could to the tax rolls. Mr. CONNOR answered that while vacant lots don't generate as much as a developed lot, residential growth doesn't pay for itself because the service burden exceeds taxes. The cost of services required by LIHTC properties will exceed the increase in taxes collected.

The Commission questioned why LIHTC properties have not been appraised the same way across the state. Mr. JONES said that new properties are entered and run through the mass appraisal computer system, which generally takes the cost approach. It is only when the owner files an appeal that the assessor learns that the property has LIHTCs. That's usually when the income approach, consistent with the Spring Hill decision, is first used.

Chairman NORRIS recognized Representative FAISON, sponsor of the bill, who said that Ronald Reagan and Tip O'Neill, recognizing some of the problems with traditional public housing, worked together and came up with the idea of inviting the private sector to develop low-income housing by giving them some skin in the game. He said it is important to give private business people some expectation of return for their investment in low-income housing. He said that supporters of the bill appreciate the fiscal situation of local governments and that passage of the bill will cause some money to be lost to local governments. However, if assessors tax the credits, there will not be enough incentive for developers to continue with low-income housing in Tennessee. The private sector takes better care of these properties. He asked the Commission members to make sure that this type of housing is preserved.

Discussion of Criteria for Referring Studies and for Classifying Studies as Commission Reports

The Commission discussed how legislation should be referred to the Commission for study and which reports should be considered commission reports. Chairman NORRIS suggested that in order for a bill to warrant a commission report, the bill should be sent by both the Senate and the House to the Commission for study. He said that otherwise, the Commission's time and resources would be spent on something that one chamber or the other may not think worthy of further consideration. Other members voiced procedural concerns with this approach, among them Senator MCNALLY's concern that a sponsor could pull a bill out of subcommittee with the agreement that it goes to TACIR and later amend it to remove that requirement, thereby bypassing the committee system. Chairman NORRIS agreed, saying that this is a procedural question that needs further discussion. The members agreed to work with leadership in the House and Senate on a procedure for bringing issues to the Commission with the aim to formalize the procedure by the end of the year.

November 19-20, 2014

Approval of TACIR's Work Program for Calendar Year 2015

The Commission approved the calendar year 2015 work program. Chairman NORRIS and Senator HENRY discussed the importance of one of the recurring projects included in the program, the public infrastructure needs inventory, with Senator HENRY saying the inventory is important because it provides a considered judgment on what projects the state and its local governments should spend their limited resources. Mayor Brent GREER added that the process of the local governments working with the development districts to compile their needs is helpful and provides useful information for the state.

Municipal Boundary Changes and Comprehensive Growth Plans (Public Chapter 707, Acts of 2014)—Draft Report for Review and Comment

A draft report on municipal boundary changes and comprehensive growth plans was presented to the Commission for review and comment. The report included several draft recommendations addressing key issues concerning municipal boundary changes and growth planning policies. Discussion centered on the report's recommendations concerning annexation referendums and petitions, deannexation, non-contiguous annexation, and the status of growth plans, as well as on annexation of agricultural property.

School Board Budget Line-item Authority for City Councils and County Commissions (Senate Bill 1935 by Johnson)—Draft Report for Review and Comment

A draft report on school system budgets was presented to the Commission for review and comment. The bill prompting the study, Senate Bill 1935 by Senator Jack Johnson, was sent to the Commission by the Senate State and Local Government Committee. If passed, it would have given certain local legislative bodies authority to alter or revise administrative line items within school systems' budgets when administrative spending exceeds 10% of the total budget. Presently, local legislative bodies can revise only the total budget amount. The report included a draft recommendation that authority over specific budget line items within school budgets remain with the elected school boards.

Valuing Low-Income Housing Tax Credit Properties in Tennessee (Senate Bill 1671 by Southerland and House Bill 1390 by Faison)—Draft Report for Review and Comment

A draft report on valuing low-income housing tax credit properties for property tax purposes was presented to the Commission for review and comment. The bill prompting the study, Senate Bill 1671 by Southerland and House Bill 1390 by Faison, would have prohibited consideration of the value of tax credits when valuing low-income housing tax credit properties. The draft presented two alternative approaches to valuing the credits for property tax purposes. Both would spread the effect of the credits over the life of the project to address cash flow problems that arise under current law. They included either dividing the total present value—or the total amount of credits, as done in Idaho—over the number of years in the restricted rent agreement and adding this value to the standard income approach including restricted rents.

Senator HENRY asked that the Commission hear from the Comptroller before providing its final recommendation on a bill that would depress revenue. Chairman NORRIS also suggested that the Commission invite the Treasurer to speak.

Requiring Sprinklers in Places of Worship (House Bill 1649 by Hill, T.)—Final Report for Approval

The Commission approved the final report on fire sprinkler requirements for places of worship, prepared in responses to House Bill 1649 by Representative Timothy Hill. That bill, which was sent to the Commission by the House Local Government Subcommittee, would have exempted single-story places of worship that meet specific size, occupancy, and exit requirements and that are located in unincorporated areas without a water supply from the requirement to install fire protection sprinkler systems. Because of the increased risk to the health, safety, and welfare of community members, firefighters, and property, and because reasonable means are available to support sprinkler systems where public water supplies cannot, the final report includes a recommendation by the Commission that the General Assembly not exempt these churches from sprinkler requirements.

Uninsured Motorist Identification and Enforcement (House Bill 2457 by Lundberg)—Update

The Commission was presented background information about issues raised by House Bill 2457 by Representative Jon Lundberg, which would have created an uninsured motorist enforcement database. The Commission discussed the need to determine the potential effect of the bill on current uninsured motorist coverage. Because of the complexity of the bill, Senator TRACY said the Commission should hear from representatives from the insurance industry and county clerks, and Commissioner Schumpert said that the Commission should be given a year to study this bill.

Recommended Workplace Civility Policy for State Agencies and Local Government (Public Chapter 997, Acts of 2014)—Draft Report for Review and Comment

The Commission was presented the draft model healthy workplace policy required by Public Chapter 997 based on bills sponsored by Representative PARKINSON and Senator KYLE. Senior Research Consultant Ethel DETCH explained that the policy would be optional and that the language would need to be adapted to fit each particular government's structure and existing policies. She noted that Chairman NORRIS had requested an opinion from the Attorney General about whether the Act would create a new cause of action, but that the response has not yet been received. The request to the Attorney General also included a question addressing how the policy would apply to county governments with their various elected officials.

Civil Remedies for Invasion of Privacy, Updating the Law to Reach New Technology (House Bill 1855 by Williams, R.)—Draft Report for Review and Comment

A draft report on civil protection against invasion of privacy was presented to the Commission for review and comment. The report was in response to House Bill 1855 by Representative Ryan Williams, which was referred to the Commission by the House Civil Justice Committee of the 108th General Assembly. The bill would have created a new remedy for capturing or attempting to capture an image or recording through the use of a visual or auditory enhancing device, regardless of whether the image or recording were published. This new cause of action would have applied in limited circumstances. The draft report said that the bill raised two constitutional issues. First, it included an amendment that would have exempted "established news media," which raises both Fourteenth Amendment equal protection issues and First Amendment freedom of the press issues. Second, the bill allows lawsuits against third parties that use images or recordings taken in violation of the bill. The United States Supreme Court has never allowed penalties against a publisher of truthful matters of public concern, even when the party that published the material knew it was obtained illegally by another. The report also said that the bill did not explicitly mention the use of unmanned aircraft (often called drones); therefore, it's not clear whether the bill would reach an invasion of privacy by that means, although drones flown low enough might constitute trespass under current law. Following the presentation, there was discussion of privacy and safety issues related to drones with several members saying that the report should address those issues.

Planned Developments and Homeowners Associations (House Bill 2070 by Farmer)—Draft Report for Review and Comment

A draft report on issues related to homeowners' associations (HOAs) was presented to the Commission for review and comment. The bill prompting this study, House Bill 2070 by Andrew Farmer, was sent to the Commission by the House Local Government Committee of the 108th General Assembly. If passed, it would have required sellers to disclose whether their property were located in a planned unit development (PUD), and if so, whether the PUD were complete. The draft report met the intent

of House Resolution 170, enacted by the 107th General Assembly, which called for TACIR to study HOAs' rules and regulations and the responsibility of HOAs to insure their obligations. The report also considered issues raised by Senate Bill 2198 by Jack Johnson and House Bill 2060 by Jeremy Durham, which would have forbidden HOAs to restrict parking on public streets and to ban political signs on private property without the approval of the city or county legislative body. It also would have forbidden HOAs to attach liens without presenting clear and convincing evidence to a judge, and prohibited fines in excess of monthly dues. Following the presentation, Mayor GREER asked the Commission to examine the obligation of counties to pay off HOA liens before selling a property at a tax sale. Chairman NORRIS directed the Commission to study this further.

January 28-29, 2015

School Board Budget Line-item Authority for City Councils and County Commissions (Senate Bill 1935 by Johnson)—Final Report for Approval

The Commission approved the final report on school system budgets. The bill prompting the study, Senate Bill 1935 by Senator Jack Johnson, introduced during the 108th General Assembly, would have given certain local legislative bodies authority to alter or revise administrative line items within school systems' budgets when administrative spending exceeds 10% of the total budget. Presently, local legislative bodies can revise only the total budget amount. The final report contained updated information including a description of House Bill 2293 by Durham/Senate Bill 2525 by Bell. That legislation would have allowed the same set of local legislative bodies to alter or revise line items of proposed education budgets if they contained lobbying expenditures. The report describes issues raised by both bills and explains the Commission's recommendation that authority over specific items within school budgets remain with elected school boards.

Recommended Workplace Civility Policy for State Agencies and Local Government (Public Chapter 997, Acts of 2014)—Final Report for Approval

The Commission was presented the final draft of the healthy workplace policy required by Public Chapter 997, based on bills sponsored by Representative PARKINSON and Senator KYLE. Since the November meeting, the policy had been renamed the Abusive Conduct Prevention Policy to conform more closely to the legislation. Senior Research Consultant Ethel DETCH explained that adoption of the policy would be optional and that any government organization adopting it would need to modify it to fit their specific policies and practices. She noted that the policy had been revised to clearly include higher education and primary and secondary schools and summarized the main points of Attorney General's opinion No. 15-01, which was requested by Chairman NORRIS. Ms. DETCH also explained that a report had been written explaining the background of the policy, how it relates to existing laws, and addressing questions related to implementation.

After several members expressed concerns with the public chapter requiring the policy, Mayor WATERS moved that the Commission request additional time to develop a draft policy. The motion, seconded by Representative CARTER, passed on a vote of 12 to 5.

Municipal Boundary Changes and Comprehensive Growth Plans (Public Chapter 707, Acts of 2014)—Final Report for Approval

The Commission approved the final report on municipal boundary changes and comprehensive growth plans, which includes recommendations related to non-resident participation in annexation decisions, annexing non-contiguous areas, and reviewing and updating growth plans, among others.

The members discussed various related issues, including non-resident voters, statutory discrepancies in current law, and the definition of agricultural use of property. They also discussed the quarterly meeting requirement for joint economic community development boards, with Mayor MCBRIDE saying that in his experience, the meetings have not been productive. Chairman NORRIS directed staff to add a recommendation that the meeting requirement be changed to once a year and more often if necessary.

Chairman NORRIS also asked staff to add language discussing the option of requiring approval by a majority of those voting or signing the petition both inside the annexing city and outside. This would be consistent with the law in Tennessee requiring dual majorities for things like consolidation of governments, upheld in December 2014 by the US Sixth District Court of Appeals, and those instances where cities allow residents outside the area proposed for annexation to participate in the referendum.

Valuing Low-Income Housing Tax Credit Properties in Tennessee (Senate Bill 1671 by Southerland and House Bill 1390 by Faison)—Final Report for Approval

The Commission approved the final report on valuing low-income housing tax credit properties in Tennessee. The legislation prompting the study, Senate Bill 1671 by Southerland and House Bill 1390 by Faison, would have prohibited consideration of the value of tax credits when valuing low-income housing tax credit properties. The report includes a discussion of alternatives that would result in relatively uniform tax payments that are easier for property owners to budget for while still recognizing that the credits are the major source of income for investors in these projects. The hypothetical property in the draft report presented at the November 2014 meeting was replaced with information on a real low-income housing tax credit property in Chattanooga to compare alternative approaches to valuing LIHTC properties using information provided by the property developer and the Hamilton County Assessor's Office.

Mayor WATERS asked whether it would be possible to mitigate the cash flow problems that can result from the current valuation method used in Tennessee while still recognizing that the credits have value by spreading the total amount tax credits evenly over the ten-year tax-credit period when valuing LIHTC properties to allay concern that the current practice in Tennessee could prevent these projects from being built in rural areas. Ms. ROEHRICH-PATRICK said staff would add this alternative approach to the final report using the real LIHTC property from Chattanooga.

Responding to a concern by Representative CARTER that approaches for valuing LIHTC properties that fail to consider rent restrictions might cause cash flow problems, Ms. ROEHRICH-PATRICK explained the different income streams that developers and investors receive from their participation in LIHTC projects. She clarified that these income streams were not being taxed in the income approach to property valuation but were being used as indicators of a property's value to a willing buyer.

Mayor BURGESS expressed support for spreading the cumulative annual present values of the tax credits over the 30-year restricted-rent period because it would reduce the early burden on property owners but keep the total taxes owed to local government over the 30-year period the same.

Uninsured Motorist Identification and Enforcement (House Bill 2457 by Lundberg)—Panel Discussion

The Commission heard presentations from two panels on House Bill 2457 by Lundberg, which was proposed to assist in uninsured motorist identification and enforcement. The first panel included representatives of the insurance industry and individuals working with verification systems:

- Center for Advanced Public Safety (CAPS), University of Alabama, Matthew Hudnall, Senior Associate Director
- Insure-Rite, Inc., Bart Blackstock, Executive Vice President
- Farm Bureau Insurance of Tennessee, Benjamin Sanders, Executive Director of Government Affairs
- Insurance Industry Committee on Motor Vehicle Administration, Alex Hageli, Vice-Chair

Mr. HUDNALL explained that CAPS developed Alabama's hybrid-web-service vehicle-registration-verification system, as well as other computer systems for the Alabama Motor Vehicle Division, and provides systems for other states, including Mississippi and Arkansas. When Alabama implemented its first mandatory liability insurance law in 2000, the state had an uninsured vehicle rate of 25%. Initially, Alabama enforced this law only through randomly targeted letters to registered vehicle owners asking them to verify whether they had insurance. By 2012 the uninsured rate had dropped to 20%. Alabama began using an online insurance verification system and began requiring electronic verification of insurance coverage for vehicle registration in 2013.

Alabama's system allows county officials, law enforcement, and the courts to query a centralized system that authenticates the user, logs the insurance information for the vehicle being verified, and routes it to the appropriate insurance company for verification. Insurance companies are required to send policy information once a month to CAPS to assist in the routing of verification information. This information creates a record that can be used to automatically generate insurance verification requests to insurers, making the verification process easier and more precise by reducing manual entry at the point of registration and traffic stops.

In response to a question by Mayor ROWLAND, Mr. HUDNALL said that Alabama requires insurance companies to participate, and there is a $1,000 fine for each failure to respond to a verification request. He said he believes the fine is too large, and in fact Alabama has never imposed it. He thinks the $250 fine per day in Tennessee's bill is much more reasonable.

Mr. HUDNALL cautioned the Commission about vehicle owners who attempt to circumvent the law by claiming a working vehicle is inoperable. To address this problem, CAPS makes citation information from police available to registration officials, allowing them to check for citations issued for a vehicle when a person claimed it was inoperable.

In response to a question from Mayor BURGESS about the initial contractual amount between the state and the University of Alabama to develop the system and about the recurring cost, Mr. HUDNALL said that the technology component, which includes the web service used to query insurance companies and the software used by officers and licensing officials, cost approximately $350,000, and the statewide marketing campaign consisting of TV and radio commercials and billboards cost about $500,000. The only recurring costs are those for employing the people who keep the system running and for the individuals devoted to resolving data discrepancy issues.

Speaking next, Mr. BLACKSTOCK, who works for a company that designs and operates verification systems for other states, said that the best verification systems require insurers both to provide a full-book-of-business download at least twice a month and to implement the IICMVA model. The advantage of the full-book method is that it allows the system to match data from insurers and the state and provides a 95% or better match rate based on Insure-Rite's experience in Utah and Texas. The IICMVA model is great for online verification, but it requires an exact vehicle identification number (VIN) and policy number.

Mr. BLACKSTOCK recommended, as the second best method, requiring a full-book-of-business only, but the insurance industry opposes it. The third best option is an "add/delete" system, with or without the IICMVA-model unknown-carrier or VIN-only request. But these systems are very inaccurate and difficult to manage. Mr. BLACKSTOCK does not recommend this. The least-preferred choice would be the IICMVA model by itself because it is labor intensive for those that have to use it, such as law enforcement, and is designed to be reactive only.

Because of insurers' concerns, Insure-Rite developed a hybrid approach for Tennessee for inclusion in legislation introduced in 2015. The Tennessee hybrid approach would require insurance companies to either participate in the IICMVA model or report a full-book-of-business. If an insurer chooses the IICMVA model, they might have to manually enter VIN and policy numbers. However, an optional IICMVA component allows for an unknown-carrier or VIN-only request to help avoid the manual entry problem. Owners of vehicles not verified by either method would be sent letters requesting verification. The letter method is similar to Alabama's, but Mr. BLACKSTOCK recommends a 90-day period before sending a letter while Alabama waits only 30 days.

Speaking next, Mr. SANDERS said that any solution to the uninsured motorist problem should have three characteristics: (1) the penalties should change behavior, (2) unintended consequences should be avoided, and (3) the benefits should outweigh the costs to consumers. He said that Tennessee's maximum fine of $100 is not enough to change the behavior of those who make a risk-versus-reward assessment of whether to break the law. The minimum price for a vehicle liability policy is about $300 a year in Tennessee, and a lot of people in Tennessee would rather risk the fine than pay that cost. Before the state looks at expensive verification programs, it should consider increasing the fine.

Mr. SANDERS also said that while most states require insurance at the time of registration, Farm Bureau has strenuously opposed this in Tennessee because of concern that people will buy insurance, register the vehicle, and then drop the policy. Further, insurers should not be part of the enforcement arm of the state, required to implement an expensive computer program. While Farm Bureau is glad to be a good corporate citizen and help the state, they question the benefit to their policy holders. He said the incremental approach agreed to by the sponsor of Tennessee's legislation and interested parties is a good solution, one that could lower the uninsured rate without adding cost to those people that are already being responsible.

In response to a question from Mayor ROWLAND about what happens when a motorist gets insurance and cancels after two weeks but still has an insurance card to show to law enforcement and is pulled over, Mr. SANDERS said that the IICMVA model allows law enforcement to "ping" insurance company information to confirm the validity of the cards.

Mr. HAGELI, who in addition to serving as vice-chair of the national Insurance Industry Committee on Motor Vehicle Administration is also the director of personal lines policy for the Property Casualty Insurers Association of America (PCI), which opposes insurance requirements because they lead to

verification programs that waste a lot of insurance company resources on resolving discrepancies between databases and insurance company information. Furthermore, the moment data is entered into the database it becomes dated and may not be accurate if it is referenced several days later. Because of this, the IICMVA model allows the state to access the insurance company's information in real-time rather than relying on information in state-run or third-party databases. PCI considers this a superior approach. He also said that any insurance-verification legislation should require an advisory council to facilitate communication between state agencies and the insurance industry and that commercial insurance policies should be excluded because they are very different from personal insurance coverage.

He said that people make an economic decision whether to buy insurance or be penalized. It does a state no good to simply know who is driving without insurance unless it has effective enforcement. Because of this, Tennessee should raise its fine for violating the law and not allow judges to reduce the amount because of a hard-luck story.

In the discussion following the panel, Representative CARTER questioned the need to address the uninsured motorist problem by creating the proposed bureaucracy when people can fix the problem for themselves by buying uninsured coverage for $2 to $7 a month. He also questioned the option to reject uninsured coverage when buying a policy. Mr. SANDERS said that a lot of complaints come from those who rejected uninsured coverage but are upset when involved in an accident with an uninsured driver and have to pay out-of-pocket for the damage. He also said that about 95% of Farm Bureau's customers carry uninsured coverage and that Tennessee prohibits rate increases for those hit by uninsured drivers, whether they have uninsured coverage or not. Representative CARTER responded that the complaint he hears from some motorists is that their insurance agent didn't explain the uninsured coverage to them and asked whether the state should require uninsured motorist coverage. Noting that it is a profound punishment to take a working person's driver's license and that doing so could ultimately put them on public assistance, if Tennessee is going to do this, we need to know that we are correcting a tremendous problem.

Mr. HAGELI responded that the catalyst for the Alabama program was its high uninsured rates and noted that Tennessee's uninsured rate is one of the highest. Mr. SANDERS said that people who feel that they have little to lose have little incentive to buy insurance and that the data shows that states with the lowest uninsured rates also have the highest household incomes. For example, states like Massachusetts, Maine, Vermont, and New York that have higher average incomes than Tennessee also have lower uninsured rates. Further, while Utah has a verification system and a very low rate, it also has a much higher average income than Tennessee.

The second panel included representatives of state and local government:

- Department of Safety & Homeland Security, Roger Hutto, General Counsel
- Department of Revenue, Richard Roberts, Commissioner
- Department of Commerce and Insurance, Michael Humphreys, Assistant Commissioner, and Tony Greer, Chief Counsel
- County Clerks Association, Kellie Jackson, Montgomery County Clerk

Mr. HUTTO said that, although the Department of Safety enforces the Financial Responsibility Law, the Uninsured Motorist Enforcement Act of 2014 would have very little effect on them. Currently, there is no requirement to show proof of insurance to register a vehicle or to get a driver's license,

but failure to have insurance is a violation that can result in suspension of the driver's license by the department for one year. Current law requires proof of insurance in only certain situations, such as traffic stops for moving violation and involvement in an accident.

There are about 20 traffic offenses for which the person convicted must show proof of vehicle insurance to the Department of Safety in order to get their license back. The requirement to show proof means either showing that the person had insurance at the time of the offense or that the person has obtained prepaid auto insurance for a period that varies with the seriousness of the offense, referred to by the insurance industry as SR-22.

The department suspended about 67,000 licenses last year because of violations of the Tennessee Financial Responsibility Law. The Tennessee Highway Patrol alone issued about 61,000 citations for failure to show proof of insurance; some of those cited were insured but did not have proof on hand. Asked by Mayor ROWLAND whether people are allowed to drive away after being cited for failure to provide proof of insurance at traffic stops, Mr. HUTTO replied that they are.

Speaking next, Commissioner ROBERTS said the question whether uninsured coverage should be required in order to register a vehicle is one for the legislature but that any requirement should not be allowed to slow the work of county clerks or be cumbersome for those needing to renew registrations. Clerks are dealing with 40-year-old-technology, particularly for vehicle titling and registration, and there have been some ill-conceived attempts that cost a lot of money over the years to update it.

The department is currently developing an insurance verification system that Commissioner ROBERTS said he hopes to be testing in consultation with the Department of Safety and county clerks and implementing by next year. The department does not yet have all the details that comprehensive legislation should include, such as appropriate fine amounts and lapse periods, but the department could come back next year with a definitive report on the successes and failures of the system, and a verification system could be ready to operate in less than a year and half. Testing of the program could begin this fall and be used to identify any gaps in the system.

Responding to a question from Mayor WATERS clarifying whether Commissioner ROBERTS was recommending not passing this type of legislation or asking for more time to develop an insurance verification system, Commissioner ROBERTS made clear that the Department of Revenue is not taking a position on legislation but is already working to develop a solution and would like more time to evaluate and test it in order to come back with recommendations based on what they find most workable. He noted the department's past successes in solving problems with generating dealer drive out tags, print-on-demand, and electronic delivery of data as evidence of the department's ability to solve problems in an orderly and efficient way. Commissioner ROBERTS also suggested allowing time for additional recommendations from citizens and the legislature for appropriate fines, grace periods, notice, and basis for suspending a registration. He said this issue raises a lot of policy questions beyond the concerns of one department.

Responding to a question from Mayor BURGESS whether the verification system he had under consideration was the full-book approach, the IICMVA model, or some combination, Commissioner ROBERTS said they were contemplating allowing insurance companies to decide, at least initially, and see how that works. He said they might narrow it down to one system in the future, but they do not know enough now to eliminate one or the other. He said that he has heard pros and cons for both systems and would like to accommodate both at the start.

Asked by Mayor ROWLAND whether people can still post a bond rather than buy insurance to meet the requirements of the Financial Responsibility Law, Commissioner ROBERTS responded that it is still permitted but only one person has done so.

Speaking next, Mr. HUMPHREYS said that the Department of Commerce and Insurance's role in the changes proposed by the referred legislation is limited to enforcing insurance companies' participation in whatever verification system is used and had no further comment.

Ms. JACKSON, representing the County Clerks Association, said their members understand that uninsured vehicles are a problem and are willing to assist in reducing that number. She asked that any verification requirement be reviewed to make sure county clerks are not overly burdened with a heavy workload and do not have to absorb the costs. She said the biggest challenge for county clerks is a lack of manpower. She also said that approximately 49% of registration renewals in Montgomery County take place online or by mail. If they had to require additional materials because an applicant failed to submit them, they would have the additional expenses of mailing a request and following up on it. Also, since military service members have taken advantage of online renewals and many renew while overseas to have the registered vehicle ready when they get back, requiring additional documentation could create a hardship for them.

Ms. JACKSON recommended not requiring county clerks to check hardcopy proof of insurance when customers come in to register, and if there is a requirement, prefers that there is an electronic way to check for proof of insurance. Notations alerting county clerks not to renew registrations, as well as emission testing information, are already embedded in the state's computer system, and 93 of the 95 county clerk's offices are using software and technology services provided by a single company to access it in a seamless process that prevents clerks from renewing those registrations.

In other discussion, Representative CARTER, drawing on his experience as a judge, made the point that issuing citations and suspending licenses does not stop people from driving, particularly those who have to drive to get to work and cannot afford not to work. Given the number of citations issued by the Tennessee Highway Patrol, he suggested that there are probably hundreds of thousands of citations being issued across the state. Numerous statutes require judges to revoke driver's licenses, which raises the question of what to do about working Tennesseans that have their licenses suspended. Council Member SENTER speculated that many of those without insurance are those without licenses.

Senator TRACY said that while we want everyone to have insurance, there will always be gaps. For example, if someone doesn't pay for their insurance, how quickly can an insurance company deny coverage for that person if they are in an accident? How quickly should insurance companies notify the clerks and state government that there is a lapse in coverage? Ms. JACKSON added that one bill introduced last year would have required insurers to notify the state after a certain number of days when insurance is dropped.

Civil Remedies for Invasion of Privacy, Updating the Law to Reach New Technology (House Bill 1855 by Williams, R.)—Final Report for Approval

The Commission approved the final report on civil remedies for invasion of privacy for approval. The report was prepared in response to House Bill 1855, which would have expanded current common law rights to sue for invasions of privacy by creating a new civil cause of action for capturing or attempting to capture an image, recording, or impression by using a visual or auditory enhancing device—what might be called a virtual invasion of privacy—regardless of whether the image or

recording were published. The final report includes information about unmanned aircraft (commonly called drones) and discusses the potential threats posed to personal privacy by their use and explained that changes in the bill may be necessary to ensure that damages can be recovered for invasions of privacy using drones.

Planned Developments and Homeowners Associations (House Bill 2070 by Farmer)—Final Report for Approval

The Commission approved the final report on planned developments and homeowners' associations (HOAs) for approval. The bill prompting this study, House Bill 2070 by Andrew Farmer, was sent to the Commission by the House Local Government Committee of the 108th General Assembly. If passed, it would have required sellers to disclose whether their property were located in a planned unit development (PUD), and if so, whether the PUD were complete. The report meets the intent of House Resolution 170, enacted by the 107th General Assembly, which called for TACIR to study HOAs' rules and regulations and the responsibility of HOAs to insure their obligations. The report also considers issues raised by Senate Bill 2198 by Jack Johnson and House Bill 2060 by Jeremy Durham, which would have forbidden HOAs to restrict parking on public streets and to ban political signs on private property without the approval of the city or county legislative body. It also would have forbidden HOAs to attach liens without presenting clear and convincing evidence to a judge, and prohibited fines in excess of monthly dues.

The report includes a section added in response to Mayor GREER's request at the November 2014 commission meeting to add information to the report about the obligation of counties to pay HOA assessments before selling a property at a tax sale. Allowing local governments to force the sale of tax delinquent properties for less than the amount of taxes owed and related costs would increase the likelihood that they could avoid buying them and assuming responsibility for future HOA assessments. Tennessee already allows the sale of properties for less than the taxes and associated costs owed, but only after the one-year redemption period, not at the tax sale.

Tennessee Valley Authority Payments in Lieu of Taxes—Annual Report for Approval

The Commission approved the annual report on TVA PILOTs, which found that Tennessee's estimated share of TVA's PILOT and the total amount that the state is estimated to receive from the Authority increased because of changes that caused decreases in Kentucky and Alabama. TVA's payment to Kentucky decreased because the Authority's largest customer in the state closed, and its payment to Alabama decreased because TVA retired several of its coal-fired units in that state. The Commission discussed TVA actions that might affect the PILOT distribution in Tennessee.

June 10-11, 2015

Legislative Update

The 109th General Assembly took action directly related to findings and recommendations in two Commission reports, Assessing the Value of Low-Income Housing for Property Tax Purposes: Whether and How to Consider the Value of Low-Income Housing Tax Credits and Municipal Boundaries in Tennessee: Annexation and Growth Planning Policies after Public Chapter 707. Responding to a request by the Commission for additional time to develop a model workplace civility policy, as required by the Healthy Workplace Act, the Senate passed Senate Bill 1157 by Norris, extending the due date for the model policy from March 1, 2015, to September 1, 2015. The bill's companion, House Bill 588 by Parkinson, was sent to the House Calendar and Rules Committee

after being amended to require TACIR to create a model policy through the promulgation of a rule pursuant to the Uniform Administrative Procedures Act.

The legislature passed three bills requiring work by the Commission pertaining to homestead exemption amounts for bankruptcy filings, hotel occupancy taxes, and the state's upcoming clean power plan. Also, committees of both chambers referred bills pertaining to county government employees serving on county legislative bodies and to property owner consent for zoning changes. Committees of one chamber or the other requested studies pertaining to painting edges of steps into certain public buildings, giving preference to Tennessee bidders in some state contracts, deleting local funding requirements for public defenders offices, and studying court fees in Tennessee counties.

Work Program Amendment, New Research Plans

The Commission considered seven amendments to the work program for the Commission's consideration. The first amendment, adding the three studies required by public chapters enacted by the 109th General Assembly—a study of whether homestead exemption amounts in TCA Title 26, Chapter 2, should be increased to reflect the cost of living; a study of the effect of hotel occupancy taxes on the economy and on tourism and the hospitality industry; and an evaluation of the state's final plan submitted by the Department of Environment and Conservation to the EPA to establish and enforce carbon dioxide emission control measures adopted to implement the obligations of the state under federal emission guidelines—passed without objection. So did amendments two and three, adding studies of bills referred by committees of both chambers of the legislature. Those included an analyses of legislation disqualifying any county government employee from serving as a member of the county legislative body and legislation requiring that any zoning amendment affecting a parcel of private property take effect only upon written consent of the owner of that property.

Following the passage of amendment three, Chairman NORRIS asked Ms. ROEHRICH-PATRICK to discuss the staff's plan for conducting these studies and the others being considered for inclusion in the work program. Ms. ROEHRICH-PATRICK reviewed the plan, noting that including all of the studies would require completing them in a very brief period, making difficult to provide the high quality research the Commission has come to expect.

Chairman NORRIS said that the studies included in amendments four through seven did not meet the threshold to study because they were not referred by law or by committees of both chambers of the General Assembly: amendment four would have added a study of legislation requiring that edges of steps into certain public buildings be marked with yellow paint to assist persons with vision impairment; amendment five would have added a study of giving preferences to Tennessee bidders in some state contracts; amendment six would have added a study of legislation that would delete the requirement that local governments provide to attorneys representing indigent criminal defendants 75 percent of the local funding they provide to the district attorney general; and amendment seven would have added a study of court fees in Tennessee counties.

Agreeing with the Chairman, Representative CARTER moved that all four studies not be included in the work program. Chairman NORRIS reminded the Commission that he considers it appropriate for any member to propose work for study, subject to the vote of the Commission. In response, Representative PARKINSON asked to separate amendment five from Representative CARTER's motion. The Commission passed the amended motion, deciding not to add amendments four, six, or seven.

At the request of the Chairman, Dr. LIPPARD reviewed amendment five. Chairman NORRIS said that he felt it premature to conduct the study because, while it had been referred by the House State Government Subcommittee, it is still pending in the Senate State and Local Committee and could still be sent by that chamber as well next session. In response, Representative PARKINSON moved that the amendment not be adopted. Representative WIRGAU seconded the motion, and it passed unanimously.

Representative CARTER, saying that he did not mean to exclude the study of court fees in Tennessee counties, moved for reconsideration of amendment seven. County Executive HUFFMAN seconded, and the commission concurred. Several members noted the importance of the issue, and Mayor BURGESS said that the study would be a large undertaking and suggested allowing more time for it than the January 2016 date requested by the bill sponsor. Chairman NORRIS suggested moving the amendment's due date to January 2017. Representative CARTER agreed. Chairman McMahan added that it would be helpful if both chambers were to introduce legislation so the Commission has some indication of any proposed changes and can evaluate them. In response to a question from Representative PARKINSON about the staff's capacity to complete the study, Ms. ROEHRICH-PATRICK said staff could produce a draft for Commission review and discussion by the June 2016 meeting. Chairman NORRIS called for a vote on the motion to add the study in amendment seven with a due date in 2017. The motion passed unanimously.

Chairman NORRIS made a motion to add a study of broadband development and deployment to the work program, due in 2017, to help facilitate legislation that will be discussed in committee again this coming session (Senate Bill 1134 by Bowling and House Bill 1303 by Brooks). In response to a question from Vice Chairman ROWLAND about the staff's capacity to complete the study, Ms. ROEHRICH-PATRICK said that she would reallocate staff among the adopted studies and bring a revised schedule back to the Commission. Chairman NORRIS said that what he has in mind for staff to look at the current status of broadband availability in Tennessee, assessing the status of deployment and adoption and determining where there are gaps. He also wants staff to study best practices from other states for encouraging broadband deployment and adoption, and reducing coverage gaps, and, ultimately, for the Commission to recommend ways increase broadband deployment. He said the study due date would tentatively be 2017, but could be revised based on the staff's revised schedule. County Executive HUFFMAN seconded the motion, which passed unanimously.

TACIR's Fiscal Year 2014-2015 Accomplishments

The Commission received an update on TACIR's major accomplishments during fiscal year 2014-15 (see appendix B).

Lodging Taxes (Public Chapter 395, Acts of 2015)—Discussion of the Effect of Hotel Occupancy Taxes on the Economy, Tourism, and the Hospitality Industry

The Commission heard presentations from two panels on the effect of hotel occupancy taxes on the economy and on tourism and the hospitality industry. The first panel included representatives of the hospitality and tourism industry:

- Greg Adkins, President and CEO, Tennessee Hospitality and Tourism Association
- Ken Maples, hotel owner and Chairman, Tennessee Hospitality and Tourism Association
- Aaron Gumpenberger, Director of Planning and Investments, Ryman Hospitality Properties, and advisor to Governor Haslam's Tennessee Tourism Committee

- Heetesh Patel, hotel owner and Mid-South Regional Director, Asian American Hotel Owners Association

Mr. ADKINS said hospitality and tourism is the second-largest industry in Tennessee, bringing in more than $16 billion in direct tourist spending and accounting for 10% of all workers, 300,000 jobs, and $5.7 billion in payroll. He said the hospitality industry is one of the largest taxpayers in the state, paying not only the lodging tax, but also the franchise and excise taxes, property taxes, beer and liquor taxes, etc. The industry is committed to addressing unfair, single-industry-targeted taxes, and his association pushed for TACIR to study the issue after a two-year discussion with cities and counties. He said that the hotel industry has become one of the most taxed industries in Tennessee and that Tennessee's combined sales and lodging taxes are among the highest in the nation. Those high taxes drive customers away and drive hospitality development to other states—particularly border states. When a government passes a lodging tax, the industry wants the revenue to be reinvested into tourism to create more jobs and opportunities for other investments.

Mr. MAPLES owns three hotels in the Pigeon Forge–Gatlinburg area, is a commissioner with the City of Pigeon Forge, and served as an alderman in Sevierville and as an assistant to County Mayor Larry Waters. He reiterated that Tennessee's taxes on hotel rooms are among the highest in the country and that they drive away guests and developers. He expressed concern about the effect of high taxes on border cities like Chattanooga, Memphis, and the Tri-Cities that compete with lower-taxed hotels in other states. He said that reinvesting tax revenue in tourism promotion generates more revenue from new and returning visitors than investments in public safety and infrastructure improvements.

Mr. GUMPENBERGER discussed how high taxes affect group bookings. A small group of meeting planners book large events—those with 3,000 to 5,000 people—and a deciding factor for many of these planners is the lodging tax rate because it is passed on to the consumer. If Tennessee has some of the highest rates, planners may choose cities in other states that have lower rates. He also talked about smaller communities, where events like youth sports tournaments bring in many visitors for multiple nights, and how they could lose those events to other cities because the families that attend are price-sensitive. These events can have a big economic impact, generating revenue to fund essential services.

Mr. PATEL talked about Tennessee's many tourist attractions and the advantage of being a low-cost state. He too expressed concern about losing business across state lines. Mr. PATEL shared a handout with a picture of a billboard advertising lower tax rates for travelers to stay in Kentucky, noting that economy travelers will look for the lowest price. The industry believes in paying its fair share of taxes, he says, but they do not want to stand out as having the highest in the country. Mr. PATEL said he knows a hotel owner in Knoxville who chose not to build a second hotel after the city added a 5% hotel tax, saying that because the average daily rate for his hotel remained flat for three years he could not absorb the cost of the tax.

The second panel included representatives of local governments:

- David Connor, Executive Director, Tennessee County Services Association
- Chad Jenkins, Deputy Director, Tennessee Municipal League
- Ralph Cross, Finance and Accounting Consultant, Municipal Technical Advisory Service
- Kirk Bednar, City Manager, City of Brentwood

- Rick Chinn, Councilman, City of Oak Ridge

Mr. CONNOR began by saying that tourism is a critical part of the economy for counties across the state. He told the Commission about his experience booking rooms for a county services event in Nashville, and that the hotel has increased its rate 35% over last year. He said that hotel taxes have been around a long time and talked about the limitations put in place in 1988. He acknowledged that the tax is 19% in some places but that half of it is sales taxes. Most county tax rates are 5%. Counties have a limited local tax base, and many counties do reinvest some of this revenue in tourism. Mr. CONNOR shared county governments' concerns about revenue from a tax on a certain industry being earmarked for promoting that industry, and said those decisions should be left up to local officials who are responsible to their voters.

Mr. JENKINS said that only about 19% of Tennessee cities levy a hotel tax. He said that he hadn't heard complaints that Tennessee's hotel taxes were so high and looked into other places around the country. He believes Tennessee is not comparatively excessive as a whole. Knoxville, with a total tax rate of 17.25%, is one of the examples given by the hotel industry as a high-tax city, but it has only a 3% hotel tax rate. The rest is sales tax and county hotel tax stacked. Tuscaloosa, Alabama, has a lower combined tax of 15%, but 11% is city tax. Mr. JENKINS said that recent news reports have noted that Knoxville hotels are expanding and growing despite their apparent high-tax status. Regarding how cities use the tax proceeds, he said that many early acts that authorized hotel taxes did not earmark them for tourism, and some split it between tourism and general funds. The 1988 legislation did not specify use for tourism purposes either. It does not appear the intent of these laws, historically, was that the tax be used explicitly for tourism. He said that different cities use these funds for tourism, economic development, or other general fund purposes, and that local autonomy should be respected. He added that hotels will want to develop, and people will want to stay, in attractive communities.

Mr. BEDNAR said that Brentwood has a 4% city tax, 4% county tax, and twelve hotels with two more in development. But Brentwood is not a tourist destination with attractions. Their hotels attract business visitors and visitors to Nashville and Franklin. They use the tax revenue to offset the cost of services needed to support visitors and to fund infrastructure and parks and other things that make Brentwood an attractive place for businesses. He feels each city can best decide how to use its tax revenue to fit its local needs.

Mr. CHINN said that Oak Ridge is near Knoxville and has a lot of federal government employees in the area. The city has nine hotels and has levied hotel taxes since 1971, with proceeds going into the general fund. The city has suffered recently from cuts in sales tax on groceries and could suffer more from the possible elimination of the Hall income tax. The hotel tax is an important component of their budget, but they invest a significant amount in the convention and visitors bureau. Hotel owners are represented in that group. He said that the city wants to maintain flexibility to use the funds for a variety of projects that indirectly improve tourism and benefit the hotels.

Following the panels, Vice-Chairman ROWLAND asked whether hotel taxes are paid by the hotels themselves or passed on to guests and whether there are group events that the price of rooms would not affect. He also asked whether spending hotel tax money on tourism was not really a benefit to the tourism industry. Mr. ADKINS replied that the sales and occupancy taxes are passed through, and that it is the high combined rate that has the negative impact on visitors. He explained that he supports a very broad definition of tourism for which funds could be spent. He said cities can

create events during off-peak seasons to draw visitors, using hotel tax revenue, and this makes hotels successful. This increases local sales tax revenue that can fund the other general needs.

Vice-Chairman ROWLAND asked for examples from Chattanooga where hotel investors have chosen not to build because of taxes. Mr. ADKINS answered that he would look for some but also that Chattanooga is a destination city where people want to be located close to the attractions. However, beyond a point, high rates will hurt group sales.

Senator YARBRO asked whether there was a problem among contiguous counties, where one is investing heavily in tourism and marketing and the others are benefitting. Mr. ADKINS said this is a concern. Some communities do a good job of investing in and promoting tourism, but others do not. Mr. ADKINS said that while he believes in local autonomy for governments, you have to draw the line somewhere and require that some money be spent on tourism. Mr. MAPLES said that Sevier County, where he is from, wants to be successful; Sevier County hotels benefit from people doing things in adjacent counties and those counties benefit from Sevier County's attractions. The Tennessee Hospitality and Tourism Association encourages all the counties to reinvest in tourism as best they can and to work together.

Senator TRACY commented on Georgia's newly adopted $5-per-room-night hotel tax dedicated to transportation funding. Several members, noting that local governments have limited sources of revenue, expressed concern about mandating how local governments spend revenue from hotel occupancy taxes. Senator McNALLY said that just as the state governments don't like federal mandates, local governments don't like state mandates. He suggested that the hotel industry needs to work more with those local governments to put their hotel tax revenue to the best purposes for tourism. Mr. ADKINS says that they try, but some communities see raising hotel taxes as politically easier than raising other taxes.

Several commissioners expressed displeasure over how hotel room rates fluctuate so much based on demand and suggested that this is a bigger problem than small increases in hotel taxes. Mr. ADKINS explained that factoring in high rates during peak demand helps hotels be profitable during less demanding times. And, several members noted that the revenue from hotel occupancy taxes not only supports tourism directly but also economic development and services like public safety that benefit not only residents but tourists as well. Mayor BICKERS said that while hotels can determine what rate the market will bear, local governments should determine what tax rate their community can bear.

Mayor BICKERS asked staff to consider all types of fees that may be added on to a hotel bill, not only tax rates. Mr. ADKINS mentioned Nashville's $2.50 room night fee as an example.

Vice-Chairman ROWLAND asked Mr. ADKINS to provide data on how hotel room rates are rising in Tennessee. He also asked about construction dollars spent on hotel building. Mr. ADKINS answered that that information may be difficult to obtain.

Sustainable Competitiveness for Tennessee's Counties: Collaboration Between TACIR and TSU

Tennessee State University professors Dr. Soumen GHOSH and Dr. Meg STREAMS presented their findings on sustainable competitiveness among Tennessee's counties. Dr. GHOSH began by defining sustainability as meeting today's needs without compromising the ability of future generations to meet their needs. The study focused on signs of success that local Tennessee officials, in a survey developed using feedback from focus groups of local officials, indicated were most important in

evaluating how a city or county is doing and how well those officials think their community is performing for each measure. Dr. STREAMS said there are three take-away points from the project. First, community asset strength is associated with higher performance on the signs of success identified by the respondents. Second, local governments must work to build community assets. Third, openness to cooperation between jurisdictions is driven not by weakness but by strength of community assets.

Following the presentation, Chairman NORRIS asked whether the methodology used in this study has been used before. Dr. STREAMS responded that the categories came out of the literature but the development of the survey and the set of items used came from focus groups and policy makers.

Chairman NORRIS asked how Dr. GHOSH and Dr. STREAMS would like the Commission to use the information from the study. Dr. STREAMS said that they would like it to be used to build recognition that relationships and social capital are as important and subject to change as the economic development factors currently focused on. She explained that relationships are helpful when issues come up in which it benefits officials to work together. Dr. GHOSH provided the example of jointly applying for a grant, and Dr. STREAMS added that granting agencies want to see collaboration.

Education Funding and Fiscal Capacity

The Commission was presented the annual update on TACIR's fiscal capacity index and provided background information about the index and education funding in Tennessee. The presentation included a look at counties' 15-year fiscal capacity trends and an update on the previous year's information about Union County's fiscal capacity, noting that the county's revenue per student increased since last year, in part because the Tennessee Virtual Academy stopped enrolling new students.

Annual Report on Public Infrastructure Needs Inventory—Final Report for Approval

The Commission approved the annual report on the public infrastructure needs inventory, *Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs*. Discussion of the report centered on the purpose and value of the report, with Senator TRACY emphasizing that the report is important and helps local and state officials and the average citizen understand our infrastructure needs.

Fiscal Year 2015-16 Scheduled Commission Meetings

September 2-3, 2015

What is Happening in the World? Reviews of Community-Based Best Practices—Report to Commission

Dr. Bruce TONN, professor in the University of Tennessee's Department of Political Science and research fellow at the Howard H. Baker Jr. Center for Public Policy, presented findings from a study of community-based best practices that he completed with four colleagues from the university. The study, partially funded by the Commission, was motivated by a desire to identify technologies, innovations, tools, and programs to address the numerous difficult, complex, and interrelated challenges facing Tennessee's communities as a result of globalization, declining economies, and the need to increase services and revenues while reducing costs. Dr. TONN discussed four major subthemes from the report, including how Tennessee's communities can take advantage of technology;

build rural and urban social, cultural, political, and natural capital; find innovative ways to pay for things; and imagine futures that tie the pieces together.

Adjusting the Homestead Exemption to Reflect Cost of Living (Public Chapter 326, Acts of 2015)—Briefing on Initial Research and Panel Discussion

The Commission was presented an update on the study of the homestead exemption in Tennessee that was required by Public Chapter 326, Acts of 2015. The presentation included a description of the growth of consumer credit and the changing nature of lending from the early 1900s until now and an overview of the Bankruptcy Reform Act of 1978 and of Tennessee's homestead exemption, as well as a comparison of Tennessee exemptions to other states.

Following the presentation, the Commission heard testimony from:

- Henry E. Hildebrand III, Chapter 13 Trustee, Middle District of Tennessee, United States Bankruptcy Court
- Robert H. Waldschmidt, Chapter 7 Trustee, Law Office of Robert H. Waldschmidt
- Tom Lawless, Certified Creditor Rights Specialist, Lawless and Associates, P.C.
- Maria Salas, Certified Consumer Bankruptcy Specialist, Salas Law Group, PLLC, Tennessee Bar Association
- Tim Amos, Executive Vice President/General Counsel, Tennessee Bankers Association
- Keith Slocum, Board Certified Bankruptcy Specialist, Harlan, Slocum, and Quillen
- Steve Hodgkins, President, Home Builders Association of Tennessee

Mr. HILDEBRAND began by giving a brief overview of the bankruptcy process. He explained that exemptions can be divided into three categories and that they make up only a part of the bankruptcy process: (1) exemptions for entire items, (2) exemptions based on dollar amounts that may be applied to personal property, and (3) exemptions for certain items up to a specific dollar amount, including homestead exemptions.

Mr. WALDSCHMIDT explained his perspective and experience as a trustee in dealing with Chapter 7 debtors. He sells property in only 5% of all cases, the rest being no-asset cases. When a debtor does have equity, the trustee must take into account the administrative costs of selling the home. Equity of $2,000 would most likely not lead him to sell the home because it would not provide a meaningful return for the creditors. He expressed concern about the complexity of the current homestead exemptions and gave the example of a woman who could see her allowable exemption change at least eight times over her lifetime because of changes in marital status, parental status, and age: from $5,000 to $7,500 to $50,000 to $25,000 to $5,000 to $12,500 to $20,000 to $25,000. He said that Tennessee has the most convoluted system of homestead exemptions in the country.

Mr. LAWLESS suggested that all bankruptcy exemptions be reduced to two unified exemptions: a large exemption for Chapter 13 and a much smaller one for Chapter 7. This exemption scheme would encourage debtors to repay their debt in Chapter 13. Mr. LAWLESS and Mr. HILDEBRAND both said that some debtors abuse the system by converting nonexempt assets into exempt assets before filing by, for example, paying down their mortgages. Ms. SALAS said that although the Commission is being directed to study the homestead exemption, the Tennessee Bar Association wants the Commission to consider all exemptions.

Mr. AMOS argued that while the homestead exemption amounts of $5,000 and $7,500 are low, debtors have access to several large exemptions, specifically the personal property exemption of $10,000 and the exemptions for the family Bible, pensions, etc.

Mr. SLOCUM said he rarely sees people try to game the system. He explained that many people want to pay back their debt but are unable to withstand aggressive debt collection efforts. These debtors use the system to help repay their debts and end the collection efforts. He agreed that a single number would be better but said that nothing should be taken away from the categories of individuals over 62 or individuals with minor children.

Mr. HODGKINS explained that the low homestead exemption in Tennessee is pushing people, including some of his friends, to move to Florida and Texas, which have unlimited homestead exemptions, to protect their assets. He said that bankers use the system to collect money when they could negotiate with debtors upfront and place a lien on the homes. Further, he argued that the unlimited exemptions in Florida and Texas have not made credit difficult to get or caused interest rates to increase there. He said that the Home Builders Association of Tennessee wants people to invest in Tennessee and feel safe in their investment.

Chairman NORRIS and Representative CARTER asked how Tennessee's homestead exemption compared to the federal homestead exemption and whether allowing the federal exemption would be an option to consider. The panelists explained that the federal homestead exemption is a single number, but the filer may use up to $11,500 of an unused portion of the exemption on other property. Mr. WALDSCHMIDT said the federal set of exemptions is extremely high. Senator YARBRO asked whether members of the panel think Tennessee's homestead exemption should be lower than the federal. Mr. WALDSCHMIDT explained that setting an exemption amount is a balancing act between fairness to debtors and creditors; Ms. SALAS said that the exemptions that need to be considered for increases are those for those under the age of 62 without minor children.

Mayor WATERS asked why Tennessee has the highest bankruptcy filings in the country. Mr. HILDEBRAND explained that people use the system to help them repay their debt, which explains why Chapter 13s are so high. Mr. AMOS agreed and added that because of the efficiency of the system, creditors are more willing to go along with repayment plans. Ms. SALAS added that Tennessee has the highest divorce rate in the country and that this is a leading factor. Mayor HUFFMAN asked what effect medical bills have on the filing rate in Tennessee. The panelists responded that this is a major factor. Mr. WALDSCHMIDT said that medical bills often do not show up on the filing forms because people use credit cards to pay for nearly everything but explained that he did his own study of the cases that he worked, and medical bills ranked at the top of reasons people file. Mr. HILDEBRAND said that a Harvard study had found medical bills to be the number one reason for filing. He added that while medical bills may push someone into filing, that could be the result of a lack of coverage or a loss of a job. Mr. HUFFMAN followed up by asking how Tennessee ranks when looking at just Chapter 7 filings. Mr. WALDSCHMIDT said that Tennessee is somewhere in the middle.

Representative PARKINSON asked how people determine which chapter to file. Mr. HILDEBRAND explained that it is up to the debtor but that judges in Tennessee are very willing to accept Chapter 13 repayment plans and that bankruptcy lawyers often encourage people to repay their debt in a Chapter 13. Ms. SALAS explained that people often use the system to help them repay their debt, which greatly influences their filing decision. Other factors include the age of the debtor, job,

eligibility, and last time filing bankruptcy. Ms. ROEHRICH-PATRICK asked how eligibility is for filing Chapter 7 is determined. Ms. SALAS explained that a filer would have to pass a means test and that generally the filer must fall below the median household income for their family size.

Several alternatives were proposed by the panelists including creating a uniform exemption and creating different exemptions for Chapter 7 and Chapter 13. Chairman NORRIS asked whether any other states currently operate under a uniform exemption. Mr. LAWLESS responded that other states have gone to a more level, transparent, and fair system and have a single homestead exemption but there are no states that have one exemption that covers anything up to a set dollar amount. Creating separate exemptions for Chapter 7 and Chapter 13 would also be a new concept not used by any other state.

When asked by Senator MCNALLY what a good number would be for a uniform exemption, the panelists all said they would not be able to agree on a number. Senator. MCNALLY asked what would happen if we had no exemptions. Ms. SALAS responded that individuals with disabilities or people out of work would be forced to give up their furniture, Bibles, clothes, houses, etc. She said it would not be good to get rid of exemptions. The number of Chapter 7 filings would also drop to nearly zero.

Mr. AMOS said the Commission should not recommend allowing the federal exemptions or indexing for inflation because of states' rights issues and periodic changes leading to further uncertainty for lenders. Mr. LAWLESS agreed. Senator YARBRO said the current system already sounds convoluted and that there must be a way to index for increases in inflation without causing too much instability.

Senator MCNALLY and Mayor BICKERS both asked what effect increasing exemptions would have on businesses and consumers. Mr. WALDSCHMIDT said that unsecured creditors must absorb any debt not repaid when exempt property is not sold. Mr. LAWLESS added that businesses build this into their cost of doing business, and as such, we all end up paying for it. Mr. AMOS said that any significant change in the homestead exemption would cause banks to change their lending practices, though a small or moderate increase would likely not have an effect. Mr. HILDEBRAND warned the Commission against believing that any reform of bankruptcy exemptions would have any significant effect on the filing rate. Many believed the 2005 reform would lower the rate, but several studies have shown it had no major effect on the filing rate.

Zoning Process and Consent to Rezone Private Property (Senate Bill 549 and House Bill 775)—Draft Report for Review and Comment

A draft report on the zoning process and consent to rezone private property was presented to the Commission for review and comment. The report responded to Senate Bill 549 by Senator NICELEY and House Bill 775 by Representative DANIEL, which would require the written consent of the owner for any rezoning affecting a single parcel of private property. The draft report included information about the rezoning process in Tennessee and in other states and a conclusion that, short of requiring the consent of owners for rezonings, some of the approaches already used by local governments in Tennessee to ensure that property owners are aware of rezonings could be required. Examples included increasing the number of newspaper notices required from one to two; requiring signs on properties proposed for rezoning with multiple signs required when more than one parcel is to be considered; requiring notice by mail, either first-class or registered, to owners of affected properties or for surrounding property owners; and authorizing local governments to require the party requesting the rezoning to pay for notification requirements.

The discussion following the presentation centered on defining adjacent properties and on whether rezonings constituted regulatory takings. Chairman NORRIS said there should be reference to the takings issue in the final version of the report. Representative CARTER added that the bill sponsors, Senator NICELEY and Representative DANIEL, agree that pursuing whether a rezoning is a taking or not is a better idea than requiring owner consent for zoning changes.

Chairman NORRIS also said that the suggestions for notice by mail should include mention of possibly requiring certified or return receipt in addition to first class mail. Representative LOVE said that a suggestion that notices be sent by mail to the owner's address of record should also be included. Mayor Pro Tem SENTER recommended including the suggestion that cities consider holding additional public hearings. Mayor HUFFMAN said that, if we suggest that two public hearings be held, then the first meeting should be held by the planning commission and the second one before the legislative body. Mayor ROWLAND added that he would like to see the term "adjacent property owners" better defined.

October 21-22, 2015

Broadband Internet Deployment, Availability, and Adoption In Tennessee—Panel Discussion

The Commission heard presentations from two panels as part of its study of broadband access, deployment, and adoption in Tennessee. The first panel included representatives of broadband providers and issues related to providing broadband services:

- Levoy Knowles, executive director, Tennessee Telecommunications Association
- Daniel Hayes, public affairs director, AT&T, Tennessee
- John Farris, legal counsel, Tennessee Cable Telecommunications Association
- Ben Lovins, senior vice president, telecommunications division, Jackson Energy Authority
- Ken Webb, president and CEO, Cleveland Utilities
- Mike Knotts, director of government affairs, Tennessee Electric Cooperative Association

Chairman NORRIS said the Commission's study would analyze all issues affecting broadband availability, deployment, and adoption in Tennessee with the intent to ensure that all Tennesseans, including people in rural communities, have access to broadband services. He also said that the study is not focused solely on whether or where public or private entities should provide broadband.

Mr. KNOWLES said that the member organizations of the Tennessee Telecommunications Association (TTA), which include mostly small- and medium-sized telephone companies and cooperatives, have made significant investments in broadband infrastructure in rural communities throughout the state to meet its objective of ensuring that everyone who wants the service can get it, deploying thousands of miles of fiber in their networks and making broadband service available to 98.3% of their customer base. He said they must nevertheless consider population density and subscription rates when expanding their broadband infrastructure because of the high cost of deployment.

Mr. KNOWLES said four things would make it easier for TTA's members to expand the coverage and quality of services: tax incentives for expansion including reducing or deferring taxes on sales and property for broadband deployment in rural areas; expansion of federal grant programs so that more of TTA's members could take advantage of them; reduction of pole attachment rates via state regulation; and state funding to build and maintain broadband infrastructure. State law allows for

a broadband fund that has never been funded. Noting that the Connect America Fund's (CAF) most recent grants went only to large carriers, which include only one of TTA's members, Mr. KNOWLES asked that the state's lawmakers and congressional delegation encourage the federal government to provide more support for smaller rural broadband providers.

Mr. KNOWLES added that educating citizens about the ways broadband could benefit their lives could help improve rates of adoption, which would make expansion in areas with low population density more economical. Many TTA members provide 1 gigabit service in several areas, but 95% of customers subscribe to 25 mbps or less. Mr. KNOWLES said the TTA supports promoting and expanding broadband service in Tennessee but opposes allowing municipalities to expand broadband service beyond their existing footprints.

In response to a question from Chairman NORRIS about the difference between regular internet and broadband, Mr. KNOWLES said that broadband has faster download and upload speeds than normal internet connections. Mr. HAYES, representing AT&T, also explained that while the Federal Communications Commission (FCC) defines broadband as a connection with at least 4 megabits per second download and 1 megabit per second upload speed, the CAF program requires providers to build infrastructure capable of providing 10 megabits per second download and 1 megabit per second upload speed, and the FCC has set a new target of achieving 25 megabits per second download and 3 megabits per second upload speed. Representative WIRGAU asked for more information about how often the FCC sets new broadband standards and what it considers when establishing them. Mr. HAYES replied that the standards were set based on assessments of the industry and where consumer demand is heading. Senator YARBRO said that more information about how different speeds affect performance would also be helpful.

Chairman NORRIS asked whether there would be any objection to municipal utilities expanding outside their electric service areas to provide broadband in unserved communities. Mr. KNOWLES said that he did not think so, that the objective is to make sure all Tennesseans have access to broadband, but duplicating services should be avoided. Chairman NORRIS said that, because of the large investments required to expand broadband infrastructure in some areas, it is important to think about costs for providers in addition to consumer benefits and needs when considering policies for expanding broadband.

Mr. HAYES said that providers have already made significant investments in both wired and wireless broadband infrastructure and urged neutrality on different technologies for providing broadband, noting that wireless use on AT&T's networks has increased significantly in recent years. He said that federal data from the FCC and National Telecommunications Information Association (NTIA) show that most coverage gaps are in rural residential areas and explained that the second round of CAF grants recently announced by the FCC are for areas that currently lack access to wired broadband of at least 10 megabits per second download speed and 1 megabit per second upload speed. Mr. HAYES said the companies in Tennessee eligible for and accepting this round of CAF grants were AT&T, Frontier, and Century Link. Mr. HAYES said that, in Tennessee, 96% of the population lives in areas covered by AT&T's 4g network. He also noted that, according to the FCC, NTIA, and the national broadband map, 99.1% of Tennesseans have access to 10 megabit download and 1 megabit upload speeds either through wired or wireless connectivity from one or more providers and technologies.

Responding to questions about the most recent CAF grants, Mr. HAYES said that the FCC determined where providers could use CAF grants to improve broadband infrastructure and that 93,000 census

blocks in Tennessee qualified. This round of CAF grants allows six years for deployment but 40% of the infrastructure must be completed by 2017.

Responding to questions about broadband access for schools and libraries, Mr. HAYES explained that schools, hospitals, and libraries can obtain subsidized coverage through the federal government's e-rate program and that in his opinion these institutions have robust connections.

Representative CARTER asked whether the government's CAF grants to for-profit providers are any different from government funds used by municipally owned providers. Mr. HAYES responded that CAF grants can be used only in high-cost rural areas to support private investment while municipal providers are using government funds to duplicate existing services.

Representative CARTER asked whether municipal utilities should be allowed to compete with private providers. Mr. HAYES said he did not think public money should be used to compete against private industries but that AT&T does not oppose municipally owned providers building in unserved areas. He said that identifying opportunities for greater adoption and for greater investment are equally important. Mr. HAYES said a recent report by the Pew Research Center found that the two main reasons for not purchasing broadband cited by those who don't currently have it are lack of understanding of the ways they can benefit from broadband and fear of hacking and spamming. In response to Chairman NORRIS' concern about where cost ranks in comparison to those reasons, Mr. HAYES said that cost is third but includes both the cost of broadband service and the cost of devices.

Responding to Mr. MCMAHAN's questions about Mr. HAYES' discussion of the extent of broadband coverage in Tennessee, wireless versus wired and urban versus rural, Mr. KNOTTS cautioned that federal broadband coverage maps overestimate coverage and speed of service because they count an entire census block as being covered at a given speed as long as even one person or business in it receives broadband at that speed. Mr. KNOTTS also said that wireless service is not equivalent to wired service because of issues both with latency and with transmitting large volumes of data quickly. Mayor ROWLAND remarked that there seem to be inconsistencies in broadband services in the areas that providers claim to serve and that these need to be explained.

Mr. FARRIS described changes in Tennessee law related to internet providers since the early 1990s, noting that the 1999 law allowing municipal utilities to provide broadband within their electric service areas has not been updated. He listed several barriers to private sector expansion in Tennessee that should be removed before the state considers allowing municipal utilities to expand: high pole attachment rates charged by local electric companies, the time electric companies take to complete work needed to ready poles for attaching broadband infrastructure, and permitting processes that should be streamlined to allow private providers to expand their coverage more easily. Mr. FARRIS suggested that these barriers exist because local electric utilities in Tennessee are not regulated and called them anti-competitive practices. He said that cable companies would likely consider investing in new infrastructure in the state if these barriers were removed. Mr. FARRIS said that Indiana's program for expanding broadband coverage by creating guidelines for policies that communities could adopt to be certified as "broadband ready" has industry support.

Mayor BICKERS' asked whether allowing providers to seek statewide franchises rather than negotiating individual local licenses has slowed broadband expansion by limiting the ability of local governments to negotiate with providers for expanded coverage. Mr. FARRIS said that was the Competitive Cable Services Act of 2008, but local franchising never addressed the other barriers to

expansion, and he does not support devolving control over broadband to the local level or duplicating existing services.

Mr. LOVINS said that access to broadband is necessary to support industries, telemedicine, job training, agriculture, and public education—including higher-education initiatives like the Governor's Drive to 55 and Tennessee Promise initiatives—all of which rely on affordable, reliable high-speed data transmission. He said that fiber-optics is the platform of the future and that all solutions include moving fiber connections closer to the end user.

Mr. LOVINS emphasized giving local leaders choice to help their communities meet their broadband needs. He said that Jackson Energy Authority's (JEA) decision to provide broadband services was a local one made to ensure that all commercial, industrial, and residential customers would have access to broadband that met their needs. He explained that establishing and maintaining these services did not require any taxes or other government funding. When asked by Representative WIRGAU how JEA's broadband business was financed, Mr. LOVINS replied that it was through revenue bonds not general obligation bonds. He responded to Mayor ROWLAND's question about whether JEA separated its broadband services from its electric services by saying that the divisions were totally separate, each with its own bonded debt and paying its own allocated costs. He also said that the Tennessee Comptroller of the Treasury audited utilities to make sure that there were no cross-subsidies between electric and broadband services.

In response to Representative WIRGAU's question about who owns JEA, Mr. LOVINS said that its ratepayers own it. Expressing concern about how ratepayers and taxpayers would be affected if a utility failed, Representative WIRGAU asked who is at risk if municipal utilities are unable to pay their debts related to providing broadband. Mr. LOVINS responded that debts would first revert to electric ratepayers but that city taxpayers would assume its debts if the utility folded.

Responding to Representative WIRGAU's question whether JEA was a party to the Chattanooga Electric Power Board's petition to the FCC to preempt Tennessee's law restricting municipally owned broadband providers to their electric service areas, Mr. LOVINS said no. Responding to Representative WIRGAU's question whether JEA provides broadband services outside of its footprint, Mr. LOVINS said that JEA broadband services coincide with its electric services and extend into the county. In response to Representative WIRGAU's question whether JEA would be receiving CAF, Mr. LOVINS responded that JEA is not eligible for these funds.

Mr. WEBB said that access to reliable broadband is no longer a luxury but a necessity for education, business and community development, medical care, and public safety. He said that the public power model would be useful for providing broadband services because it emphasizes cooperation. Cleveland Utilities, following the public power model, wants to provide reliable, reasonably priced broadband throughout its service area while adhering to a financially sound business plan reviewed by the Tennessee Comptroller of the Treasury, with no cross-subsidization and with first class customer service. Mr. WEBB noted that the Tennessee Valley Authority also audits local electric utilities.

Representative WIRGAU asked how long Cleveland Utilities had been offering broadband services. Mr. WEBB said that Cleveland Utilities does not provide broadband services but is studying it. Representative WIRGAU asked why. Mr. WEBB said that, based on requests for service from local residents, there are both wired and wireless broadband coverage gaps in Cleveland Utilities' electric service area. When asked by Representative WIRGAU whether the utility would provide service to

rural areas in its electric footprint where others don't, Mr. WEBB said that Cleveland Utilities' first obligation for broadband service would include all areas within its electric footprint.

Mr. KNOTTS explained that electric cooperatives are private, non-profit corporations, committed to universal service, and among the largest taxpayers in their communities. He acknowledged that they cannot provide broadband under current law; however, they need broadband infrastructure to operate their electric grids and their reliance on it for grid management will only increase. Mr. KNOTTS said that the primary barriers to expanding service in rural areas are population density and the time required to make a return on capital investments. He said that the model used to promote electrification of rural areas in the 20th century using cooperatives was applicable to broadband. He also said that there is little correlation between pole attachment rates and broadband availability.

Mr. YOUNG asked whether the FCC regulates pole attachment rates. Mr. FARRIS responded that while AT&T is subject to FCC guidelines for establishing rates, the Tennessee Valley Authority, municipal utilities, and electric cooperatives are not. In response to Representative CARTER's question about whether Tennessee Code Annotated, Section 7-59-316(c), limits pole attachment rates in historically unserved areas, Mr. FARRIS said that he thinks the limits apply only to joint ventures [Note: Staff confirmed this with the Tennessee Regulatory Authority. The limits apply only in areas designated by TRA as historically unserved in response to application by a municipality or county for authority to establish a joint venture with one or more other providers to provide broadband in the area]. In response to Representative CARTER's question about whether statewide average pole attachment rates for broadband are $2, Mr. HAYES said that the average that AT&T pays to utilities and electric cooperatives statewide is quite a bit more.

Senator YARBRO asked whether the decision to allow municipally owned utilities to expand broadband beyond their electric service areas should be made at the local or the state level. Mr. FARRIS responded that safeguards are needed to prevent cross-subsidization of services and defaults on debt. In response to Mayor ROWLAND's question about whether any municipal utilities are successfully providing broadband in Tennessee, Mr. FARRIS said he was not aware of any, citing JEA's debt in 2010 of $68 million as evidence that it was failing. Mr. WEBB, a certified public accountant, explained that the ability to pay back debt rather than total debt was a better indicator of success and that to his knowledge JEA had not had any problems paying its debt. He added that for-profit providers like AT&T also carry debt. When Mayor BICKERS asked whether private providers receive government subsidies such as tax incentives, Mr. FARRIS said that cable companies do not receive public funding.

The second panel included representatives on behalf of broadband users and community needs:

- Amy New, assistant commissioner of rural development, Tennessee Department of Economic and Community Development
- Cliff Lloyd, chief information officer, Tennessee Department of Education
- Steve Mallard, computer information technology master instructor, Tennessee College of Applied Technology at Shelbyville
- Sgt. Ehrin Ehlert, Tennessee Highway Patrol, Department of Safety and Homeland Security
- Shaun Lawson, mayor, Hickman County
- Rhedona Rose, executive vice president, Tennessee Farm Bureau

Ms. NEW said that access to reliable, affordable broadband is necessary for students, businesses, downtowns, and main streets, and was a recurring topic of conversation in the meetings she had with community leaders and residents across the state. In these meetings and in surveys, 20% of respondents said that broadband was the most difficult need to meet in their communities ahead of site development, community development, health, and transportation. She said communities without access to fiber-based broadband struggle to land industrial prospects and many farms need help getting wired connections. In response to Senator YARBRO's question about the minimum broadband speed necessary to promote economic development, Ms. NEW said that consultants the department is hiring to study broadband coverage and needs in the state will be surveying businesses to determine that.

In response to Chairman NORRIS's request for more information about the Department of Economic and Community Development's study, Ms. NEW said that the study is geared toward determining what coverage exists in Tennessee as well as what policies could help improve coverage throughout the state. She said that there is misinformation about what communities have access to in terms of broadband. The department is contracting with Strategic Networks Group and NEO Fiber to carry out the study, which includes surveys of residents and businesses to determine their current coverage, rates of adoption, and needs. In response to a question from Representative WIRGAU, she replied that the department hopes to complete its study and make it available for the legislature by the end of February 2016.

Ms. NEW also discussed the importance of broadband to individuals seeking employment or completing their education. She explained that only two out of nearly 40 participants who completed a recent training program for jobs that could be done from home were eventually able to find home-based employment. The rest, she said, could not either because they could not get fast enough internet speeds at their residences or could not afford it. Speaking from her personal experience, Ms. NEW described how inadequate internet speeds and reliability can make it more difficult for students to complete and turn in assignments.

In response to a question from County Executive HUFFMAN about funding for fiber-optic infrastructure build-outs to prospective industries, Ms. NEW said the department's fast-track funding could be used but the rural development fund does not have money for broadband infrastructure. She said the state's $6 million site-development program could be used for build-outs.

Mr. LLOYD said that broadband needs for the state's K-12 schools are going to expand rapidly in the coming years as the way students consume information changes. He said the traditional model of internet use in schools driven by the need for email communication and a single computer lab accommodating a small percentage of students at a time is being replaced with one in which every student will be connected to the internet in real time with one-to-one computing as well as an expansion of online assessment. Tennessee is a leader in the transition to online assessment, and replying to a question from Representative PARKINSON, he said the state has tested its new online assessment program and connectivity shouldn't be a problem this year.

Mr. LLOYD said that although broadband capacity of schools is not currently under much pressure, lack of capacity could become a problem as shifts to online assessment and real-time one-to-one computing take place. He also cautioned that while many customers care only about download speeds, schools rely on having fast upload speeds as well. In response to a question from Mayor BICKERS about connectivity issues at some schools, Mr. LLOYD said these problems are not always

the result of inferior service from providers and speed alone does not capture the problems at some schools. Instead, he said that bottlenecks that reduce connectivity can be related to the infrastructure and devices within schools rather than their external connections to the internet.

Mr. LLOYD explained that the primary broadband issue for school districts is cost. Tennessee districts rely on the federal e-rate program, which is managed by the FCC and pays for a portion of what Internet providers charge, for 86% of their broadband funding and would not be able to afford broadband without it. Several districts recently lost e-rate funding after FCC audits found problems with their vendor selection process. In response to Mayor BICKERS's question about other funding sources, including federal Race-to-the-Top funding, Mr. LLOYD explained that Race-to-the-Top funding expired on June 30, 2015, and that although most of the money went to districts for individual projects, the state spent $9 million building a data network that will eliminate the need for manual state reporting. He said that the FCC is offering incentives for states to connect K-12 schools through school-only networks; however, the grants are not large enough to cover all costs.

Mr. MALLARD said the growth of technology is driving the need for more broadband in higher education and broadband issues are often brought up when he visits the state's colleges of applied technology. Broadband access is increasingly important for training his students because more machines and appliances, such as heating, ventilation and air conditioning units connected with smart thermometers, are being connected to the internet. As a result, his classes can exceed their monthly data cap of 250 gigabytes in a single day. Mr. MALLARD said that he finds that some of his students have access to broadband at home, but others do not, and he cautioned that coverage maps are not always accurate.

Sergeant EHLERT said broadband connectivity is important for public safety officials in the digital age, citing the ability to quickly check licenses, download building blue prints, check firefighters' vital signs, connect paramedics with emergency room staff, and operate Next Generation 911 systems as benefits. He cautioned that the most important issues related to broadband for those in public safety are slightly different from those of providers. While providers are more concerned about coverage and speed as they relate to customer satisfaction and return on investment, public safety officials need coverage where population density is very low as well as where it is high, and they need enough capacity to connect safety workers during large-scale emergency responses. Public safety networks must be able to support push-to-talk and group communication and must have built-in redundancy and hardened sites that will function during natural disasters. Deployable broadband that can be mounted on trucks is particularly important in areas where terrain and financial constraints prevent traditional broadband infrastructure from being built.

Sergeant EHLERT also described FirstNet, which is a nationwide public safety network being built that will rely on mobile broadband. FirstNet in Tennessee will be interoperable with FirstNet networks in other states. In response to Representative WIRGAU, he said that most networks currently used for public safety are operated by commercial carriers. In response to Mayor ROWLAND's questions about weak links in broadband coverage and performance throughout the state, Sergeant EHLERT said coverage is a problem in less heavily populated areas, but the lack of people does not mean that service isn't needed in those areas. He also said that voice communication throughout the state is generally good, but data networks that can be used to send videos or photos of crime scenes to officers could be improved. In response to Representative WIRGAU's concerns about security, Sergeant EHLERT said that end users must be trained to maintain the security of public safety networks.

Mayor LAWSON described inconsistencies in coverage in his community. He mentioned that he has to rely on a mobile hotspot rather than wired coverage at his house despite the fact that neighbors on either side of him have access to wired broadband and there is cable running along the road in front of his property. As a result, he has difficulty downloading large files, which hampers his and his family's ability to use other devices in his home.

Mayor LAWSON said fiber-optic broadband infrastructure is typically part of the requirements for prospective businesses and industries in their site selection processes, and his county has lost businesses to counties with better broadband coverage. He said this happens despite the fact that there is a lot of fiber-optic cable in his county that is not being used. He said that cost is an impediment for both residents and businesses, citing the example of a business owner who was quoted a price of $85,000 to connect existing fiber-optic infrastructure along the interstate to his location just 1.4 miles away.

Mayor LAWSON said commercial providers cite the low rate of return on investment as a reason for not expanding in his county. He characterized broadband as today's utility and stressed that, although his local electric cooperative wants to be able to provide broadband and he thinks they should be allowed to, he does not care whether broadband is provided by commercial carriers, electric cooperatives, or municipally-owned utilities, as long as coverage in his community improved. In response to Mayor ROWLAND's question, Mayor LAWSON said he does not think the major commercial carriers in his county have a local license.

Ms. ROSE said that common complaints received by the Tennessee Farm Bureau include service that covers some but not all residents in a given area, speeds that are too slow to be of value, costs that are too high, data caps that are too low or that can only be used at non-peak times, and infrastructure easements that are required but cannot be accessed by those whose land they cross. She said broadband is essential for farmers as they collect, analyze, and use massive volumes of data to manage their businesses. She explained that modern farm equipment is often internet enabled, allowing it to communicate mechanical issues before they become major problems and to use and collect real-time data. She said these machines can transmit data collected in the field to the internet, which farmers can download and analyze using information about markets and weather to plan their farm operations. Ms. ROSE said data collection is vital for farmers as they compete in a global economy, and they cannot just wait for providers to extend coverage to them.

In response to a question from Representative WIRGAU about whether farmers are moving toward mostly wireless service, Ms. ROSE said farmers needed both wired and wireless service. Equipment wirelessly uploads the data it collects, but farmers need wired connections to download the data.

Mr. MCMAHAN said technology has exploded in the last 15 years, but providers haven't been able to build to all of the areas that need or want coverage; as a result, local stakeholders have tried to take care of their communities' needs. He also said that TACIR's study could help many people better understand what is accessible to them.

Zoning Process and Consent to Rezone Private Property (Senate Bill 549 and House Bill 775)—Final Report for Approval

The Commission approved the final report on the zoning process and consent to rezone private property. The report responds to Senate Bill 549 by Senator NICELEY and House Bill 775 by Representative DANIEL, which would require the written consent of the owner for any rezoning

affecting a single parcel of private property. The report says that short of requiring the consent of owners for rezonings, some of the approaches already used by local governments in Tennessee to ensure that property owners are aware of rezonings could be required. If additional notification requirements are placed in law, consideration should be given to authorizing local governments to require the party requesting the rezoning to pay for them. Language was added discussing regulatory takings.

Adjusting the Homestead Exemption to Reflect Cost of Living (Public Chapter 326, Acts of 2015)—Draft Report For Review And Comment

The Commission was presented the draft report on homestead exemptions in Tennessee for review and comment. The report responded to Public Chapter 326, Acts of 2015, requiring the Commission to study the homestead exemption amounts in Tennessee and determine whether they should be increased to accurately reflect the cost of living. The draft concluded that if Tennessee's homestead exemption amounts for individuals and joint filers had kept pace with inflation, they would now be valued at $16,304 and $21,645. If the exemption for joint filers was double the exemption for individuals, it would now be $32,608. It noted that a simpler way to bring these figures up to date and keep them up to date would be to adopt the federal amounts, which are adjusted for inflation every three years. Tennessee's exemption amounts for debtors with custody of a minor child are currently more than those amounts and would need to be grandfathered until the federal exemption amount catches up to it.

In the discussion following the presentation, Chairman NORRIS asked staff to rephrase language in the report to clarify that state laws are exemption laws, not bankruptcy laws, and that bankruptcy courts were restructured under the Bankruptcy Reform Act of 1978, not created. The Chairman also asked Linda KNIGHT, a partner at Gullett Sanford Robinson & Martin, to speak to the Commission on several concerns she had about adopting different sets of exemptions for Chapters 7 and 13, an idea suggested by a panelists at the September 2015 commission meeting. Chairman NORRIS said Ms. Knight's concerns would be noted in the report.

Mayor BICKERS expressed concern that the report is almost entirely focused on the homestead exemption as used in bankruptcy and that the report should include other applications, noting that increasing the homestead exemption for bankruptcy would mean increasing it for those purposes as well. He also suggested including the full set of exemptions offered in Tennessee and each state and expanding discussion of the interests of creditors and the effects that bankruptcy exemptions may have on creditors, communities, and the tax bases of the local governments that serve them.

Lodging Taxes (Public Chapter 395, Acts of 2015)—Draft Report For Review And Comment

The Commission was presented a draft report on lodging taxes for review and comment. The report responds to Public Chapter 395, Acts of 2015, which directed the Commission to study the effect of hotel occupancy taxes on the economy, tourism, and the hospitality industry. The draft report concluded that it is not clear that the General Assembly's practice of considering earmarks one case at a time rather than imposing a general earmark—especially in the absence of a general authorization to impose lodging taxes—is not an appropriate way to respond to disparate local situations and avoid unnecessarily restricting all local officials' discretion and hindering communities' efforts to set their own priorities and determine how best to meet their needs.

Following the presentation, Chairman NORRIS invited Dan HASKELL, to speak to the Commission on behalf of the Tennessee Hospitality and Tourism Association. Mr. HASKELL said that while the report presumed that customers do not care about room taxes, lodging taxes are a major factor. Travel planners list hotel taxes as one of ten factors they consider when choosing a site. Professional travelers are sensitive and may decide not to return to places where taxes are too high. He said that tax rates up to 17% to 18% seem bearable, particularly for destination cities, but when they are higher than that, it is a problem.

Mr. HASKELL said that Tennessee has particularly high rates in small towns, and the revenue from the taxes is mostly put into their general funds. He said hotel taxes that are not invested in tourism are shortsighted expenditures and that spending the money properly brings back more than what is spent. Mr. HASKELL also said that Tennessee is at a competitive disadvantage compared to states with lower lodging taxes.

Mr. HASKELL said that the Tennessee Hospitality and Tourism Association would be vigorously opposed to an additional room charge like the $5 tax adopted in Georgia. He said that increasing lodging taxes drives business elsewhere; an American Economics Group report, *Room Taxes and the Economic Impact on the Lodging Industry*, said that a 2% increase in room taxes causes a large decrease in economic activity.

Representative CARTER, referring to Chattanooga's combined tax on lodging of 17.25%, said that 9.75% of the rate is because of state and local sales taxes and that the lodging tax rate itself seems reasonable. Mr. HASKELL responded that the combined tax rate is what matters. The hotel association in Chattanooga had opposed a lodging tax but changed sides and supported it when the money was devoted to developing downtown Chattanooga and the riverfront. Representative CARTER said the hotel owners did not oppose the tax because they saw it as an investment.

Mr. HASKELL said that he understands that local governments need revenue to provide services and the argument that there are costs associated with serving tourists, but tourists also contribute to our economy in a huge way beyond just staying at hotels. He also said that a significant number of tourists in Tennessee are Tennesseans.

Asked by Senator YARBRO whether there are cities outside the big four that have earmarked lodging taxes for tourism development, Mr. HASKELL said most of the private acts or exceptions to the general law in the last ten years authorizing lodging taxes have earmarked the revenue for tourism. He said that identifying what increases tourism is complicated, giving the popularity of youth athletic tournaments as an example.

County Executive HUFFMAN said the complaints he hears are not about the tax rates but about room rates. He said that while a tax could be too high and hurt the economy, restricting it too much is a concern because local governments have very narrow tax bases. Part of the reason for the tax is to provide basic services. Saying that it looks like the greatest difference between rates in Tennessee and neighboring states is between Memphis and Southaven, Mississippi, County Executive HUFFMAN asked whether the industry knows what the effect of differential tax rates is on hotel tax revenue. He added that almost all the states around Tennessee have lower consumption taxes and that the outflow of sales taxes from Tennessee to other areas is significant. Mr. HASKELL said he did not

have a study on that subject, but the loss of business and revenue is the issue. A problem for local governments on the border is that higher sales and hotel taxes here mean that people, given the chance, will go to another state.

County Executive HUFFMAN asked whether Mr. HASKELL had any recent numbers on how the lodging industry is performing. Mr. HASKELL said he would provide the Commission with those numbers. He said that during the recent economic downturn, the hospitality industry in Tennessee was the only industry that continued to grow.

Vice-Chairman ROWLAND asked whether customers who stay more than 30 days in a hotel should have to pay the lodging tax and what is the definition of a long-term stay. Mr. HASKELL said after 30 consecutive days the customer is no longer considered a transient and, therefore, does not owe lodging taxes. One of the discussions that led to last year's bill was the possibility of moving the requirement from 30 days to 90 days. You pay the tax for 29 days, and then on the 30th day you get a credit.

Representative WIRGAU asked whether the lodging industry is okay with a combined lodging rate as high as 17% or 18% as long as some of the money goes to tourism. He added that Henry County spends $500,000 a year on tourism, more than they generate from the lodging tax. He said it should be the overall amount spent on tourism that concerns the tourism industry. Mr. HASKELL said that lodging tax rates over 18% are a concern no matter how the revenue is spent. He gave the example of New York City raising lodging tax rates to 21% but quickly lowering them after losing business to other cities.

Representative WIRGAU said that this year the governor added $6 million to the budget for promoting tourism because of how well tourism is doing. Tourism keeps growing, and it is vital to rural communities. He asked how we are comfortable with 18% combined rates in one county but not in another. Mr. HASKELL said local governments were considering rates of 19% to 21% without any focus on what to do with the money. Even Nashville, which has led the way, built a convention center with their first hotel tax in the mid-70s; 80% was dedicated to tourism and 20% to the general fund. This example was the inspiration for the 80% earmark in the original version of the bill that was eventually amended and referred to the Commission for study.

Representative WIRGAU said that requiring local governments to spend lodging tax revenue on tourism will just create a numbers game. The money they were already spending on tourism will be shifted to other needs. In response, Mr. HASKELL said that some cities and counties are spending money for tourism but not taking credit for it.

Mayor WATERS said the industry appears to have three issues: the sales tax, the hotel tax, and the use of that hotel tax. He added that Sevier County divides the revenue between school infrastructure and marketing, trying to reach an appropriate balance.

County Employees Serving On County Commissions (Senate Bill 466 and House Bill 985)—Draft Report for Review and Comment

The Commission was presented the draft report on the issue of county employees serving on county commissions for review and comment. The report responded to a request from both the Senate

State and Local Government and the House Local Government committees to study Senate Bill 466 by BELL and House Bill 985 by ROGERS, which would disqualify all county employees from serving on the county commission of the county that employs them. The draft concluded that rather than forbidding all county employees to serve on their county commissions, conflict of interest measures and provisions in the law could be strengthened to make conflicts more apparent and to further limit the situations in which commission members use their influence to benefit themselves, their businesses, or their families.

Examples from existing practices of Tennessee counties, previously introduced legislation, and other states' laws include further restricting voting and service on certain committees; more specifically defining conflict of interest in law; requiring ethics training, ethics committees, and written disclosures when voting; and authorizing state ethics commissions to enforce conflict of interest laws. Other options include forbidding county employees serving as county commissioners to vote if a conflict of interest exists, with conflict of interest defined as anything that improves their pay or benefits or the pay or benefits of their spouse, and requiring commissioners who accept county employment after being elected to resign but allowing them to run again in later elections.

During the discussion following the presentation, Vice-Chairman ROWLAND and Mayor MCBRIDE pointed out apparent conflicting interpretations of what is or is not a lucrative position in court decisions and attorney general opinions interpreting Article II, Section 26, of the Tennessee Constitution presented in appendix C. Mayor MCBRIDE asked that the definition of lucrative office be clarified in the final report. The Commission also asked staff to clarify whether the majority required to pass legislation is reduced when a member abstains because of a conflict of interest.

Mayor BURGESS asked whether the Tennessee County Commissioners Association's (TCCA) ad hoc committee on county employees had issued its recommendations on whether county employees should be allowed to serve on their legislative body. Ms. BARRIE, quoting from a document provided by TCCA, said it had and the recommendations were to (1) allow county employees to serve as county commissioners but not allow them to vote if they have a conflict of interest, (2) define a conflict of interest as anything improving their pay or benefits or the pay or benefits of a member of their immediate family, and (3) define immediate family member as a spouse. The TCCA intentionally left vague the issue of whether a commissioner married to a teacher could vote on a budget, a question raised by Mayor WATERS.

Chairman NORRIS recognized Representative ROGERS, sponsor of the House bill, and offered her the opportunity to speak before the Commission. Representative ROGERS said she did not bring the bill because of individual conflicts with contracts but rather because of the violation of separation of powers created by allowing county employees serve on their legislative body. An assertive executive could bring the percent of commission seats filled by employees from 50% to 70%. The solution is to separate the power an individual has so they cannot be coerced. She said she is also concerned that the county commission could become the stage where departments battle to establish their priorities.

January 5-6, 2016

Broadband Internet Technologies, their Capabilities and Availability in Tennessee

The Commission heard a staff presentation on the available data depicting broadband coverage in Tennessee as well as two presentations from experts, the first of which was on broadband technologies and the effects of connection speed and other factors on different online tasks. The second presentation

was on Tennessee's existing state-managed broadband network and on guidelines developed for state employees working from home or in the field.

Senior Research Associate Matthew OWEN said that the available data on broadband coverage in Tennessee was collected from providers as part of the National Telecommunications and Information Administration's (NTIA) National Broadband Map project, which began in 2009. He said that the information collected about wired service includes census-block-level data on the technologies used for providing service, the maximum, advertised upload and download speed tiers available, and the typical upload and download speeds achieved, which the NTIA defines as the speed consistently achieved by most subscribers to the maximum-advertised speed during expected periods of heavy network usage.

Dr. OWEN said that because the NTIA requested this information about wired service only at the census block level, it is not possible to determine from the National Broadband Map data whether every address in a block or road segment has access to the reported coverage. Instead, the data show only that at least one address in a block is covered. Because of this, he said, the National Broadband Map and the data supporting it represent the maximum extent of coverage for wired service, a best-case scenario.

Dr. OWEN also said that not all information was reported for each census block. For example, no information about typical download speeds was reported for approximately half of the blocks where a maximum, advertised download speed was reported. For those areas where typical upload and download speeds were reported, Dr. OWEN said they tend to be similar to maximum advertised upload and download speeds at slower speed tiers and slower than maximum advertised speeds for faster speed tiers.

The need for more information and context about existing broadband coverage in Tennessee was discussed following Dr. OWEN's presentation. Mayor BICKERS said that it would be helpful to compare coverage for wired broadband service with coverage for wireless broadband service. Dr. OWEN said that the NTIA also requested information about the technologies used for providing access, the maximum, advertised upload and download speed tiers available, and the typical upload and download speeds achieved for wireless service. But this information was not requested at the census block level. Instead, the NTIA requested that providers plot the extent of their wireless service areas on maps. Chairman NORRIS requested that staff provide maps that can be layered like transparencies to compare the extent of wired and wireless coverage in the state.

Noting that broadband has joined electricity, natural gas, and water and wastewater as a necessary infrastructure for attracting industries and promoting economic development, County Executive HUFFMAN requested more information about where Tennessee communities, and in particular rural communities outside the state's core metropolitan areas, rank relative to those in other southeastern states for broadband coverage and where the southeast ranks relative to the nation as a whole. Dr. OWEN said that that is part of the project research plan.

Noting the difference between not having access to any broadband and choosing not to adopt available broadband services, Senator YARBRO said that existing coverage maps make it difficult to tell what percentage of the population is without any access to broadband and what percentage choose not to adopt it. Saying that he had seen estimates that four or five percent of residents nationwide lack access to any broadband service, he asked whether that information was available for Tennessee. Dr. OWEN did not have it but said staff would get it. [Note: The Federal Communication Commission's

2015 Broadband Progress Report says that 17% of the US population and 18% of Tennesseans lacked access to a fixed (wired) connection at 25 megabit-per-second (mbps) download/3 mbps upload speeds; 7% of Americans and 11% of Tennesseans lacked access to wired 10 mbps download/0.768 mbps upload connections; and, 4% of Americans and 8% of Tennesseans lacked access to wired 3 mbps download/0.768 mbps upload connections.]

Representative CARTER said that it was important to consider subscription costs when determining for practical purposes whether broadband is available to residents and businesses in any given area and asked whether this could be mapped alongside existing coverage. Dr. OWEN said that cost data was not included in the information available from the NTIA's National Broadband Map project but that staff would research it.

In response to a request by Senator YARBRO for more information on coverage gaps in Tennessee, Dr. OWEN said that representatives of the Department of Economic and Community Development have been invited to present the results of its survey on broadband access and adoption in Tennessee, which Chairman NORRIS said may provide much of the information and context needed to help answer questions about the extent of broadband coverage in Tennessee. Also at Senator YARBRO's request, Dr. OWEN said that staff will provide an overview of the regulatory landscape at the federal, state, and local levels at the Commission's spring meeting.

The Commission next heard from Mr. Victor HAZLEWOOD, chief operating officer of the University of Tennessee and Oak Ridge National Laboratory's Joint Institute of Computational Sciences (JICS), and Dr. Anthony MEZZACAPPA, director of JICS. Mr. HAZLEWOOD described available broadband technologies, including digital subscriber line (DSL), cable modem, fiber-optic cable, wireless, and satellite. He explained that DSL and cable-modem networks use existing telephone lines and cable television infrastructure respectively and that wireless networks can use either omnidirectional antennas that provide 360-degree coverage or directional antennas that focus coverage to a specific area. In response to Mr. MCMAHAN's question about the difficulty of providing wireless coverage in mountainous areas, Mr. HAZLEWOOD said that topographical features can block wireless signals but that it is possible to provide coverage by locating wireless antennas on mountaintops, especially directional antennas that can be aimed at individual communities.

Mr. HAZLEWOOD explained that broadband throughput—the amount of time it takes to complete different online tasks—is a better way to describe the technologies' capabilities than speed is. He said that the two factors most affecting throughput are bandwidth—which he also referred to as capacity—and latency. Mr. HAZLEWOOD described bandwidth using the analogy of two-lane roads, four-lane highways, and superhighways as small, medium, and large capacity networks and vehicles using the road as packets of data being transmitted. Just as vehicles share the road and too many at one time can slow traffic and increase travel time, data packets share the capacity of internet networks, and the amount of time needed to complete online tasks increases when the amount of data being transferred exceeds network capacity and creates bottlenecks. In other words, throughput is affected by the number of people sharing a network at one time. Although a low-capacity network may provide adequate service for one user at a time, it can quickly become congested as more users try to connect through it.

In response to Executive Director ROEHRICH-PATRICK's question about whether wireless networks are also shared by multiple users, Mr. HAZLEWOOD said that they are. He also said that wired and wireless networks are similar to road networks to the extent that connections linking individual

users to the internet, much like surface streets in a neighborhood, tend to have smaller capacities than the long distance internet connections that, much like major interstates, link cities and regions around the world. Mr. HAZLEWOOD then described the current bandwidth capabilities of different broadband technologies.

Mr. HAZLEWOOD described latency as the time required for data packets to travel between the endpoints of an internet connection, which depends on distance. As distance increases, for example transferring files between users in Nashville and Tokyo, the amount of time it takes to complete an online task also increases. He said that latency can especially be an issue for satellite connections because the distance data must travel between a user and a satellite is thousands of miles.

Mr. HAZLEWOOD explained how different bandwidth connections affect throughput for tasks involving files of various sizes ranging from very small files like simple emails with small attachments to research and industrial size files such as a hospital's entire radiological image collection. He said that five megabit-per-second connections were generally acceptable for most tasks an average user might undertake, including those involving up to around 100 megabytes. In response to Executive Director ROEHRICH-PATRICK's question about whether a five megabit-per-second connection would support streaming video, Mr. HAZLEWOOD said that it could. However, Mr. HAZLEWOOD said that a five megabit-per-second connection would not provide enough throughput to be practical for tasks involving larger files, especially those above one gigabyte such as the new Microsoft Windows operating system, which is a three-gigabyte download. Because of this, he said that a one gigabit-per-second connection standard is a reasonable ten-year target for the state. Dr. MEZZACAPPA added that the throughput needed for various online tasks can be objectively measured and that this one-gigabit-per-second capacity standard would support the throughput needs of hospitals, schools, libraries, and industries.

Mr. HAZLEWOOD said that deploying broadband across the state and reaching this capacity target depends on three sets of factors in addition to cost: whether a location is urban or rural, whether the technology being used is wired or wireless, and whether the public or private sector is making the investment. Dr. MEZZACAPPA said that rather than relying entirely on wired connections or private investment, any strategy will involve some combination of all of these factors.

In response to County Executive HUFFMAN's question about whether there are any federal or state programs for improving broadband deployment, Mr. HAZLEWOOD said that the Connect America Fund is the largest and most well-known federal program. He said that there are other federal funding programs, but they are smaller and less easily accessed. Mr. HAZLEWOOD is unaware of any state program that he would hold up as "best practices."

Next, the Commission heard a presentation from Mr. Ron GROVE, executive director of enterprise shared solutions for the Tennessee Department of Finance and Administration's Strategic Technology Solutions division, on NetTN—the existing state-managed broadband network—as well as on guidelines developed for state employees working from home or in the field. Mr. GROVES was accompanied by Mr. Jim WINTERS, the NetTN operations manager for the NetTN Program Office. In response to Chairman NORRIS' question about Strategic Technology Solutions' role in broadband, Mr. GROVE said it helps state agencies coordinate to meet their broadband needs.

Mr. GROVE said that NetTN connects approximately 1,300 sites, including health care facilities, colleges and universities, primary and secondary schools, libraries, and state and local government offices across Tennessee. He said that the network's ten gigabit-per-second backbone links the state's

major metropolitan areas and that the network includes redundancies to ensure that it functions during emergencies. In response to City Commissioner CROSSLEY's question about whether this redundancy is by design, Mr. GROVE said that it is and that these redundancies are necessary to support programs like Next Generation 911. He said that Tennessee is the only state where Next Generation 911 is available throughout and that this is a result of the redundancies built into the network.

In response to Senator YARBRO's question about the amount of bandwidth NetTN provides at individual sites such as libraries, Mr. GROVE said that it varies from several megabits per second to multiple gigabits per second depending on the number of people expected to use the connection as well as what they are using it for. He said that the state monitors the amount of bandwidth used at individual sites to determine whether increases are needed. In response to Senator YARBRO's question about the difficulty of upgrading all of the connections on the state's network to gigabit-per-second speeds to meet a target like the one Mr. HAZLEWOOD described, Mr. GROVE said it would be costly. He said that fiber networks in particular are expensive and that it had recently cost the state $100,000 to provide a fiber connection for a single location in West Tennessee. Mr. GROVE said cost can be especially challenging in areas where population density is low.

In response to Mayor BICKERS' question about whether all primary and secondary schools have broadband connections, Mr. GROVE said that the 15% of primary and secondary schools connected to the NetTN network have fiber connections; the rest are connected through Education Networks of America's network. Mr. GROVE said that programs like the federal E-Rate program for schools help, especially now that the Federal Communications Commission has set a new connection standard of one gigabit per second for schools receiving E-Rate funding. Responding to another question from Mayor BICKERS, Mr. GROVE said that he believes that the Department of Education works with districts to take full advantage of their E-Rate funding.

Mr. GROVE also said that Strategic Technology Services has guidelines for state employees working from home and in the field. He said that a connections with upload speeds of six megabits per second and download speeds of six megabits per second are sufficient, assuming that no other user is sharing that bandwidth and the individual is not working during periods of peak network traffic, typically from 7 p.m. to 11 p.m.. In response to Executive Director ROEHRICH-PATRICK's question about how much bandwidth would be needed if the connection were shared with a second user streaming videos for an online class, Mr. GROVE said that it would depend on the quality of the video but that he would probably recommend a ten megabits-per-second connection.

Following Mr. GROVE's presentation, the Commission discussed the next steps in the research process. Executive Director ROEHRICH-PATRICK said based on the complexity of the project, as made evident by the panels at the Commission's October meeting and by the staff's initial work, the plan is to present additional research updates at the Commission's spring and summer meetings and submit a report for review and comment in the fall and for approval by January 2017, as contemplated when the study was originally proposed. This timeline will allow staff to explore the regulatory environment, identify barriers to deploying and adopting broadband, and explore alternatives to close existing coverage gaps. In response to Representative CARTER's concern that this timeline for completion could affect pending legislation, Chairman NORRIS reiterated that the Commission's study will have no effect on any bills this session.

County Employees Serving on their County Commissions (Senate Bill 466 and House Bill 985)—Final Report for Approval

The Commission approved the final report on legislation that would have prohibited county employees serving on their county commissions. A map and table showing the results of a survey of county government officials about county employees were added to the draft presented at the October 2015 meeting. The report says that conflict of interest provisions in the law could be strengthened to make conflicts more apparent and to further limit the situations in which commission members can exert undue influence to benefit themselves, their businesses, or their families, and then gives examples of how some local governments and other states have done so.

Responding to the concern of Representative SARGENT and others that voting to approve the report might be perceived as support for the proposed legislation, the Commission voted to add the phrase "The Commission chose not to recommend the bill and approve the attached report describing alternatives that could be considered instead" to the transmittal letter bound into and part of the final report.

Lodging Taxes (Public Chapter 395, Acts of 2015)—Final Report for Approval

The Commission approved the final report on the effect of hotel occupancy taxes on the economy, tourism, and the hospitality industry. Changes made after the draft report was presented to the Commission at its October 2015 meeting included new maps showing lodging tax authority, rate capping, earmarking, and overlapping of lodging taxes by state, and a new section discussing definitions of tourism. The report says that it is not clear that the General Assembly's practice of considering earmarks one case at a time rather than imposing a general earmark—especially in the absence of a general authorization to impose lodging taxes—is not an appropriate way to respond to disparate local situations and avoid unnecessarily restricting all local officials' discretion and hindering communities' efforts to set their own priorities and determine how best to meet their needs.

Adjusting the Homestead Exemption to Reflect Cost of Living (Public Chapter 326, Acts of 2015)—Final Report for Approval.

The Commission approved the final report on whether homestead exemptions should be increased to accurately reflect the cost of living. In the report, the Commission says that if Tennessee's homestead exemption amounts for individuals and joint filers had kept pace with inflation, they would now be valued at $16,304 and $21,645. If the exemption for joint filers was double the exemption for individuals, it would now be $32,608. They noted that a simpler way to bring these figures up to date and keep them up to date would be to adopt the federal amounts, which are adjusted for inflation every three years. Tennessee's exemption amounts for debtors with custody of a minor child are currently more than those amounts and would need to be grandfathered until the federal exemption amount catches up to it.

After discussion of the limited applicability of the report to judgments other than in bankruptcy and concerns about the effects of increasing the homestead exemptions outside of bankruptcy, the Commission chose to use the transmittal letter to convey the limited scope of the study, saying: "The options presented in the attached report approved by the Commission have been studied primarily in the context of bankruptcy and the Commission makes no recommendation outside of that context."

Tennessee Valley Authority Payments in Lieu of Taxes—Annual Report for Approval

The Commission approved the annual update on Tennessee Valley Authority (TVA) payments in lieu of taxes (PILOT). The Commission's discussion following the presentation of the report's findings centered on actions that might affect the PILOT distribution in Tennessee. One potential scenario discussed was a decrease in the amount of TVA power property in Tennessee relative to other states, which would reduce Tennessee's share of the Authority's PILOT and, absent other changes, would reduce the amount that local governments and the state receive from TVA relative to other states although private companies owning power plants would pay local property taxes. Currently, there are no private companies that own electric power plants in Tennessee.

May 25-26, 2016

Fiscal Year 2015-16 Accomplishments

The Commission received an update on TACIR's major accomplishments for the past fiscal year to be incorporated into the biennial report for fiscal years 2014-15 and 2015-16.

Legislative Update

The 109th General Assembly passed or considered legislation on several issues related to the Commission's work, some dealing directly with findings and recommendations from commission reports. The legislature also passed two pieces of legislation requiring new commission studies, a public chapter calling for a study of privilege taxes and a senate joint resolution calling for a study of legislative compensation. Committees and subcommittees of the legislature asked the Commission to study four additional bills pertaining to transitory vendors, trailer registration and fees, a franchise tax credit for certain shippers, and cyber security.

Work Program Amendment, New Research Plans

The Commission considered five amendments to the work program for the Commission's consideration. The first amendment, adding the two studies required by legislation enacted by the 109th General Assembly passed unanimously. The first study is of legislative salaries, per diem reimbursement rates, mileage reimbursement rates, and other expenses and compensation in Tennessee compared those in contiguous states. The second is a study of the professional privilege tax, considering the application of the tax, or its non-application as the case may be, to various occupations, businesses, and professions, including those not listed in Tennessee Code Annotated, Section 67-4-1702, and its application to both residents and nonresidents. The other four amendments, each of which would have added a study referred by just one legislative chamber, each failed to receive a motion for consideration. The Commission also heard from Mr. Dick Farrar, a resident of Lincoln County and an advocate for metropolitan governments, who requested its assistance in bringing more attention to the benefits of consolidated city-county governments; the Commission took no immediate action on the request.

Following the presentation, Mayor BICKERS said that officials in Blount County had asked him if the Commission would consider studying the impact, financial and otherwise, on counties having to house a growing number of state prisoners in county jails. Following discussion, Chairman NORRIS asked staff to propose a response to Blount County's request, taking into account past reports on the subject by the Comptroller and the Commission. Staff is preparing a draft research plan for the Commission's consideration at the August 2016 meeting.

Court Fee Study—Information from Past Surveys of Court Clerks

The Commission received an update on the Commission's study of court fees, including information on the survey the staff sent to all the municipal and county clerks in the state to gather information on the types of fees, earmarks on those fees, and whether the revenues are being used as legislatively intended, as well as information about efforts to collect unpaid fees. Following the update, representatives from the Department of Safety and Homeland Security and the Administrative Office of the Courts provided information about their recent surveys of court clerks about court fees:

- Roger Hutto, general counsel, Department of Safety and Homeland Security
- Linda Russell, special policy assistant, Department of Safety and Homeland Security
- Amanda Hughes, application support manager and court clerk liaison, Administrative Office of the Courts
- Ann Lynn Walker, information systems director, Administrative Office of the Courts

Mr. HUTTO discussed the Governor's Public Safety Subcabinet's action plan, which includes an item to improve collection of criminal fines and fees. He said the Commissioner of the Department of Safety and Homeland Security created a working group to develop the plan, which will provide recommendations to the 110th General Assembly. He said that TACIR staff is participating in the group. He then discussed the results from a survey of court clerks the department conducted in 2015. The survey results indicated that indigence and lack of resources were reasons fees were sometimes not collected. The majority of clerks responding said they notified the state of nonpayment of court costs so drivers' licenses could be revoked in criminal cases; the number of revocations increase each year.

Senator YARBRO asked about the number of driver-license revocations and whether there is data to show that revocations have increased the collection rate. Mr. HUTTO said that anecdotal evidence indicates that it has increased collections but he does not have data. Since 2011, 170,000 licenses have been revoked for not paying criminal court costs.

Ms. Amanda HUGHES and Ms. Ann Lynn WALKER discussed court fees, with Ms. WALKER saying that fees are complex and depend heavily on various charges and the factors of each case. She said that fees have gone up and that, anecdotally, as that has happened, collections have gone down. The Administrative Office of the Court has no authority to enforce collections, but they do train clerks and inform them of changes in the laws pertaining to court fees. The Office studied court fees in fiscal year 2011-12 in response to a legislative request. In the study, they asked what amounts they assessed and collected in that fiscal year; collection receipts did not include information about payment agreements. They found that civil collection rates are higher than criminal fee collection rates because civil fees are paid mostly up front when the cases are filed.

In response to questions, Ms. HUGHES said that people can still purchase and carry auto insurance after their license is suspended, but their rate may go up. She also said that fee increases are always done legislatively and that when counties pass resolutions imposing or increasing fees, the resolutions are based on state statutes. Most of the fees are disbursed to other agencies and funds.

Chairman NORRIS said that the actual amount of fees collected did not always match fiscal note projections and asked staff to compare with actual revenue with fiscal note projections. Mayor

HUFFMAN asked whether staff is looking at distribution as well as collections; Chairman NORRIS replied yes.

Senator YARBRO asked staff to consider the effect of increasing fees on collection rates and how revoking driver licenses—taking away people's right to mobility—affects those people economically. Senator MCNALLY asked staff to see whether the law requires clerks revoke other licenses, such as professional licenses. Noting that the law was intended to get people on payment plans, he asked staff to review whether that has happened. He also suggested staff look at other states' public works programs for people who cannot pay.

Broadband Internet Deployment, Availability, and Adoption in Tennessee—Panel Discussion of Federal, State, and Local Regulatory Landscape

The Commission heard from two panels whose participants discussed the regulatory landscape for broadband internet service at the federal, state, and local levels.

A. The first panel discussing the regulatory landscape for broadband internet service included representatives of broadband providers:
   - Henry Walker, attorney, Bradley, Arant, Boult, Cummings, legal representative for several broadband providers, and former general counsel of the Tennessee Public Service Commission, predecessor agency to the Tennessee Regulatory Authority
   - Mark Smith, attorney, Miller and Martin and legal counsel, Tennessee Valley Public Power Association, speaking on behalf of municipal utilities
   - Steve Nicley, president, Tennessee Wireless Association
   - Bruce Mottern, state government affairs manager, TDS speaking on behalf of the Tennessee Telecommunications Association
   - Joelle Phillips, president, AT&T, Tennessee
   - Andy Macke, vice president, external affairs, Comcast Cable Communications, Inc. speaking on behalf of the Tennessee Cable Telecommunications Association
   - J. Richard Lodge, attorney, Bass, Berry and Sims and corporate counsel, Tennessee Electric Cooperative Association

Mr. WALKER said that Tennessee shouldn't have to pass new laws to expand broadband deployment. He said that if the Federal Communication Commission's (FCC) order reclassifying broadband from an unregulated information service to a regulated telecommunications service is upheld in court, then the Tennessee Regulatory Authority (TRA) would have jurisdiction over broadband under section 706(a) of the federal Telecommunications Act, which directs states and the FCC to encourage the deployment of telecommunications services by promoting competition in local markets. Mr. WALKER said that although state law generally restricts TRA's authority over broadband, it does not prevent TRA from exercising jurisdiction in accordance with federal law or FCC regulations.

Mr. WALKER said that if the FCC's reclassification is upheld, TRA should have authority to allow municipal utilities to provide broadband outside of their electric service areas in communities that are determined to be unserved or underserved. He said that these utilities could be required to provide

wholesale service to other broadband providers and that it isn't necessary to allow municipal utilities to provide service throughout the entire state.

In response to Representative WIRGAU's question about how to define unserved or underserved areas, Mr. WALKER said that TRA is best situated to make that decision because of its historical role in determining whether a community's needs are being met by the utilities TRA regulates. In response to Chairman NORRIS' question about whether TRA's shift from full-time to part-time commissioners would affect the agency's ability to make these types of determinations, he said that TRA staff still possess the expertise to do so. In response to Chairman NORRIS' question about whether his proposal's feasibility hinged on the outcome of ongoing legal challenges to the FCC's ruling, Mr. WALKER acknowledged that it does.

Mr. MOTTERN said that broadband providers have significant federal reporting requirements. He said that they submit information to the FCC twice per year about deployment (coverage area), speed, and adoption, that is used by the FCC for mapping broadband availability in the United States. He said that providers also submit confidential information to the FCC about service quality improvements, capital investment, participation in the lifeline program, and ability to provide emergency services.

Mr. MOTTERN said that, although broadband is generally not subject to state regulation, providers have significant reporting requirements to the TRA as well. He said that this includes Tennessee's telephone cooperatives, all of which have adopted the TRA's service standards, complaint process, and minority business plan rules despite not being required by law to do so. In response to a question from Representative LOVE, Mr. MOTTERN said that all of the Tennessee Telecommunications Association's members are currently in compliance with the state's minority-owned business plan rules.

Mr. MOTTERN said that for-profit providers pay franchise and excise taxes, property taxes, payroll taxes, federal income taxes, and sales taxes on equipment purchases. He said that telephone cooperatives pay the same taxes as for-profit providers except that they do not pay federal income taxes as long as 85% of their income comes from services provided to their members. Mr. MOTTERN said that providers also pay franchise fees to local governments for access to public rights of way and that these fees are equal to 5% of revenue from cable television services.

Mr. MOTTERN said that Tennessee Telecommunications Association's members pay higher property taxes than other internet providers because they are assessed at the 55% utility ratio. Cable companies are assessed at lower ratios, either 40% for real property or 30% for personal property. In response to Mayor ROWLAND's question about whether AT&T is also assessed at the 55% utility ratio for property tax purposes, Ms. PHILLIPS said that it is and that the higher rate hurts telephone companies. She said that AT&T is the second largest payer of property taxes in Tennessee and that it also is among the largest payers of franchise and excise taxes and sales taxes on equipment. She said that including sales and use taxes collected from customers, AT&T pays Tennessee more than $280 million per year in taxes.

Mr. MOTTERN also said that the pole attachment rates charged by municipal utilities and electric cooperatives in Tennessee limit broadband providers' ability to expand service. He said that these rates are inflated because they are not subject to FCC guidelines. [Note: The FCC has adopted guidelines for pole attachment rates, but these guidelines apply only to poles owned by for-profit entities; 80% of poles in Tennessee are owned by municipal or non-profit entities.]

Mr. MOTTERN said that the Tennessee Telecommunications Association opposes the expansion of municipal broadband, especially in areas where the municipal utilities would be competing with telephone cooperatives and for-profit providers. He said that municipal utilities can take advantage of better financing terms for bonds and gain an advantage over other providers, especially those operating in rural areas. Mr. MOTTERN said that Tennessee could encourage non-discriminatory access to dark fiber and streamline access to rights of way. He said that permitting processes for building wired infrastructure across railroads, highways, and wildlife areas in particular can be time consuming and that building on federal land often results in significant delays.

Mr. MOTTERN said that Tennessee could encourage deployment by making appropriations to the state's Broadband Deployment Fund, established under Tennessee Code Annotated, Section 7-59-315. He said this fund could be used to support investment and maintenance as well as subsidize low-income subscribers. He said that income tends to correlate with adoption rates and that 95% of their subscribers subscribe to no more than 25 megabits per second. Mr. MOTTERN said that Tennessee could also promote digital literacy and broadband adoption by consumers.

In response to Mayor ROWLAND's question about whether the Tennessee Telecommunications Association's members accept federal funding, Mr. MOTTERN said that they have accepted grants and loans from the USDA's Rural Utility Service as well as American Recovery and Reinvestment Act funds, all of which come with financial, technical, build out, and reporting requirements. Mr. MOTTERN also said that the FCC issued an order on March 30, 2016, that will likely make Connected America Fund (CAF) support available to rate-of-return carriers, including the Tennessee Telecommunications Association's members. Previously the CAF program was available only to price-cap carriers, which tend to be larger telecommunications companies. He is optimistic that the new CAF funding will help rate-of-return carriers with deployment.

In response to Mayor ROWLAND's question about how long these build outs might take, Mr. MOTTERN said that depending on the final implementation of the CAF order, they might take six to ten years and that he was hopeful that they could begin in 2017. In response to Senator TRACY's question about whether the Tennessee Telecommunications Association is willing to work with the Department of Economic and Community Development, Mr. MOTTERN said that they are, though their ability to participate may depend on the final implementation of the new CAF order.

Mr. SMITH said that municipal broadband providers not only comply with the same FCC and TRA regulations as private providers but also comply with additional regulations that vary depending on whether they provide telecommunications services as authorized under Tennessee Code Annotated, Section 7-52-401 et seq., or broadband and cable services as authorized under Tennessee Code Annotated, Section 7-52-601 et seq. He said that although municipal providers cannot provide broadband and cable services outside of their electric service areas under Tennessee Code Annotated, Section 7-52-601 et seq., their territory is not restricted when they provide telecommunications services under Tennessee Code Annotated, Section 7-52-401 et seq.

Mr. SMITH said that in general, municipal broadband providers have three layers of oversight. At the local level, they are overseen by utility boards whose members are typically appointed by the mayor and approved by the legislative body. He said that city councils also have to approve bond issues for these providers regardless of whether they are providing telecommunications services or broadband and cable services. At the state level, they are overseen by TRA and the Comptroller's

Office. At the federal level, they are overseen by the Tennessee Valley Authority (TVA) in addition to the FCC.

When deciding whether to provide broadband and cable services, Mr. SMITH said that a local utility board must submit a business plan to the Comptroller's Office for approval, and after the Comptroller's review of the business plan is received, a public hearing must be held. Following the hearing, if the local utility board decides to provide service, it must then receive approval by a two-thirds majority of the city council or by a simple majority vote in a referendum at the city council's option.

Regardless of whether a municipal provider is providing telecommunications services or broadband and cable services, Mr. SMITH said that it may not subsidize those services with revenue from electricity ratepayers. He said that TVA regulates retail electricity rates charged by these providers and in doing so oversees cost allocation among services for shared assets and employees. He said that the Comptroller's Office also reviews audits of municipal utilities to ensure that they are not using electric revenues to subsidize broadband, cable, or telecommunications services. Any loans from a municipal utility's electric operations to its broadband and cable or telecommunications operations are subject to TVA approval. The Comptroller's Office must also approve loans used for telecommunications operations but not those used for broadband and cable operations.

Mr. SMITH said that the territorial restriction on municipal broadband services prevents neighboring communities from benefiting from the investment that some municipalities have made in fiber infrastructure and that there is no regulatory reason for the restriction. In response to Mayor ROWLAND's question about the benefits of allowing Electric Power Board of Chattanooga (EPB) to provide broadband outside its electric service area, Mr. SMITH acknowledged his working relationship with EPB but said that separate from this relationship, he thought the utility's expansion would be beneficial. In response to Representative WIRGAU's question about whether enough regulations exist to protect taxpayers and prevent local governments from overextending themselves, Mr. SMITH said that, as with all utilities, risk will always exist for municipal broadband providers but that it is currently not too great because of the combination of existing local, state, and federal oversight.

In response to Chairman NORRIS' question about whether Tennessee Code Annotated, Section 7-59-315(a)(b)(2), which declares the legislature's intent to deploy broadband services as quickly as possible in unserved areas through public investment, private investment, and public-private partnerships, is in conflict with regulations placed on municipal providers by Tennessee Code Annotated, Section 7-52-601 et seq., and Tennessee Code Annotated, Section 7-52-401 et seq., Mr. SMITH said the laws are supplementary and not in conflict.

Mr. NICLEY described the multi-step regulatory process that must be navigated to construct a tower for wireless broadband. After locating and securing access to a potential site, a wireless provider must adhere to the National Environmental Protection Act (NEPA), which requires that the provider receive approval from a state's historical preservation office as well as that state's tribal preservation office. In response to City Commissioner CROSSLEY's question about how the tribal preservation office approval process works, Mr. NICLEY said that the provider must ensure that construction on the proposed site will not disturb any ancestral holdings for any tribes in the state. If it is found that construction will cause a disturbance, the provider must go through an environmental assessment process to find a remedy or choose a different site for the tower. Mr. NICLEY said that providers

must also comply with Federal Aviation Administration (FAA) regulations to ensure that towers do not interfere with commercial airspace. Mr. NICLEY said that complying with NEPA and FAA regulations takes between six and nine months.

Mr. NICLEY said that in addition to NEPA and FAA regulations, providers also have to comply with local zoning and planning regulations in communities and that these local regulations, can in effect, prohibit tower construction. In response to Chairman NORRIS' question about whether a municipality building its own towers would have to follow its own zoning regulations, Mr. NICLEY said that they would not but would have to adhere to NEPA and FAA regulations. He said that Metro-Nashville Government and the city of Brentwood have both built towers recently without complying with their own zoning and planning regulations.

In response to Representative LOVE's question about whether the towers built by Metro-Nashville were also used by private providers, Mr. NICLEY said that they are not. Metro-Nashville's towers are used for emergency services such as fire and rescue and by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation. Because of this, Metro-Nashville has not allowed private providers to co-locate transceivers on them.

Mr. MACKE said that policies that reduce operating costs, capital outlays, and risk would encourage the expansion of broadband services and urged consistency across federal, state, and local policies. Mr. MACKE said that the role of government-owned providers should be limited to unserved or underserved areas. Governments have several inherent advantages over private providers: They are not subject to permitting timelines for attaching cables to utility poles, repair their own infrastructure first after storms or outages, can market broadband services to residents and businesses signing up for electric service, and have greater influence with local chambers of commerce.

Mr. MACKE said that encouraging adoption was an integral part of improving access to broadband. He said that Comcast's internet essentials program has helped 15,000 low-income residents get broadband service. In response to Representative LOVE's question about how the program has evolved, Mr. MACKE said that eligibility for it has gradually been expanded from families with school children receiving free and reduced-price lunches to families on other forms of public assistance. He said that in Nashville, the program is being expanded to include residents of public housing and will provide resources for training, equipment, and connectivity. In response to Representative LOVE's question about how much laptops cost as part of the program, Mr. MACKE said $150.

Mr. MACKE said that the process for attaching cables to utility poles is an impediment to expanding broadband in Tennessee. He said that, unlike the state-issued franchise agreements that providers can obtain for any community in the state through a single application to TRA, pole attachment agreements must be negotiated individually with each of the 85 electric providers in Tennessee. Mr. MACKE said that obtaining permission for pole attachments from utilities as well as obtaining other permits from local governments can cause significant delays. He said that it took Metro-Nashville five months to issue permits needed for connecting Health Care of America's new downtown office building and that a timeline of 30 days would facilitate deployment. He said that burying cable underground was the only other option for expanding service but that this costs ten times as much as attaching to utility poles.

Mr. MACKE also said that the cost of pole attachments is significantly higher in Tennessee than in other states and that this creates another impediment to broadband expansion. He said that pole attachment rates in Tennessee are three times the national average and higher than any other state

in which Comcast operates. He said that this results in Comcast paying $10 million per year in additional fees that could otherwise be used for deploying broadband services and that rates in Tennessee have increased 35.5% since 2011. In response to Mayor ROWLAND's question about whether pole attachments vary across the state, Mr. MACKE said that they do and there appears to be no rhyme or reason why.

Mr. MACKE said that TVA's recently adopted pole-attachment-rate formula is in conflict with both the FCC's and the state's goal of expanding access to broadband and will likely cause these rates to double in the coming years. In response to a question from Chairman NORRIS, Mr. MACKE said municipal utilities and electric cooperatives subject to TVA's pole attachment regulations own 80% of the poles in Tennessee.

In response to Mr. YOUNG's question about whether reducing pole-attachment rates would allow providers to offer broadband service throughout Tennessee, including areas currently unserved or underserved, Mr. MACKE said that, although there isn't a direct one-to-one ratio, reducing rates would help. He surmised that providers could expand service in some locations if rates in Tennessee were lowered to even twice the national average but cautioned that there are too many variables affecting whether providers can expand service to say that reducing pole attachment rates alone would allow them to serve the entire state. Mr. MOTTERN said that high rates are barriers to expansion and that rate negotiations with individual utilities in Tennessee can be difficult. He said that state public service commissions in other states review pole attachment rates and adopting a model for determining rates based on their cost would help.

Ms. PHILLIPS said that a model or formula like the one used by the FCC that provides an opportunity for pole owners to demonstrate costs as well as a mechanism for resolving disputes would be appropriate. She said that setting a specific rate would not take into account the differences in maintenance costs across the state based on topography and other factors and that reimbursement for pole maintenance is a legitimate concern for pole owners. Ms. PHILLIPS said that there was no reason that pole attachments should be more costly in Tennessee than in the rest of the nation. She said that resolving the pole attachment rate issue will become increasingly important as next-generation wireless deployments may rely on attaching transceivers to utility poles rather than to towers.

Mr. LODGE said that TVA's pole-attachment-fee formula was based on the Authority's statutory mandate to protect electric ratepayers and keep electric rates as low as possible. He said that TVA adopted the formula at its February 2016 board meeting and that it would be finalized by January 2017. Citing a 2014 opinion by the Tennessee Attorney General, he said that TVA's actions would preempt state regulation of pole attachment rates. Mr. LODGE also said that, although electric cooperatives are not allowed to provide broadband under state law, they do deploy infrastructure capable of providing customers with broadband services.

Ms. PHILLIPS said that most direct regulation of broadband providers, including merger review and data reporting requirements, occurs at the federal level. The FCC licenses and controls access to radio frequencies necessary for wireless broadband service by auctioning blocks of frequencies to providers. AT&T spent $18 billion on these auctions in 2015. Ms. PHILLIPS said that wireless broadband service is important for connecting low-income customers and that the National Telecommunications and Information Administration reports that consumers increasingly access the internet through mobile connections rather than fixed connections regardless of income level.

She said that wireless broadband is also important for connecting a variety of devices to the internet and allowing them to be monitored and controlled remotely.

Ms. PHILLIPS said that there is little if any direct regulation of broadband services at the state and local levels and that laws passed by the Tennessee General Assembly limit the state's jurisdiction to powers delegated to it by the federal government. For-profit broadband providers are regulated indirectly at the state and local levels through tax policies, zoning, and permitting.

Ms. PHILLIPS said that Tennessee's tax on equipment for providing broadband services purchased by providers is an impediment to broadband expansion. She said that approximately 20 states including North Carolina do not tax these purchases and that this would be a meaningful policy change for Tennessee because it would allow the capital that broadband providers set aside for deploying and maintaining networks to go farther. In response to Mayor ROWLAND's question about whether eliminating the sales tax on equipment would allow AT&T to reduce rates, Ms. PHILLIPS said that it would depend on several factors. It could allow AT&T to reduce rates or deploy service in new areas. She said that Tennessee could choose to exempt providers from taxes on equipment purchased for deployments in unserved and underserved areas. Ms. PHILLIPS said that tax policy affects the amount of money providers can invest in deploying networks and that it is an important factor limiting the expansion of broadband access because of how capital intensive the business is. AT&T invested $1.2 billion in the last three years in Tennessee alone and spends approximately $1 billion per year with Tennessee vendors.

Ms. PHILLIPS said that zoning and permitting processes can slow deployment and increase costs. Some local governments require workers deploying fiber-optic cable to be licensed to work with low-voltage wiring, which increases the cost of deploying network infrastructure. AT&T has deployed more than 1.7 million strand-miles of fiber in Tennessee; fiber is important for wireless service as well as wired because it connects cell towers to the wider internet. She said that reducing delays in connecting fiber to wireless cell sites is also vital because AT&T plans to expand broadband deployment under the Connect America Fund using fixed wireless service.

Ms. PHILLIPS said that fees for accessing rights of way should be cost-based and, although owners should be compensated, they should not be allowed to replace general revenue with right-of-way fees; doing so would slow deployment. Ms. PHILLIPS said that although the complexity of broadband networks can make it difficult to share all infrastructure, sharing rights of way and other public infrastructure makes sense especially for the collocation of equipment needed to deploy the next generation of wireless service. In response to Representative WIRGAU's question about how AT&T determines to expand its broadband network, Ms. PHILLIPS said that, in general, AT&T looks at customer demand and growth determined in part by the types of other services that customers are buying and consider the presence of anchor institutions and other large users. As part of its obligations for receiving CAF support, AT&T has agreed to deploy broadband in approximately 80,000 locations that are not currently served according to the FCC and will would provide service in the first 30,000 of these locations by the end of 2017. When determining which of these areas to serve first, AT&T considers existing fiber-optic cable and other infrastructure that can be leveraged to speed deployment and comply with CAF program regulations.

In response to Senator MCNALLY's question about whether fiber-optic cable will be replaced by a different medium for providing broadband service, Ms. PHILLIPS said that fiber is critical to several different network architectures. It is used for wireless broadband to connect cell towers with the wider internet and will continue to be significant but will also continue to evolve. New types of

fiber are being developed, and even if fiber doesn't need to be replaced, other equipment does such as signal amplifiers; this is part of the reason that broadband is so capital intensive. Broadband providers must rebuild their networks every eight years, much more frequently than other types of utilities. Ms. PHILLIPS said that a light regulatory approach would encourage competition among providers to upgrade their networks.

Ms. PHILLIPS said that broadband availability should not be conflated with adoption. Half of Tennesseans who haven't adopted broadband have access to it, and the most common reasons individuals choose not to adopt broadband service include cost, lack of digital literacy, fear, and the perception that the internet is irrelevant to them. Ms. PHILLIPS said that the government should play a role in improving broadband adoption, in particular by promoting digital literacy.

In response to Representative LOVE's question about programs that could make broadband more affordable for low-income communities, Ms. PHILLIPS said that AT&T has a new program for participants in the federal Supplemental Nutrition Assistance Program. The federal Lifeline program has historically been available for voice service only, but there are benefits to expanding it to include mobile broadband so that low-income individuals and families can more easily take advantage of service subsidies even if they move residences frequently. Reducing the cost of devices is just as important as reducing the cost of service. AT&T has participated in the Digital Inclusion Fund as well as Computers for Kids, two programs that reduce the cost of obtaining computers for low-income families.

In response to Senator YARBRO's question about whether expanding access to broadband would lead to a more equitable distribution of economic development, Ms. PHILLIPS said that it is an issue of what comes first and that, unlike access to electricity in the twentieth century, it isn't clear that there is a causal relationship between broadband access and economic growth. But she said that there does appear to be a correlation between the two. Mr. MACKE said that broadband access is not a silver bullet, but that it is part of the puzzle for improving development.

In response to Senator YARBRO's question about whether significant regulatory changes or significant public investment are necessary to improve broadband access, Ms. PHILLIPS said that public money could be better invested in areas like education where there is lower risk and was reluctant to say that the government should be in the business of providing broadband. Ms. PHILLIPS said that alternatives should include more than just municipal expansion. Legislation introduced by Senator Mike Bell in 2016 would have authorized TRA to determine areas of the state that are unserved; municipal expansion in these areas would not be inappropriate. Mr. MACKE said that government's role should be to support private investment. Mr. MACKE said that local governments could also play a role in expanding broadband deployment by soliciting proposals from different providers for unserved and underserved areas. Incentives could be offered to defray the costs of deployment, but that these incentives would not have to extend to operation.

B. The second panel discussing the regulatory landscape for broadband internet service included representatives of government agencies:

- David Foster, utilities chief, Tennessee Regulatory Authority
- John Hutton, telecom consultant, Tennessee Regulatory Authority
- Ron Queen, manager of local finance, Office of State and Local Finance, Tennessee Comptroller of the Treasury

- Jean Suh, contract audit review manager, Division of Local Government Audit, Tennessee Comptroller of the Treasury
- Gary Harris, director, Office of State Assessed Properties, Tennessee Comptroller of the Treasury
- Barbara Sampson, assistant commissioner, Tennessee Department of Revenue
- Gary Jaeckel, municipal management consultant, Municipal Technical Advisory Service

Representatives of both the Tennessee Valley Authority (TVA) and the County Technical Assistance Service were invited but were unable to attend.

Ms. SAMPSON said that the principal taxes that businesses in Tennessee pay are property taxes, franchise and excise taxes, sales taxes, and business taxes. Internet providers do not pay business taxes or collect sales taxes on internet service because the federal Internet Tax Freedom Act (ITFA) prohibits state and local taxes on internet service. Internet providers pay franchise and excise taxes and property taxes because the ITFA does not prohibit state or local taxes on their income, net worth, or property nor does it prohibit states taxing internet providers' equipment purchases.

Ms. SAMPSON said that non-profit and government-owned entities are generally not subject to franchise and excise taxes in Tennessee, but state law requires municipally owned internet providers to make payments in lieu of taxes (PILOT) in place of franchise and excise taxes. In response to Chairman NORRIS' question about whether these PILOTs were included in the 1999 legislation authorizing municipalities to provide internet service, Ms. SAMPSON said that she did not know whether they were included in the original legislation, but they are currently part of the law.

Mr. JAECKEL, representing the Municipal Technical Advisory Service, said that cities are limited under current law to regulating access to rights of way, zoning, and permitting. In response to Mayor SENTER's question about whether pole attachment fees should be eliminated entirely, Mr. JAECKEL said that maintenance costs for poles are a valid concern and that the process of installing, maintaining, and replacing poles is not cheap. Costs vary based on topography, location, the communities served, and the quantity of poles, and municipal electric systems are not allowed to operate at a loss. Pole attachment rates in unserved and underserved areas are capped at 50% of the highest rate charged by the local municipal utility or electric cooperative as of January 1, 2008. [Staff Note: Under current law, limits apply only in areas designated by TRA as historically unserved in response to application by a municipality or county for authority to establish a joint venture with one or more providers to provide broadband in the area. Providers eligible for joint ventures include for-profit and non-profit providers statewide as well as municipal electric systems, but the latter only inside their electric service areas.]

Mr. JAECKEL said that only 51 of Tennessee's 394 cities operate a municipal electric systems and can therefor provide broadband service under current law. In response to a question from Chairman NORRIS, Mr. JAECKEL said that cities that lack municipal electric systems are also interested in providing broadband services. In response to Representative WIRGAU's question about the drawbacks for cities that do not have the ability to provide service, Mr. JAECKEL said that in areas were deployment costs are high, private providers may be unable to make a business case for providing service. These cities view the lack of broadband access as a deterrent to economic development and an impediment to education. Representative LOVE said that access to broadband is not only a problem in rural areas but in urban areas as well, especially for low-income residents.

Mr. QUEEN said that the Comptroller's Office of State and Local Finance reviews broadband business plans submitted by municipal utilities that want to provide broadband services authorized under Tennessee Code Annotated, Section 7-52-601 et seq. The office determines whether a plan is feasible based on whether the utility's broadband operations will be self-sufficient. Regardless of whether a plan is determined to be feasible by the Comptroller's Office, the final decision whether to provide service is made at the local level.

Ms. SUH said that the Comptroller's Division of Local Audit reviews municipal audits prepared by public accounting firms to ensure that municipal utilities are not using electric revenues to subsidize broadband, cable, or telecommunications services. The Division of Local Audit determines whether the municipal audits adhere to Generally Accepted Accounting Principles, Generally Accepted Government Auditing Standards, and the Tennessee state audit manual.

Mr. HARRIS said that the Comptroller's Office of State Assessed Properties assesses all entities that are not assessed locally for property tax purposes. His office assesses 18 different types of companies, including those classified as utilities such as telephone companies. The 1,700 companies assessed by his office pay approximately $257 million per year in property taxes that are passed through to cities and counties.

Mr. HARRIS said that Tennessee's Ad Valorem Tax Reduction Fund was established in 2000 to compensate telephone companies for the higher property taxes they pay relative to other internet providers such as cable companies. The fund is paid for by a tax on telephone companies' business customers. The Office of State Assessed Properties determines what each telephone company would owe if it were assessed at the lower commercial rates rather than the utility rate and distributes the difference between the two to each company from the fund. If the fund does not have enough money to compensate each company fully, then payments are distributed based on each telephone company's contribution to it. The fund paid out more than $9 million this year. [Note: The fund has never had enough money to fully compensate telephone companies for their higher property tax rates.]

Mr. FOSTER said that, in contrast to its historical role in regulating telephone companies' rates, deployment, and quality of service, the TRA has only a limited role in regulating broadband providers. TRA does not regulate telephone cooperatives. TRA is responsible for granting franchise authority to providers either as cable companies or as competing telephone companies. The process for certifying cable companies in Tennessee Code Annotated, Section 7-59-301 et seq., is narrowly construed against the TRA.* TRA has granted franchise authority to 19 companies under this law, and they tend to be large companies whose service areas cover large areas of the state. The state remits the franchise fees it collects from providers under Tennessee Code Annotated, Section 7-59-301 et seq., to local governments.

In response to Mr. WALKER's proposal from the first panel, Mr. FOSTER said that it was premature to speculate on what authority the FCC would ultimately grant to state public service commissions like TRA but that he would be surprised if regulatory authority over deployment, rates, or service quality were delegated to states. He said that TRA will carry out duties assigned to it but is not seeking expanded jurisdiction.

* Tennessee Code Annotated, Section 7-59-302, reads in pertinent part, "It is the intent of this part to confer a limited role on the Tennessee regulatory authority . . . which will be ministerial and narrowly construed, except to the extent otherwise specifically provided for in this part, and no rulemaking authority is provided by this part."