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# Intergovernmental Challenges and Achievements



**Biennial Report**

**Fiscal Years 2020-21 and 2021-22**



# TACIR Publication Policy

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Reports approved by vote of the Tennessee Advisory Commission on Intergovernmental Relations are labeled such on their covers with the following banner at the top: *Report of the Tennessee Advisory Commission on Intergovernmental Relations*. All other reports by Commission staff are prepared to inform members of the Commission and the public and do not necessarily reflect the views of the Commission. They are labeled *Staff Report to Members of the Tennessee Advisory Commission on Intergovernmental Relations* on their covers. *TACIR Fast Facts* are short publications prepared by Commission staff to inform members and the public.

## Intergovernmental Challenges and Achievements

### Biennial Report

Fiscal Years 2020-21 and 2021-22

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Chairman



Mayor Kevin Brooks  
Vice Chairman



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Cliff Lippard, Executive Director

December 16, 2022

The Honorable Randy McNally  
Lt. Governor and Speaker of the Senate

The Honorable Cameron Sexton  
Speaker of the House of Representatives

Members of the General Assembly  
State Capitol  
Nashville, TN 37243

Ladies and Gentlemen:

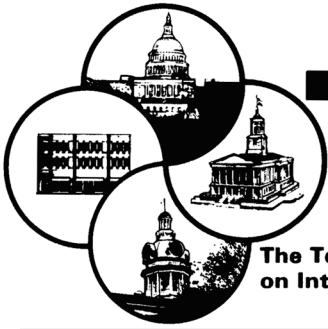
Transmitted herewith is the biennial report for the Tennessee Advisory Commission on Intergovernmental Relations for fiscal years 2020-21 and 2021-22 pursuant to Tennessee Code Annotated, Section 4-10-108. This report was approved by the Commission on December 16, 2022 and is hereby submitted for your consideration. It outlines the significant contributions of the Commission in aiding local governments, the General Assembly, and the State of Tennessee.

Respectfully yours,

Senator Ken Yager  
Chairman

Cliff Lippard  
Executive Director





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## ***MEMORANDUM***

**TO:** Commission Members

**FROM:** Cliff Lippard  
Executive Director

**DATE:** 16 December 2022

**SUBJECT:** Biennial Report for Fiscal Years 2020-21 and 2021-22—Final Report

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The biennial report on the Commission's work for fiscal years 2020-21 and 2021-22 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 several of the important program areas—broadband access, community resiliency, local government revenue and services, right-of-way dedications, right to shop programs in healthcare, shared resources in counties with multiple school systems, small cell wireless facilities, state contracting, state gold depository, 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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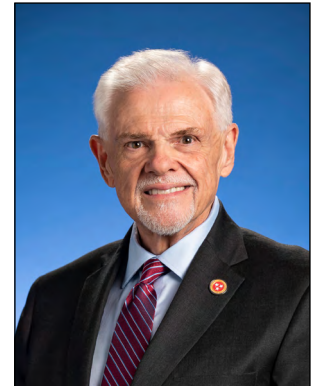
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## Message from the Chair and Executive Director

This Biennial Report of the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) describes the accomplishments and primary activities of the Commission during fiscal years 2020-21 and 2021-22. The Commission's members take seriously the mandate to provide a future-oriented perspective to public policy and intergovernmental relations, focusing the efforts of the 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 2020-21 and 2021-22 are listed in appendix A.

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 criminal statutes of limitations, local revenue and services, and public infrastructure needs, among others. The broader scope of the Commission's work can be seen in the lists of publications, presentations, relevant legislation, and meeting participation included in the appendixes.

Sadly, however, this report also marks the passing of the Commission's prior chairman, Representative Mike Carter, and our retired, longtime executive director, Dr. Harry Green. Chairman Carter, who had a venerable career both in law and in state government, joined the Commission in 2013 and served until his death in 2021. Dr. Green had numerous academic distinctions to his name and was appointed as the Commission's first executive director in 1981. He served in that capacity for 31 years, guiding the Commission's research staff and making invaluable contributions to the State of Tennessee in the process. The Commission commemorates them both for their exceptional service.



**Senator Ken Yager**  
Chairman, TACIR



**Cliff Lippard**  
Executive Director, TACIR



## Focus Issues

The Commission and its staff addressed a variety of issues during fiscal years 2020-21 and 2021-22. Some of the highlights include broadband access, improving resiliency to natural disasters, local government revenue and services, right-of-way dedications and land use, the right to shop for healthcare services shared resources for multiple school systems, small cell wireless facilities, state contracting opportunities, the feasibility of establishing a state-backed gold depository, and the state’s infrastructure needs. The diversity of these issues demonstrates the 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.

### ***Broadband Internet Deployment, Availability, and Adoption***

Recognizing broadband’s growing importance to Tennesseans, the Commission initiated a study of broadband access and adoption in Tennessee in 2015. The Commission’s report—released in 2017—identified existing public and private-sector initiatives for expanding coverage and increasing broadband adoption in the state while also making several recommendations to fill remaining coverage and adoption gaps. The Commission’s recommendations helped guide policy changes included in the Tennessee Broadband Accessibility Act (Public Chapter 228, Acts of 2017). The Act further directed the Commission to prepare an update to the 2017 report, resulting in the 2021 report *Broadband Internet Deployment, Availability, and Adoption in Tennessee Four Years After the Broadband Accessibility Act (Public Chapter 228, Acts of 2017)*.

The report observed that while improvements continued, gaps in broadband access and adoption remained, with more than 432,000 Tennesseans living in census blocks that still did not have sufficient access. Given the role that libraries and schools play in their communities and the importance of tailoring broadband adoption efforts to meet local needs, the report advised that state and local governments should continue to identify opportunities to increase funding for libraries and schools to assist their efforts to facilitate broadband adoption and short-term access in their communities. It further recommended that the state continue to fund the broadband grant program and could consider increasing its annual appropriations to accelerate broadband expansion to more unserved areas. To facilitate these and other efforts, it suggested that the Tennessee Department of Economic



and Community Development develop its broadband coverage maps for the state, updated annually based on address-level data reported to it under agreements with broadband providers and that the General Assembly mandate protections for business-sensitive information in such data. The report also recommended state and local governments consider tying any new incentives for broadband providers directly to coverage expansions while limiting the overall share of project costs that those incentives pay for, and that the state consider eliminating or easing existing territorial restrictions on electric cooperatives and municipal electric systems while protecting electric ratepayers. A range of bills was put forward in the 112<sup>th</sup> General Assembly that would have touched on these recommendations, but none passed. Consistent with the Commission’s recommendation, the Department of Economic and Community Development is in the process of developing its broadband coverage maps for the state. A draft map was released for public comment in April 2022, and an updated version of the map is expected to be released in the fall of 2022. According to the department, “Once complete, the map is intended to be used for state broadband funding decisions, as well as serve as a community planning resource.”

### ***Community Resiliency to Natural Disasters***

The potential for natural disasters threatens every community in Tennessee. Individuals, businesses, community groups, and governments play an important role in limiting the negative effects of these events, in part by adopting strategies that allow them to adapt to changing conditions and prepare for, withstand, and rapidly recover from disruptions to everyday life, thereby making their communities more resilient. To better understand the historical, present, and projected occurrence of natural disasters in Tennessee, and to assess what should be done to prepare for future events, Senate Bill 1114 by Senator Yarbro and House Bill 1120 by Representative Freeman were introduced during the 111<sup>th</sup> General Assembly and would have created a state government task force on community resiliency to examine present and projected losses resulting from these events, develop recommendations to reduce vulnerabilities, and report its findings to the General Assembly. Following discussion of the bill, the House State Government Committee referred it to the Commission for study.

The final report, *Collaborating to Improve Community Resiliency to Natural Disasters*, found that while the state already sees hundreds of millions of dollars in damages each year from natural disasters, these costs would likely double by 2055. Both state and local governments are working to mitigate the hazards of natural disasters, and several state agencies, including the Tennessee Department of Economic and Community Development and the Tennessee Department of Environment and Conservation, collaborate to help local governments with disaster preparation and recovery. Representatives from these two agencies in particular expressed interest



in creating a state-level interagency council to further coordinate state resilience planning, something that, at the time of the report, six other states had already established. The Tennessee Emergency Management Agency expressed reservations regarding the need to create a new collaborative body as it already provides interagency coordination.

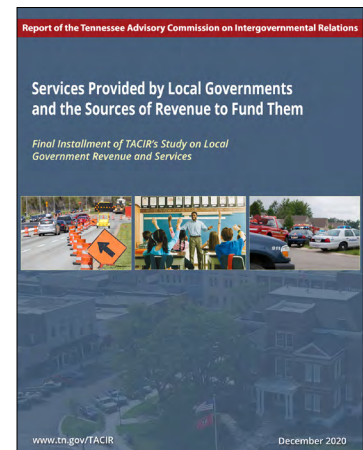
The report concluded that, as Tennessee local governments and state agencies are implementing strategies to prepare for, withstand, and rapidly recover from disruptions to everyday life, and because interagency collaboration is already occurring, the state should ensure that ongoing resilience efforts continue—including collaboration among state agencies and local governments. The Commission took no position on the exact structure of these collaborative efforts but advised that they include hazard mitigation strategies, a focus on community resilience-planning features such as assessing social and economic vulnerabilities, and engaging community members in the decision-making process.

### **Local Government Revenue and Services**

During its discussion of House Bill 971 by Representative Sargent (Senate Bill 1075 by Senator Watson) in the 110<sup>th</sup> General Assembly, a bill that as introduced would have revised the distribution of local government revenue generated by the 2.25% local sales tax imposed on sales made in this state by dealers with no location in Tennessee, the House Finance, Ways and Means Committee asked the Commission to study the duties of counties and cities mandated by law and the funds that go from the state to counties and cities to comply with the law. The Commission, as suggested by its local members, directed staff to produce two interim reports as part of the research for the overall study, the first of which concerned collection and distribution of online sales taxes, followed by a second on K-12 education services funding. The final report, *Services Provided by Local Governments and the Sources of Revenue to Fund Them*, provided a broad overview of the services that local governments in Tennessee offer—including both services that are required by law and those that are authorized by law but not required—and the revenue available to fund them.

The report made no specific recommendations but was instead intended to provide information for further discussion and policy consideration. Among its key observations, the report noted that the provision of public services is a primary function of local governments. State law requires certain duties and services of counties and cities while authorizing them to provide others.

In fiscal year 2016-17, local governments in Tennessee spent \$34.6 billion on services, with roughly a third of that (\$12 billion) going to services that were required either by state or federal law. Expenditures on services



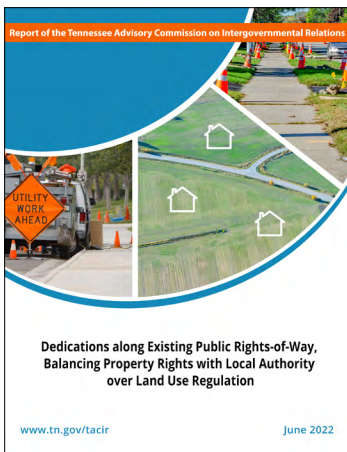
by local governments can increase over time, particularly when new requirements are assigned to them by changes in state law. These kinds of mandatory expenditures, whether for required services or for compliance with requirements associated with authorized services, accumulate over time. In the same fiscal year, local governments received \$34.3 billion in revenue from all sources, with \$26.2 billion sourced locally, with most of the remainder coming from the state and \$705.5 million from the federal government. About 57% of own-source revenue depends on local fees for services, such as electricity, sewage, transit, and so forth, with another 30% coming from local taxes. The percentage of revenue for any given shared tax between local and state government that is to be allotted to local government is set in state law. As of the time of the report, total revenue for funding local services had been steady for several years when adjusted for inflation, as had the state’s percentage of that revenue. The report noted that regardless of whatever future changes might come, joint funding would remain essential for maintaining local services, and striking a balance that ensures the needs and expectations of the state’s residents continue to be met would be paramount.

### ***Right-of-Way Dedications and Land Use***

When property owners apply to local governments to subdivide a piece of property, the approval of the application may be conditioned on the property owner giving land or the right to use that land to the local government for public use, a process known as dedication. Dedications of land for public rights-of-way may be used for purposes such as road widening, space for utilities, or sidewalks. Local governments do not typically pay for dedications.

In the 112<sup>th</sup> General Assembly, Senate Bill 1604 by Senator Bailey and House Bill 366 by Representative Williams would have prohibited local governments from requiring a property owner to dedicate land along an existing public right-of-way as a condition of approving any application made to develop the property. While local government stakeholders held that dedications were an important tool for managing land use and protecting public interests, others raised doubts about the constitutionality of the practice. The Lieutenant Governor and House Speaker then requested that the Commission study the bill.

The resulting report, *Dedications along Existing Public Rights-of-Way, Balancing Property Rights with Local Authority over Land Use Regulation*, found that dedications are constitutional, provided they meet the two-pronged *Nollan/Dolan* test established by prior US Supreme Court rulings: in short, any required dedication must have an “essential nexus” with a valid government purpose and there must be a “rough proportionality” in how much land is to be dedicated to meet that purpose. Because courts have found dedications that meet the *Nollan/Dolan* test are a constitutional





means for governments to regulate land use, because new developments can and often do add to a community’s infrastructure needs and costs, because dedications can help offset those costs so that they don’t fall solely on community taxpayers, and because of Tennessee’s long-standing tradition of local control regarding land use regulation, the Commission did not recommend the proposed legislation. Instead, it proposed that the General Assembly codify the *Nollan/Dolan* standard in state law. Acting on that recommendation in the draft report, Senator Bailey and Representative Williams introduced and the General Assembly passed Public Chapter 1128, Acts of 2022, which incorporated language from the *Nollan/Dolan* test into Tennessee’s statutes.

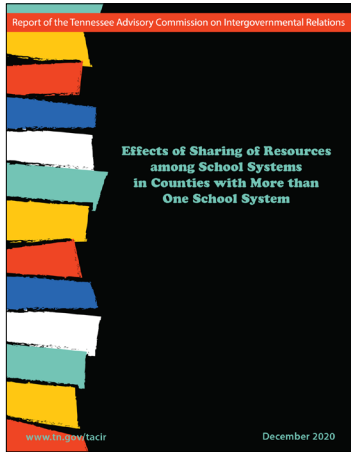
### **Right to Shop Programs in Healthcare**

In the US, healthcare is expensive, and the amounts that healthcare providers—such as physicians, clinics, testing centers, and hospitals—charge for services vary widely. This price variation creates an opportunity for people to shop for lower-cost, high-quality healthcare providers. Right to shop programs—also called rewards, shared savings, or incentive programs—help encourage people with insurance to shop for and choose lower-cost, high-quality healthcare services using online price comparison tools and toll-free phone numbers provided by their insurers. Enrollees are rewarded for choosing lower-cost providers in amounts often ranging from \$25 to \$500 per procedure.

Several states, including Tennessee, have taken steps to ensure that better price information and shopping tools are available so consumers can better compare prices and quality of healthcare services and potentially save money. In 2019, the Tennessee General Assembly passed Public Chapter 407, which requires private insurers in the state to provide healthcare price and quality information to help enrollees shop for lower-price, high-quality services and providers within their insurer’s network and authorizes the Tennessee State Insurance Committee and private insurers to implement incentive programs. The law also directed the Commission to study any cost savings realized by enrollees of health insurance plans in other states that have adopted incentive program legislation or incentive programs that encourage enrollees to shop for and use lower-price healthcare services.

The Commission’s report, *Cost Savings of Right to Shop Programs*, made no recommendations, but did present several findings. At the time of the study, seven states in addition to Tennessee had taken steps to require insurers to provide price information to their insurance enrollees, while 14 states managed publicly accessible websites with healthcare cost information to assist people in shopping for lower-cost services. The report found that shopping for services could result in savings for both consumers and insurers, and that, when incentive programs were combined with price tools, they could motivate consumers to shop for services and save





more. But usage of these tools and incentive programs varied widely, and there was insufficient data to determine whether the savings produced would prove significant over the long term. Though some other states have implemented incentive programs for state employee health plans or required them for private plans, Tennessee has not done so.

### ***Shared Resources in Counties with Multiple School Systems***

As of 2020, there were 94 county school systems, 33 municipal school systems, and 14 special school districts in Tennessee, and 30 of the state’s 95 counties had more than one school system. State law requires counties to share local revenue with city school systems and special school districts in the same counties, but there are no sharing requirements for cities and special school districts. Representatives of county officials in Tennessee had expressed concern that education revenue-sharing requirements in Tennessee favor city school systems and special school districts at the expense of county school systems. City officials had expressed concerns of their own, mainly that these requirements can be an incentive for counties to find ways to work around them. Responding to these concerns, Senate Joint Resolution 593 in the 110<sup>th</sup> General Assembly, sponsored by Senator Haile, directed the Commission to study the overall effects on public K-12 education of the laws and regulations related to the sharing of resources between multiple school systems in the same county and the effect of the operation of additional municipal or special school districts within a county.

The Commission addressed these questions in its report, *Effects of Sharing of Resources among School Systems in Counties with More than One School System*. Among the report’s recommendations, it proposed that the General Assembly could require counties to share property tax and local option sales tax revenues when used for education capital expenditures just as is already required when counties use such revenues for education operations and maintenance. The report also advised that, if the General Assembly chose to do this, it should consider other alternatives to improve student equity while maintaining taxpayer equity and that the change be made prospective so as not to interfere with already committed revenues. As to student and taxpayer equity, the report recommended removing a requirement that counties share their portion of the unearmarked half of local option sales tax when it is budgeted for education operations and maintenance. Additionally, the state could transition from calculating fiscal capacity at the county level to calculating it at the system level when equalizing funding through the Basic Education Program funding formula.

The report recommended the General Assembly establish a method for transferring school property, both real and personal, to new school systems formed by existing cities. A local committee could be created to determine

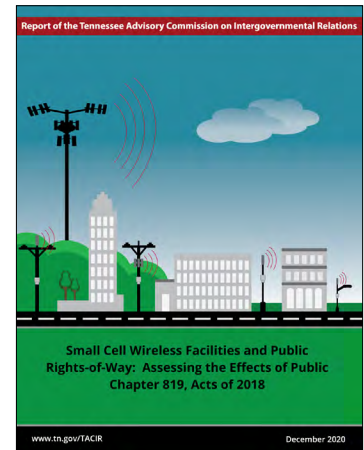
what property should be transferred and what the city should pay for it. Likewise, the report noted that city residents vote in a referendum on whether to form a new city school system before they know what it will cost the city—and by extension the city’s taxpayers—to acquire all of the property it will need to operate a school system. To remedy this, the report also suggested the General Assembly require that the purchase price of the property be determined before the city referendum on the creation of a city school system.

In the 112<sup>th</sup> General Assembly, Senate Bill 898 by Senator Stevens and House Bill 917 by Representative White, as amended, would have transferred all school property owned by a county school system to a municipal school system in the county upon its creation if the parties did not enter into an agreement for the county to continue operating a school system within the geographic boundaries of the municipal school system, though it did not pass.

### ***Small Cell Wireless Facilities***

As mobile wireless service has evolved, so too have the networks that support it, and the wireless industry has in recent years begun to supplement traditional cell towers with smaller ones intended to be installed along public rights-of-way. These are referred to as small cells. In 2018, the General Assembly passed Public Chapter 819, which created a framework for the regulation of small cells in public rights-of-way while also directing the Commission to study the effects of the Act and make recommendations for any changes to it.

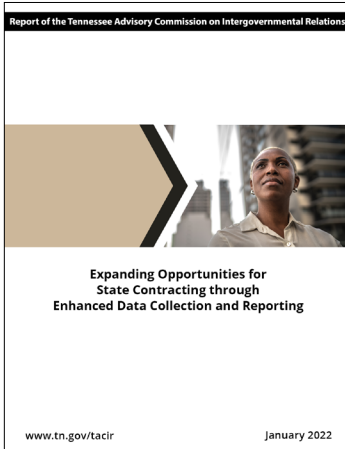
The Commission’s report, *Small Cell Wireless Facilities and Public Rights-of-Way: Assessing the Effects of Public Chapter 819, Acts of 2018*, found that small cells were being leveraged for improvements to mobile wireless networks, including for transportation-related applications, though there was skepticism regarding whether small cells would yield benefits in the short-term, given uncertainty about how soon advances in wireless services might fuel new products people are willing to pay for. It also found that the Act had had minimal effect on broadband deployment in unserved areas. Additionally, officials from nearly one-fourth of local governments reported that the application fees for small cell facilities did not cover the governments’ costs. Although the law did retain at least some local authority to manage public rights-of-way and enforce aesthetic standards related to small cells, the effect of small cells on community aesthetics was still the most widespread cause of concern among local officials contacted in the study. For that reason, in the report the Commission encouraged local governments to update existing ordinances on aesthetic standards to include small cells. Recognizing that concerns might still remain, the Commission further recommended that the General Assembly consider authorizing local governments to require colocation of small cells in



areas with existing poles. Public Chapter 799, Acts of 2022, modified the state’s small cell law in part by bringing it in closer alignment with federal regulations adopted by the Federal Communications Commission.

### ***Expanding Opportunities for State Contracting***

In recognition of the importance of small businesses to the economy, the state of Tennessee has at various times in the past sought to ensure that its contracts with private businesses are made equitably and give opportunities to historically disadvantaged businesses. A 2009 study of disparities in state contracting for minority-owned and woman-owned businesses found that Tennessee had “a strong basis in evidence to take proactive measures to prevent discrimination” against various groups of contractors, including African-American-owned businesses. In light of that, Senate Bill 1235 by Senator Gilmore and House Bill 1593 by Representative Miller were introduced in the 112<sup>th</sup> General Assembly. Though only House Bill 1593 passed, the Commission voted to take up the study at its June 2021 meeting. The bill requested the Commission study whether disparities continued to exist in state contracting with African American-owned businesses and make recommendations for ways to address any such potential disparities.



The Commission’s report, *Expanding Opportunities for State Contracting through Enhanced Data Collection and Reporting*, reviewed the findings from the 2009 disparity study and examined more recent data from Go-DBE on contracting by state agencies. While the report was not able to update the disparity analysis from the 2009 study, it did find that state procurement spending with African American-owned businesses had increased both in total amount and as a percentage of overall state procurement spending. At the same time, however, only five of 30 state agencies met their aspirational goals for procurement spending with minority-owned businesses in at least three of the five fiscal years from 2015-16 through 2019-20. Only two of those five met their goals every year, and half of the 30 agencies did not meet their goal in any of the five years.

Additionally, the report found that the state had already implemented most of the 23 recommendations that had been made in the 2009 disparity report and noted that several recommendations would require either new legislation or an updated disparity study to be legally viable. Ultimately, the report recommended that Go-DBE include as part of its annual report agency-level data on spending goals and achievements with minority-owned businesses. The 112<sup>th</sup> General Assembly enacted this recommendation into law with the passage of Public Chapter 793, Acts of 2022.

## State Gold Depository

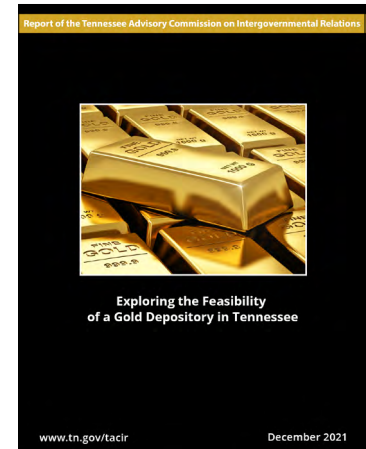
In 2021, the General Assembly passed Public Chapter 585, which directed the Commission to study the feasibility of establishing a state-backed gold depository in Tennessee. Proponents of such a depository argue that investments in precious metals, like gold, could protect the State of Tennessee in the event of economic downturns, as well as generate revenue through storage and service fees paid by state residents who opted to use the depository for their precious metals. It has also been suggested that such a depository would serve as a step toward creating a state-backed currency.

The Commission's report, *Exploring the Feasibility of a Gold Depository in Tennessee*, found that because of the high costs involved, a lack of demonstrated demand for a depository, and the fact that precious metals were not exempt from sales tax in Tennessee, a state-backed gold depository would not be feasible. The Commission also found that only one other state—Texas—had created such a gold depository and that there were substantial costs associated with maintaining the facility. Moreover, the Texas depository could not participate in COMEX, a key market for precious metal exchanges, because of strict requirements under COMEX rules that member exchanges be located within 150 miles of New York City. A state-backed depository in Tennessee would face similar issues. In the course of its research, however, the Commission found that Tennessee is one of only eight states of the 45 that have a sales tax that does not exempt the sales of precious metal coins or bullion in any way.

For these reasons, the report recommended against a state-backed gold depository in Tennessee but did propose that the General Assembly consider a sales tax exemption for precious metal coins and bullion, provided that it would not violate conditions of the American Rescue Plan Act or that it be enacted after all the federal funds had been spent. The 112<sup>th</sup> General Assembly had already considered two bills that would have granted such a sales tax exemption but that did not pass; however, following the report, the General Assembly passed Public Chapter 1092, Acts of 2022, which created such an exemption.

## Tennessee's Public Infrastructure Needs

During fiscal years 2020-21 and 2021-22, the Commission released the nineteenth and twentieth reports in the series on Tennessee's infrastructure needs, *Building Tennessee's Tomorrow: Anticipating the State'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

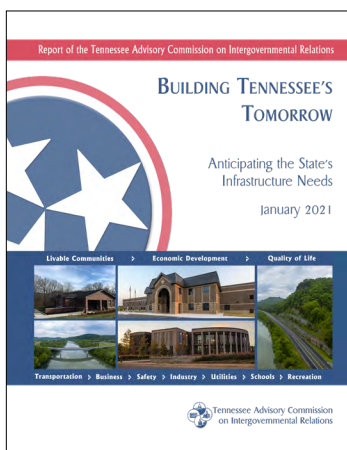
- improve the quality of life of all Tennesseans,
- support livable communities, and
- enhance and encourage the overall economic development of the state through the provision of adequate and essential public infrastructure.

The 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. However, they are not perfectly aligned in any county. Some counties can 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 challenging 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 show that governments often rely on more than one funding source to fund public infrastructure projects and that the government that owns the infrastructure will be responsible for providing the majority of the funding. For example, the state collects taxes and appropriates those funds for their 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.

### January 2021

According to the nineteenth report in the series, Tennessee needed at least \$58.6 billion of public infrastructure improvements during the five years from July 2019 through June 2024. The need for public infrastructure improvements, as reported by state and local officials, was up \$3.8 billion (6.9%) compared with the year before. Improvements needed for the three categories of Transportation and Utilities; Education; and Health, Safety, and Welfare continue to account for most of the inventory, with Transportation and Utilities infrastructure and General Government needs responsible for most of the reported increase this year. Almost two-thirds (65.1%) of the estimated cost of needed infrastructure improvements reported in the inventory were not funded.



Costs for infrastructure needs fall into six general categories:

- Transportation and Utilities: \$32.7 billion
- Education: \$14.2 billion
- Health, Safety, and Welfare: \$7.7 billion
- Recreation and Culture: \$2.2 billion
- General Government: \$1.5 billion
- Economic Development: \$286 million

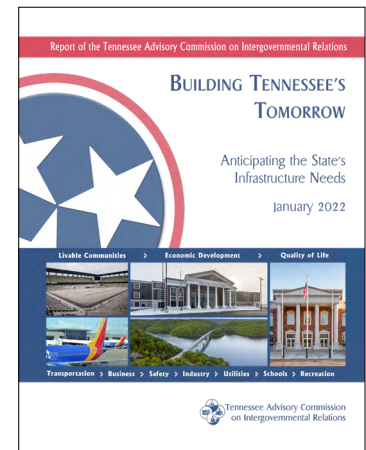
Starting with the July 2019 through June 2024 inventory as presented in this report, geographic coordinates are required for every project in the inventory so staff and public officials can better analyze infrastructure needs using Geographic Information System (GIS) analysis. This information may be used by Commission staff members in the future to provide more detailed information to officials and the public.

## January 2022

The Commission's twentieth infrastructure report in the series estimated that Tennessee needs at least \$61.9 billion of public infrastructure improvements during the five years from July 2020 through June 2025—a \$3.4 billion (5.7%) increase from the year before. Improvements needed for the three categories of Transportation and Utilities; Education; and Health, Safety, and Welfare continue to account for most of the inventory, with Transportation and Utilities infrastructure and Education infrastructure needs responsible for most of the reported increase this year. Just over two-thirds (67.4%) of the estimated cost of needed infrastructure improvements included in the report were not funded, a slight increase from the previous year.

Costs for infrastructure needs fall into six general categories:

- Transportation and Utilities: \$34.7 billion
- Education: \$15.2 billion
- Health, Safety, and Welfare: \$8.3 billion
- Recreation and Culture: \$2.3 billion
- General Government: \$1.2 billion
- Economic Development: \$277 million







## Appendix A: Commission Members

### *Fiscal Year 2020-21 through Fiscal Year 2021-22*

#### Legislative

- Senator Heidi Campbell
- Senator Jon Lundberg
- Senator Katrina Robinson\*
- Senator Ken Yager
- Senator Jeff Yarbrow
- Representative Mike Carter\*\*
- Representative John Crawford
- Representative Harold Love, Jr.
- Representative Antonio Parkinson
- Representative Ryan Williams

#### Statutory

- Senator Bo Watson, Chair, Senate Finance, Ways and Means
- Representative Susan Lynn, Chair, House Finance, Ways and Means\*
- Representative Patsy Hazlewood, Chair, House Finance, Ways and Means
- Justin Wilson, Comptroller of the Treasury\*
- Jason Mumpower, Comptroller of the Treasury

#### Executive Branch

- Jim Bryson, Commissioner, Department of Finance and Administration (Deputy Commissioner of Parks and Conservation, Department of Environment and Conservation at time of service)\*
- Paula Davis, Deputy Commissioner of Operations and Administration, Department of Economic and Community Development\*
- Deniece Thomas, Commissioner, Department of Labor and Workforce Development
- Sammie Arnold, Assistant Commissioner of Community and Rural Development, Department of Economic and Community Development\*

#### Local Government

- Rogers Anderson, Mayor, Williamson County
- Buddy Bradshaw, Mayor, Loudon County
- Jeff Huffman, County Executive, Tipton County
- Larry Waters, Mayor, Sevier County
- Tom Bickers, Mayor, City of Louisville

## Intergovernmental Challenges and Achievements

- Kevin Brooks, Mayor, City of Cleveland
- Chase Carlisle, Councilman, City of Memphis
- Jill Holland, Mayor, City of McKenzie
- A. Keith McDonald, Mayor, City of Bartlett\*

### **Other Local Government**

- Terry Frank, Mayor, Anderson County, Tennessee Development District Association
- Mary Gaither, Tipton County Clerk, County Officials Association of Tennessee
- Brent Greer, Mayor, Henry County, Tennessee Development District Association\*

### **Private Citizens**

- Calvin Clifton, Kingsport
- Jeff Peach, Smyrna

*\*No longer a member of the Commission*

*\*\*Deceased*

## Appendix B: TACIR Accomplishments by Research Area

### *Fiscal Year 2020-21 and 2021-22*

#### **Fiscal Year 2020-21**

##### *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 a report on local government services and the means of funding them, prepared in response to a request from the House Finance, Ways and Means Committee during its discussions of House Bill 971 by Representative Sargent (Senate Bill 1075 by Senator Watson).

##### *Education Finance*

- Completed the Commission's report on the effects of sharing school system resources in counties that have more than one school system, prepared in response to a request by Senate Joint Resolution 593 by Senator Haile of the 110th General Assembly.
- Completed the fiscal year 2021-22 fiscal capacity model.
- Executive Director served on the Basic Education Program Review Committee.

##### *Land Use, Transportation, and Growth Policy*

- 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 141 school systems, 95 counties, 344 municipalities, and 263 other entities.
- Completed an annual report to the legislature on Tennessee's public infrastructure needs pursuant to Public Chapter 817, Acts of 1996.

##### *Other Research*

- Completed the Commission's report on community resilience against natural disasters, prepared in response to Senate Bill 1114 by Senator Yarbrow and House Bill 1120 by Representative Freeman introduced in the 111th General Assembly.
- Completed the Commission's report to the legislature on Public Chapter 407, Acts of 2019, which directed the Commission to study the cost savings of right to shop programs for healthcare.
- Completed the Commission's report to the legislature on Public Chapter 819, Acts of 2018, on small cell wireless facilities and public rights-of-way.
- Completed the Commission's report to the legislature on Public Chapter 228, Acts of 2017, regarding broadband deployment, availability, and adoption.

- 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/tacir-publications.html>).
- 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://ctasdata1.utk.tennessee.edu/countyos.html>).
- 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/tennessee-county-profiles-redirect.html>).
- Published timely information to 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>).
- Collaborated with Tennessee Customer Focused Government to share and link to TACIR data, resources, and publications on the Transparent Tennessee website (<https://www.tn.gov/content/tn/transparenttn.html>).

## **Fiscal Year 2021-22**

### *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).

### *Education Finance*

- Completed the fiscal year 2022-23 fiscal capacity model.
- Executive Director served on the Basic Education Program Review Committee.

### *Land Use, Transportation, and Growth Policy*

- 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 144 school systems, 95 counties, 345 municipalities, and 245 other entities.
- Completed Commission's annual report to the legislature on Tennessee's public infrastructure needs.

### *Other Research*

- Completed the Commission's report to the legislature on the feasibility of establishing a state-backed gold depository in Tennessee, prepared in response to Public Chapter 585, Acts of 2021.
- Completed the Commission's report to the legislature regarding possible disparities in state contracting with African American-owned businesses and their effects, prepared in response to Senate Bill 1235 by Senator Gilmore and House Bill 1593 by Representative Miller in the 112<sup>th</sup> General Assembly.
- Completed the Commission's report on Senate Bill 1604 by Senator Bailey and House Bill 366 Representative Williams introduced in the 112<sup>th</sup> General Assembly regarding dedication requirements along public rights-of-way, as requested by the Lieutenant Governor and House Speaker.
- 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/tacir-publications.html>).
- Continued to improve and refine data visualization and interactive analysis tools for infrastructure reporting.
- Continued to improve the public infrastructure needs inventory application to work with the latest versions of Microsoft supported software; streamlined the process of processing data; and automated the process of formatting and printing infrastructure one-page summaries for the annual report.
- Developed data visualization and interactive analysis tools for infrastructure reporting (<https://www.tn.gov/tacir/infrastructure/infrastructure-reports-/infrastructure-needs-2018-2023/infrastructure-needs-by-county.html>).
- 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/tennessee-county-profiles-redirect.html>).
- Published timely information to 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>).
- Continued a collaboration with Tennessee Customer Focused Government to share and link to TACIR data, resources, and publications on the Transparent Tennessee website (<https://www.tn.gov/content/tn/transparenttn.html>).



## Appendix C: TACIR Publications

### ***Fiscal Year 2020-21 and Fiscal Year 2021-22***

*Collaborating to Improve Community Resiliency to Natural Disasters*—Commission Report, September 2020

*Intergovernmental Challenges and Achievements: Biennial Report Fiscal Years 2018-19 and 2020-19*—Commission Report, September 2020

*Small Cell Wireless Facilities and Public Rights-of-Way: Assessing the Effects of Public Chapter 819, Acts of 2018*—Commission Report, December 2020

*Cost Savings of Right to Shop Programs*—Commission Report, December 2020

*Effects of Sharing of Resources among School Systems in Counties with More than One School System*—Commission Report, December 2020

*Services Provided by Local Governments and the Sources of Revenue to Fund Them*—Commission Report, December 2020

*Tennessee Valley Authority's Payments in Lieu of Taxes: Annual Report to the General Assembly*—Commission Report, January 2021

*Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs*—Commission Report, January 2021

*Broadband Internet Deployment, Availability, and Adoption in Tennessee Four Years After the Broadband Accessibility Act (Public Chapter 228, Acts of 2017)*—Commission Report, January 2021

*Gains in Education Spending Equity Continue 20 Years After Fully Funding the Basic Education Program*—Staff Report, February 2021

*The Effect of the COVID-19 Recession on Public Infrastructure Needs, Interim Report: Lessons Learned from the Great Recession (December 2007 – June 2009) and Early Observations from Local Government Officials*—Staff Report, September 2021

*Exploring the Feasibility of a Gold Depository in Tennessee*—Commission Report, December 2021

*Expanding Opportunities for State Contracting through Enhanced Data Collection and Reporting*—Commission Report, January 2022

*Tennessee Valley Authority's Payments in Lieu of Taxes: Annual Report to the General Assembly*—Commission Report, January 2022

*Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs - Commission Report*—Commission Report, January 2022

*Dedications along Existing Public Rights-of-Way, Balancing Property Rights with Local Authority over Land Use Regulation*—Commission Report, June 2022





## Appendix D: Staff Presentations

### ***Fiscal Year 2020-21 and Fiscal Year 2021-22***

“Broadband Access and Adoption in Tennessee: Four Years After the Broadband Accessibility Act of 2017” at the Tennessee State Board of Education (February 4, 2021)

“Findings and Recommendations of TACIR’s Update to Its 2017 Report on Broadband Deployment, Availability, and Adoption in Tennessee” at the Appropriations Subcommittee of the Tennessee House of Representatives (March 1, 2021)

“TACIR, Policy Analysis, and Employment Opportunities for PhDs Outside of Academia” at the Vanderbilt Graduate Department of History (April 8, 2021)

“Payments in Lieu of Taxes Programs to Incentivize Economic Development” at the Tennessee School Board Association (November 20, 2021)

“Building Tennessee’s Tomorrow: Anticipating the State’s Infrastructure Needs—July 2020 through June 2025” at the Senate Finance, Ways and Means Committee (January 25, 2022)



## **Appendix E: Conference and Meeting Attendance**

### ***Fiscal Year 2020-21 through Fiscal Year 2021-22***

Tennessee Department of Human Resources Human Capital Management Conference

Tennessee County Services Association Annual Fall Conference

Tennessee Municipal League Annual 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, 10 members have local government as their primary affiliation, 11 represent the legislature, two are drawn from the executive branch, and two are private citizens.

### Mission

In the late 1970s, 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 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 2020-21 and Fiscal Year 2021-22*

#### **Fiscal Year 2020-21**

- Public Chapter 585, Acts of 2021, directed the Commission to study the feasibility of creating a state gold depository, including whether other states or jurisdictions had created gold depositories.
- Public Chapter 497, Acts of 2021, directed the Commission to study a variety of questions on the conditions of non-fish and game water recreation activities across the state, including questions of accessibility, fees, taxes, and revenues involved.
- Public Chapter 503, Acts of 2021, the General Assembly sought a comprehensive evaluation from the Commission of the socioeconomic effects that childhood obesity has on the state, both in the short and long-term.
- On April 1, 2021, Speaker of the House Cameron Sexton and Speaker of the Senate Randy McNally submitted a request to the Commission for a study of Senate Bill 1604 by Senator Bailey and House Bill 366 by Representative Williams, which would have prohibited government entities from requiring dedications of rights-of-way as a condition of approving any land use application made to them. The Commission opted to take up the study at its June 9, 2021, meeting.
- Senate Bill 1235 by Senator Gilmore and House Bill 1593 by Representative Miller would have directed the Commission to study disparities in the issuance or awarding of state contracts to businesses owned and operated by African Americans. While House Bill 1593 was passed, Senate Bill 1235 did not advance beyond the committee stage. Upon discussion at the June 9, 2021, meeting, the Commission chose to undertake the study.
- The Commission completed a final report on the risks posed across the state by natural disasters and current efforts and best practices for ensuring community resilience in the face of such disasters, as requested by Senate Bill 1114 by Senator Yarbrow and House Bill 1120 by Representative Freeman of the 111th General Assembly.
- The Commission completed a final report on services provided by local governments and the means by which they are funded, as requested by the House Finance, Ways and Means Committee during its discussions of House Bill 971 by Representative Sargent.
- The Commission produced a final report on the effects of sharing resources among school systems in counties that have more than one system, as requested by Senate Joint Resolution 593 by Senator Haile of the 110th General Assembly.
- Pursuant to Public Chapter 407, Acts of 2019, the Commission completed a final report on the cost savings that might accrue under so-called right to shop programs for healthcare.
- In response to Public Chapter 819, Acts of 2018, the Commission produced a final report on small cell wireless facilities in public rights-of-way, including the effects of the regulatory framework established by Public Chapter 819 itself.
- The Commission completed a final report on broadband internet deployment, availability, and adoption in the state, pursuant to Public Chapter 228, Acts of 2017.

- 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 2021-22**

- Public Chapter 1114, Acts of 2022, along with Public Chapter 1124, Acts of 2022, both directed the Commission to carry out a study of the potential for passenger rail service in Tennessee.
- Public Chapter 1043, Acts of 2022, directed the Commission to study the effects of utility-scale solar energy development.
- Senate Bill 2330 by Senator Hensley and House Bill 2456 by Representative Sparks would have required the Commission to undertake a study of the effects of reference-based pricing for health insurance. The bill passed in the Senate but was referred for further study by the House Finance, Ways and Means Subcommittee. The study was adopted by the Commission at its meeting on June 15, 2022.
- Senate Bill 2827 by Senator Hensley and House Bill 2729 by Representative Ogles passed in the Senate but was referred for further study in the House. The bill would have directed the Commission to conduct a study of the routing and storage of emergency communications on college campuses in Tennessee and to offer recommendations for how such communication systems might be improved. The Commission chose to undertake the study at its meeting in June 15, 2022.
- Senate Bill 2262 by Senator Briggs and House Bill 2419 by Representative Mannis was taken off notice in the House of Representatives but passed in the Senate. The bill would have directed the Commission to study liquor-by-the-drink taxes. The Commission voted to undertake the study at its June 15, 2022 meeting.
- The Commission completed a final report on the feasibility of establishing a state-backed gold depository in Tennessee, pursuant to Public Chapter 585, Acts of 2021.
- The Commission completed a final report examining potential disparities in state contracting with African American-owned businesses and the effects that any such disparities might have, prepared in response to Senate Bill 1235 by Senator Gilmore and House Bill 1593 by Representative Miller in the 112th General Assembly.
- In response to a request submitted by the Lieutenant Governor and House Speaker, the Commission completed a final report on the potential effects of Senate Bill 1604 by Senator Bailey and House Bill 366 Representative Williams of the 112th General Assembly concerning the requirement of dedications along public rights-of-way by local governments.
- 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

The following are summaries of the Commission’s quarterly meetings. Full minutes and video for meetings are located on TACIR’s website (<https://www.tn.gov/tacir/commission-meetings.html>).

### *Fiscal Year 2020-21 Scheduled Commission Meetings*

#### **September 29, 2020**

##### *Community Resiliency to Natural Disasters—Final Report for Approval*

Senior Research Associate Tyler CARPENTER presented the final report for the Commission’s approval. The report was prepared in response to Senate Bill 1114 by Senator Yarbrow and House Bill 1120 by Representative Freeman, which was referred to the Commission for study by the House State Committee. The sponsors requested that the Commission specifically

- identify risks for extreme weather events and earthquakes across the state,
- document the current status of planning to reduce the effects of these specific natural disasters and build community resilience in Tennessee at the state and local level,
- identify best practices for building community resilience, and
- determine the cost of action and inaction.

Mr. CARPENTER said that from 1996 to 2018 in Tennessee, there was an average of \$343.5 million annually in property damage and economic losses resulting from natural disasters, according to an analysis by 3 Sigma Consultants, LLC—the consulting firm the Commission contracted with to analyze past and future extreme weather events and earthquakes. According to 3 Sigma’s analysis, Tennessee could see the annual cost of natural disasters nearly double to \$595 million per year by 2055. Mr. CARPENTER then summarized strategies that can reduce these costs and build resilience. He explained how local governments and the state are planning for natural disasters.

Mr. CARPENTER said the report’s recommendation remains unchanged from the draft report, recommending that the state should ensure that ongoing resilience efforts continue—including collaboration among state agencies and local governments. The Commission takes no position on the exact structure of these collaborative efforts, but they should include, in addition to hazard mitigation strategies, a focus on community resilience-planning features such as assessing social and economic vulnerabilities and engaging community members in the decision-making process.

Mayor Buddy BRADSHAW moved that the report be approved. Senator Jeff YARBROW seconded the motion. The Commission unanimously approved the report.

##### *Biennial Report for Fiscal Years 2018-19 and 2019-20—Final Report for Approval*

Executive Director Cliff LIPPARD presented the Commission’s biennial report for fiscal years 2018-19 and 2019-20, for approval, pointing out the several focus issues that the report discusses. Vice Chairman BROOKS moved for approval, and Senator YARBROW seconded the motion, which passed unanimously.

### *Open Discussion of Informational Material Prepared for Postponed May 2020 Meeting*

Dr. LIPPARD opened the forum for discussion of three items under Tab 5—Fiscal Capacity for fiscal year 2020-21 update (Tab 5a), Public Chapter 407, Acts of 2019, update (Right to Shop, Tab 5b), and Tennessee Valley Authority payments in lieu of taxes update (Tab 5c). He said that the information on these items was sent to the members in May 2020. He added that one of the items, Tab 5c Tennessee Valley Authority payments in lieu of taxes, was recently updated with new information and staff will present that updated information along with any additional changes at a future commission meeting.

Mayor MCDONALD asked whether effects of the pandemic were included in 5a Fiscal Capacity for fiscal year 2020-21. Dr. LIPPARD said they are not—5a is reporting fiscal capacity for the ongoing year 2020-21 and has already been forwarded to the Department of Education. He said that the BEP review committee recommended that the administration and General Assembly should not penalize a school system because of a drop in average daily membership because of the pandemic. However, this does not affect the information presented on fiscal capacity for 2020-21.

## **November 5, 2020**

### *Broadband Internet Deployment, Availability, and Adoption—Panel*

Dr. Matthew OWEN introduced a panel of broadband provider representatives who discussed the progress that has been made in expanding broadband access as well as the challenges faced when trying to fill the state’s remaining coverage gaps. The panelists included

- Mr. Andy MACKE, vice president of external affairs, Big South Region, Comcast;
- Mr. Jeremy ELROD, director of government relations, Tennessee Municipal Electric Power Association;
- Ms. Joelle PHILLIPS, president, AT&T Tennessee;
- Ms. Lisa COPE, general manager and chief executive officer, Ben Lomand Connect; and
- Mr. Mike KNOTTS, vice president of government affairs, Tennessee Electric Cooperative Association.

Mr. MACKE provided several suggestions on ways to encourage more investment in the expansion of broadband in the state. He started by saying that Tennessee has the highest pole attachment rates in the country. The national average for Federal Communications Commission (FCC) regulated pole rates is \$6.84 while broadband providers pay an average of \$33.47 per year to attach to Tennessee Valley Authority (TVA) regulated poles in Tennessee. He said the state could create a pole attachment tax credit or a credit on franchise and excise taxes in the amount of the difference between what a provider might pay under the TVA pole attachment fee and what it would pay under the FCC formula. Alleviating the effect of these rates could have a meaningful effect on the cost of deploying and maintaining broadband networks especially in rural areas.

Establishing fair and consistent processes for permitting and right-of-way (ROW) access could remove barriers to broadband deployment as well. He noted that the Broadband Ready Community designation could be made more robust by adding additional requirements such as use of the FCC pole attachment formula, establishment of a universal permit fee, appropriate permitting timelines and expanding the definition to include the owner of the ROW. The state could incentivize communities to become broadband ready by

requiring the Broadband Ready designation for state broadband grants as well as other state grants like the Tennessee Department of Economic and Community Development's (ECD) FastTrack grants.

Mr. MACKE also suggested that ECD could diversify the selection committee of the state's broadband grant program to include other members beyond ECD staff. In addition, he said that more electric providers are providing broadband services and these electric providers dictate the costs and terms and conditions for other broadband providers attaching to their poles. To make certain the regulatory framework environment is fair for all providers, he stated that there needs to be transparency with regards to the electric providers' permitting and decision-making process and this should include an avenue of appeal to ensure that current protections in the state law are being adhered to.

Mr. ELROD said that currently municipal electric providers can only provide broadband service to people in their electric service areas—they cannot provide broadband to people outside it. Municipal electric providers can't consider serving these areas or partnering with other utilities because state law doesn't allow it. To deploy broadband in areas like these, more proactive steps by the state and others are needed to get service to these areas that don't have it.

One major step could be giving current municipal electric providers latitude to partner with new providers outside their electric service areas to provide broadband service to consumers. These can be partnerships with other municipal electric providers, electric or telephone cooperatives, or even public-private partnerships. These partnerships would save new providers significant startup costs, increase flexibility and planning, and put expertise to work in these communities.

Ms. PHILLIPS stated that broadband adoption is a long-standing concern for the industry. It fuels their ability to keep deploying. COVID may have helped people to better understand the need for broadband connectivity. In an effort to meet that need for connectivity, AT&T, like other providers, has provided \$10 per month broadband service for families eligible for the Supplemental Nutritional Assistance Program (SNAP) benefits. She said this type of program might be one state policymakers might consider supporting in the future.

She noted that as technology has changed it is opening up opportunities to partner with entities considered to be competitors in the past. As businesses continue to grow and offer new services it gives them more incentive to work with their colleagues in the private sector and municipal and electric cooperative service sector because there are more ways they can work together. Ms. PHILLIPS said Tennessee has been wise not to limit the types of activities that private sector providers can engage in, and it will be a good thing to continue to incentivize innovative partnerships across the spectrum of providers.

One barrier to broadband deployment is cost. It is incredibly expensive to deploy and maintain networks. COVID has made it even more costly as they continue to do it in a safe manner. There are lots of good grant programs like the state broadband grant program and federal Connect America Fund (CAF) II program to help with deployment costs. She suggested that the state consider expanding grant programs to provide some ongoing support or ability to use funds to support operation of those networks. Tax policy changes should also incentivize deployments. There is a sales tax exemption for equipment they use to build networks, but it's capped at a certain amount. She said that removing the cap would be good tax policy and a way to incentivize additional deployment.

Another issue is the cost of pole attachments. Tennessee is in a unique position because of TVA's regulation of pole attachment rates. She suggested that it would be wise for the Commission and Tennessee policymakers

to do as much as possible to facilitate ongoing conversations about the cost of pole attachments not just with electric providers that are part of TVA system but with TVA itself. She added that the Commission would be a great venue for connecting some of those folks together.

She said there is a lot of misinformation out there about new technologies such as 5G. The FCC has tried hard to debunk some of those myths. She suggested the Commission could help educate policymakers about these new technologies. She also encouraged policymakers not to lose sight of the importance of education policy as an area related to digital success. Companies like AT&T need tech savvy employees and consumers.

Ms. COPE praised the Tennessee Broadband Accessibility grant program, saying that it has been the impetus needed to deploy broadband in areas that would not have otherwise been feasible to serve. In a study compiled by Ferdinand Difurio and others from Tennessee Technological University called “An economic impact study of a broadband expansion project in Tennessee,” it was estimated to cost \$1.7 billion to deploy broadband to the remaining unserved areas in the state. Even with the planned \$400 million investment by Tennessee Broadband Association members, additional funds are needed to bridge the digital divide in the state. Ms. COPE asked that the Commission recommend the continued funding of the grant program and maybe recommend increasing the funding because it is so necessary to the economic viability of this state.

Mr. KNOTTS said the Tennessee Electric Cooperative Association wants to see the Broadband Accessibility Grant Program continue and be funded at adequate or increased levels. He also recommended the examination of the territorial restrictions that exist on willing broadband providers. There are some electric co-ops that are nearing the territorial limits of where they can build out broadband to, and there are adjacent areas outside these limits they could provide broadband to if the law allowed it. He suggested that the Commission should also consider how the state might encourage continued investment in technologies that provide sufficient upload bandwidth.

In response to Mayor MCDONALD’s question about the possibility of wireless internet service, Ms. PHILLIPS said there are many situations where wireless is the best alternative. For example, fixed wireless can be a good option in areas that are sparsely populated. She emphasized the need to take advantage of all the technologies as opposed to thinking one technology is the wave of the future. Technology neutral policymaking that leaves room for new technology is important. Mr. KNOTTS added that electric cooperatives are primarily investing in fiber but some are investing in fixed wireless as well. Ms. COPE said that many members of their group are looking at deploying wireless technologies, and some are currently offering fixed wireless.

Mayor MCDONALD then asked how electric systems were built and whether something similar could be done with broadband service. Mr. KNOTTS replied that the federal government created the Rural Electrification Administration (REA). It helped and incentivized electric cooperatives, which are private corporations owned by the people they serve, to provide electric service in rural areas. This was the solution to the problem. There are very strong parallels between broadband deployment and electrification in the 1930s, but electric cooperatives don’t have a presence in every place that needs broadband.

Mr. MACKE said one of the key differences between electrification in the 1930s and broadband deployment today is the technology is rapidly changing with regard to broadband. There may be innovations in the way electricity is delivered but not at the same pace as you have in the communications industry. It is not only the scale of massive capital deployments for broadband but also the continual investment in the network and continual innovation of the technology that is important to bear in mind.

Ms. PHILLIPS highlighted significant distinctions between broadband deployment now and electrification in the 1930s. When electrification took place there were not multiple providers of power using the same ROW space. In the case of broadband, you already had several established communications service providers. She added that the life cycle of technology is eight years in the broadband industry; you can look to replace your infrastructure investment every eight years. This was not the case with the electric industry where an initial infrastructure investment was expected to last longer. Mr. ELROD said that the main difference between electrification then and the deployment of broadband today is that there wasn't the restriction on nonprofit electric utilities in the 1930s and 1940s like there is today. Currently there are municipal electric utilities whose broadband networks have been built out for years, but because of restrictions in state law, they are not able to provide broadband to people who live outside their service areas.

In response to Mayor HOLLAND's question about what restriction in state law prevents municipal electric utilities from providing broadband service in areas that need it, Mr. ELROD said that when the law to allow municipal electric utilities to offer broadband was passed there was a limitation put on them that they could only offer broadband in their electric service area. Mayor HOLLAND asked whether there would be a problem with rethinking the law. Mr. ELROD replied that they had been trying to get the law changed for many years. Removing regulatory barriers in state law would allow for more partnerships between municipal electric utilities and other municipal electric utilities or electric or telephone cooperatives that could help get broadband service to those areas of the state that are having difficulties getting service.

Mayor HOLLAND asked if an electric utility doesn't want to provide broadband in its service territory what would be their biggest objection to having another entity come in to provide broadband in the area. Ms. PHILLIPS responded that there has been a concern that a municipal electric that would go outside its territory and overbuild in an area that already has broadband. There have been pilot projects where that has happened. She said that now with better broadband mapping and the fact that the CAF has provided funding for some additional build out there might be an opportunity to find totally unserved areas where targeted expansion might make sense. Mr. MACKE stated that there were also concerns from a legislative standpoint about the risk of electric providers deploying capital beyond their territorial borders and the effect that might have on the electric ratepayers. Mr. ELROD said they are in favor of putting those decisions in the hands of local decision makers. If their needs for speed or service are not being met, municipal electric providers should have the opportunity to partner with another municipal or cooperative utility service provider.

In response to Senator YARBRO's question about what could be done to improve the broadband adoption rate in Tennessee, Ms. PHILLIPS suggested that government could explore more ways of subsidizing broadband service especially for lower income households. Public funding to help provide students with devices to access the internet could also make a meaningful difference. Moving as many things as possible to online platforms will move people to adopt broadband. She recommended that people keep in mind when developing online platforms that lower income people will use broadband first on a smartphone or tablet so the platforms should be designed to be mobile friendly. Mr. MACKE added that people might not be subscribing to broadband because they may not understand the relevance of the internet. He said it's important to partner with organizations, particularly nonprofits, who are already helping people and expanding digital literacy training. Investing in training is critical.

County Executive HUFFMAN asked whether the bonds a municipal electric provider issues for a broadband project are revenue bonds or bonds backed by the taxable authority of the city. Mr. ELROD answered that they are revenue bonds. He said he had never heard of there being problems with their bonds.

In response to County Executive HUFFMAN's question about the status of the FirstNet initiative and whether there will be sufficient megahertz (MHz) in Tennessee in the future, Ms. PHILLIPS said AT&T is the sole provider of FirstNet, a network with dedicated spectrum for emergency services that prioritizes first responder traffic. Spectrum dedicated to FirstNet should be adequate for the task. In the future, AT&T plans to continue to build out FirstNet sites to make the network more robust.

In response to County Executive HUFFMAN's question about how Tennessee compares to other southeastern states in terms of its accessibility to adequate broadband, Ms. PHILLIPS answered that there are still some tax policy improvements that would put the state on better footing like removing the cap on the sales tax exemption on equipment they use to build networks. Limiting government debt is also one of the most important things a government can do to make it attractive for broadband investment. When governments get too far into debt, property taxes are often the place they go to get money to pay off the debt by raising taxes. AT&T owns a lot of property in the state and pays property tax on it. Limiting property taxes can make an area more attractive for broadband development. She said that TVA needs to satisfy its goals of avoiding extra costs on electric providers while at the same time not chilling broadband deployment with high pole attachment costs. She suggested that one way to help with this would be to talk to electric providers about problems they may have with pole attachments that may be driving up their costs and whether there is anything AT&T and other providers could do to help them bring their costs down. One thing they have talked about with TVA is a valley-wide policy that would apply the existing formula for wireline to wireless attachments as well so that it was a technology neutral process.

Ms. Lauren SPIRES asked whether municipal electric providers and the electric cooperatives are offering broadband service to everyone in their service areas and how many unserved individuals actually have the option to sign up but choose not to. Mr. ELROD replied that most of the municipal providers serve their entire service area and if they don't it is their goal to serve all their customers. He said that people may not sign up for broadband because they think it is a luxury they don't need. Mr. KNOTTS responded that an electric cooperative that forms a subsidiary and becomes a retail internet service provider (ISP) is required by state law to provide service to all of its electric customers.

In response to Mayor Larry WATERS' questions about what sources are available to help local governments identify areas that need internet service and how local governments can get internet service to these areas, Ms. COPE responded that the Tennessee Broadband Association members work with local officials in their areas to see whether they can help provide a solution. The federal Rural Digital Opportunity Fund (RDOF) will provide funding to deploy broadband in these unserved and underserved areas. Mr. ELROD added that when municipal electric providers look to get in the broadband service they talk to elected officials and send out surveys to residents to find out whether they need service or are happy with their existing service. This helps them make a decision about deploying broadband in an area.

Ms. PHILLIPS said there are opportunities under state law to do a joint provisioning or community project where the local government can put out a request for proposal (RFP). A local government can do a sort of reverse auction for providers who may be interested in deploying broadband in an area with financial support from the community. During this time of COVID, some cities have decided to be the customer and pay all or part of the bill for access to the internet for families for a certain amount of time so their children can have access to the internet for educational purposes. Ms. PHILLIPS recommended that local governments first reach out to ECD Assistant Commissioner Arnold to get some examples of the state broadband grants they have done and some guidance about where to go to get the best broadband mapping for their community.



Mr. MACKE suggested that with regards to identifying homes that need internet service local governments often have better data about where homes may be located, and this would be a good starting point to make sure the prospective provider and local government are on the same page in terms of where these households are. Once you identify a cluster of homes looking to be served, try to get information on exactly how many want to be customers. This can dramatically affect the amount of capital that can be spent to deploy broadband, and you can find out the revenue that would result from connecting these people to the internet. If you need funding to deploy broadband, there are a number of options including the state grant program and numerous other federal grant programs. Local governments could also consider a tax abatement for the property taxes paid by private providers on their networks thus offsetting some of the cost that way. Communities have reached out about rolling back the pole attachment rate and create savings to help finance incremental investment in broadband. In Georgia, the county association has suggested a proposal to create a special service district created in partnership with the local government to help fund broadband deployment.

### *Small Cell Wireless Facilities—Draft Report for Review and Comment*

Dr. OWEN presented the draft report on Public Chapter 819, Acts of 2018, for review and comment. The Act, which created a framework governing the regulation of small cell wireless facilities in public rights-of-way, directed the Commission to study its effects and recommend any changes based on the Commission's findings. Small cells are typically installed on utility poles, streetlights, or standalone poles and are being used to enhance existing mobile wireless service and the latest advance in service referred to as 5G. Dr. OWEN reviewed the draft's findings. Although there are several new or enhanced applications for transportation that could be supported by small cells and 5G, there is skepticism regarding whether small cells and 5G will yield benefits in the short-term, given uncertainty about how soon advances in wireless services will fuel new products people are willing to pay for. Initial deployments of small cells have been located primarily in urban and suburban areas, so the effect on broadband deployment in unserved areas has been minimal, so far. Commission staff did not attempt to quantify the Act's fiscal effect because of the limited number of local governments that had received more than a dozen small cell applications at the time of their interviews, but several local officials raised concerns that limits for local application fees in the Act are too low.

Dr. OWEN said that aesthetics was the most widespread concern among local officials who were interviewed. He said that local officials already have authority under the Act to require small cells to conform with adopted aesthetic standards and many are using this authority. But adoption of aesthetic standards won't fully address the concerns of some local officials that installation of new poles for small cells would create visual clutter in public rights-of-way, because these standards must comply with other provisions of Public Chapter 819. Local governments are currently authorized to propose design alternatives, which include colocation on existing poles, during the application process. This offers applicants the opportunity to collaborate on solutions acceptable to both parties. However, some local officials are concerned wireless providers won't allow competitors to collocate on small cells on poles that wireless providers own.

DR. OWEN said that because the concerns related to community aesthetics are unlikely to diminish, the draft report includes two recommendations: First, the draft report encourages local governments to both update existing ordinances that set aesthetic standards for their communities to ensure their requirements apply to small cells and include small cells in any new standards they adopt. Second, the draft report finds that the General Assembly should consider authorizing local governments to require colocation of small cells in areas with existing poles. Care would need to be taken to ensure this authority could not be used to block the deployment of small cells in situations where applicants can demonstrate that colocation is not feasible either for technical reasons or because of added costs, similar to limitations on colocation requirements adopted in

Georgia. Regardless, some new poles will be necessary to improve wireless service given the limited distance traveled by some of the wireless signals used by providers. And because colocation will likely involve the use of electric utility poles, any colocation requirements should also ensure the continued authority of local power companies to protect the safety and reliability of the electric grid.

### *Local Government Revenue and Services—Draft Final Report for Review and Comment*

Executive Director Cliff LIPPARD said that the third and final report of the Commission’s comprehensive study of the revenue sources of counties and cities in Tennessee and the services counties and cities provide would be dedicated to the memory of former TACIR member and House Finance, Ways and Means Chair Representative Charles Sargent. Senior Research Associate Michael MOUNT then presented the report. The House Finance, Ways and Means Committee requested this comprehensive study during its discussion of House Bill 971 by Representative Sargent in the 110<sup>th</sup> General Assembly and directed TACIR to address the duties of counties and cities mandated by law and the funds that go from the state to counties and cities to comply with the law. Mr. MOUNT said the first interim report, published in February 2019, addressed online sales tax collection and distribution, and included recommendations to expand sales tax collection requirements to more out-of-state sellers. He added that the second interim report, published in January 2020, focused on K-12 education services and funding and included a recommendation for a comprehensive review of the components be made by the BEP Review Committee or other designated state and local officials and other stakeholders. He concluded by saying that the third and final report makes no specific recommendations but instead is intended to provide policy makers with the information needed for further discussion and policy consideration.

In response to a question from County Executive HUFFMAN about whether the single article sales tax will expire in July, Mr. MOUNT said that without action by the General Assembly, the streamlined sales tax provision set to take effect would change the single article cap in July 2021 and limit the tax to sales of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, and mobile homes. The cap currently applies to any sale. Mr. MOUNT added that since 2009, the General Assembly has delayed the implementation of this provision every two years. County Executive HUFFMAN asked how much local revenue is in jeopardy, and what the effect on state single article tax revenue would be, if this provision were to be implemented. Mr. MOUNT said revenue would increase through local option sales tax and for the state single article tax because the cap would be removed from certain items. County Executive HUFFMAN asked what the effect on state single article tax revenue would be. Mr. MOUNT said it would also increase.

In response to Mayor Jill HOLLAND’s question about whether there is a conflict in the principles that local government members of the Commission agreed should guide the Commission’s study, Executive Director Cliff LIPPARD said that the local members wanted to look at ways the state could do more to assist local governments but did not want the state to assist by shifting the distribution of revenue among cities and counties.

Mayor Tom BICKERS moved, and Mayor Rogers ANDERSON seconded, to approve the report; however, they later withdrew their motion after Mayor HOLLAND and Mayor MCDONALD each asked that additional information be added to the front part of the report. The mayors want it noted that local governments’ share of state-shared tax revenue has not again reached its 2002 level. The percentage declined in 2002 after tax rates for several taxes increased, but none of the additional revenues from the increases were shared with local governments. Staff will add this information and present the final report at the December 2020 Commission meeting.

*Right to Shop Programs in Healthcare—Draft Report for Review and Comment*

Senior Research Associate Jennifer BARRIE presented an overview of the draft report addressing cost savings of right to shop programs in other states. It was prepared in response to Public Chapter 407, Acts of 2019, Tennessee’s Right to Shop law, which directs the Commission to perform a study of any cost savings realized by enrollees with health plans in other states that have adopted incentive program legislation or incentive programs that reward enrollees for shopping and choosing lower-cost healthcare service providers. The study is to include cost savings resulting from programs offered by both private health plans and state employee health plans and, at a minimum, to look at programs in Arizona, Florida, Kentucky, Maine, and New Hampshire. The final report will be presented for the Commission’s approval at the December meeting and is due to the General Assembly no later than December 2020.

Ms. BARRIE summarized the draft report’s findings, noting that it does not make any recommendations. Shopping for healthcare services can result in some savings for both consumers and insurers, and when price tools are combined with incentive programs, they have the potential to save more. A few states have implemented incentive programs for state or other government employee health plans or have required private plans to implement them. But usage for both the tools and the incentive programs varies widely. The data show the programs produce cost savings, but there is not yet enough data to determine whether the savings are significant over the long term.

Mayor BICKERS commented that medical care is not a commodity, and he is concerned that the report portrays it that way. He would like the report to acknowledge that people consider more than just cost when making decisions about their medical providers and that patients’ relationship with their doctors is not a hurdle but is a natural part of healthcare. He would also like more focus on the importance of educating consumers about their healthcare and their choices. There are different ways they can save money, such as when making choices about their health insurance plan. Ms. BARRIE responded that the report can address those concerns.

Chairman Robin SMITH commented that she plans to introduce legislation next session that will expand services and savings opportunities. She agrees that incentive programs enhance participation, but legislators need to help promote the tools. In response to a question from Mayor MCDONALD about the range of participation rates, Ms. BARRIE said more detail can be added to the report about the rates. In response to Mayor Jill HOLLAND’s question about people’s access to and awareness of the public shopping tools, Ms. BARRIE explained that 14 states have public tools that anyone can access, but Tennessee does not have one. Most insurers already have online tools and toll-free phone numbers that their enrollees can use to shop, but for people without insurance, it is more challenging to gather the cost information. She also clarified that people who are using their insurer’s tool would be shopping in their insurer’s network, but people using a public tool would be searching the providers listed on those websites, not necessarily ones that are in their insurer’s network. Mayor Terry FRANK asked whether the programs include pharmacy. Ms. BARRIE said that because pharmacy is usually separate from medical services, the programs in other states do not include pharmacy, but it could potentially be included in a separate shopping program.

Mayor BROOKS asked whether the report could encourage the state of Tennessee to establish a public website modeled on New Hampshire’s. Ms. BARRIE said the report provides information about the other states that have websites, including cost, but does not encourage Tennessee to start one. During conversations with staff, stakeholders in other states that manage websites said it is a costly and challenging undertaking to start and maintain the websites. Mayor BICKERS agrees with the idea of a recommendation but expressed concern about listing providers and cost information on a website without also having information about quality. We

want to encourage people to make the most cost-effective decision that provides them with the care they need and not just to choose the cheapest provider. Director LIPPARD responded that although there are concerns about the cost of a website, if it is the will of the Commission, staff could develop a recommendation for the state to develop a public website and present it in the final report at the December meeting.

## December 17, 2020

### *Broadband Internet Deployment, Availability, and Adoption—Draft Report for Review and Comment*

Policy Coordinator Dr. Matthew OWEN presented the draft report on Public Chapter 228, Acts of 2017, for review and comment. The Act directed the Commission to update its 2017 report on broadband deployment, availability, and adoption in Tennessee. Consistent with recommendations in the Commission’s 2017 report, the Act also

- established a state grant program to help offset the cost of expanding coverage in unserved areas, while authorizing the program to grant funds to libraries to help facilitate broadband adoption;
- established a tax credit for broadband investment in tier 3 and tier 4 enhancement counties;
- removed barriers to entry for would-be providers by authorizing electric cooperatives to provide broadband within their electric service areas; and
- established a pathway for communities to signal providers that they have streamlined local permitting processes and removed regulatory barriers to broadband investment.

Dr. OWEN said that both broadband access and broadband adoption in Tennessee continue to increase. According to the latest data available from the Federal Communications Commission (FCC), approximately 93.7% of Tennesseans live in census blocks where at least one provider reported offering service with a capacity of at least 25/3 as of December 2019, compared with 88.3% in December 2015. Dr. OWEN noted that because the FCC data do not show whether everyone in these census blocks has access to service at the reported speeds, this represents the maximum extent of coverage. Regarding adoption, 58% of households in census blocks where at least one provider reported offering broadband subscribed to the service, according to the FCC’s 2020 broadband progress report, which relies on December 2018 data. Four years earlier, the rate was only 40%.

In response to Representative John CRAWFORD’s request for coverage maps with improved image quality, Dr. OWEN said that they would be provided. He added that staff intends to produce development district level maps that will provide a more focused picture of coverage in subsections of the state and hopefully be easier to read.

Dr. OWEN next presented the draft recommendation related to facilitating broadband adoption. He described some of the efforts undertaken by local libraries and schools to improve broadband adoption in their communities, saying that the draft report also highlights recent funding for these efforts. He said that because of the role libraries and schools play in their communities and the importance of tailoring broadband adoption efforts to meet local needs, the draft report recommends that the state and local governments should continue to identify opportunities to increase funding for libraries and schools to assist their efforts to facilitate broadband adoption and short-term access in their communities—including support for digital literacy classes, devices, hotspots, and other efforts to make broadband available to those who either don’t have or cannot afford service. For libraries, in particular, the state should continue to provide funding for broadband adoption efforts through the state’s broadband grant program.

County Clerk Mary GAITHER noted that in Tipton County they have six buses parked in various locations across the county that provide hotspots that are being used for students. Dr. OWEN said that information can be included in the report. Vice Chairman BROOKS added that the parking lots of the Cleveland City Schools and the Cleveland Chamber of Commerce have been outfitted with WiFi access points to provide broadband access for families so that their children can complete assignments requiring the internet. Dr. OWEN said providers interviewed for the report have also said that WiFi access points they have deployed in their communities are helping students and others who need service get access to broadband.

Dr. OWEN next discussed the Tennessee Broadband Accessibility Grant program administered by the Tennessee Department of Economic and Community Development (ECD), which awards funding to offset the cost of expanding broadband in unserved areas. The program has awarded a total of more than \$44.3 million, helping fund 39 projects in communities that will result in 26,300 previously unserved homes and businesses receiving broadband. However, he said there are still at least 131,000 homes in census blocks where no provider reported 25/3 service as of December 2019 that won't receive broadband from existing state- or federally funded projects, according to TACIR staff estimates. Based on the median cost per location for projects in the first three rounds of the state grant program—approximately \$4,028 per location, including both the state's share and the applicant match—the total cost to cover these homes could be approximately \$529 million.

Because of the challenging economics of providing broadband in some unserved areas, Dr. OWEN said that filling the remaining coverage gaps will likely require a combination of public and private resources. Requirements to build out broadband to unserved homes and businesses included in each grant—which providers must meet to receive their full grant awards—help ensure that state funding spent through the program results in coverage expansions. While only one round of projects funded by the state grant program has been completed, projects in that round not only met but collectively exceeded their buildout requirements. As a result, he said that the draft report recommends that the state should keep supporting efforts to expand broadband access in Tennessee by continuing to fund the broadband grant program and could consider increasing its annual appropriations to accelerate broadband expansion to more unserved areas.

Dr. OWEN said that in its discussion of other potential government incentives that could be established for broadband providers, the draft report emphasizes that the buildout requirements included in the state grant program help protect the state if projects fail and tie receipt of state funding directly to the expansion of broadband access. Moreover, ECD caps the state's share of project costs under the grant program at 50%. He said that while the exact structure of the grant program's requirements might not be transferrable to every state or local incentive, the goal of reducing risk to taxpayers is. The draft report recommends that the state and local governments should consider tying any new incentives for broadband providers directly to coverage expansions, while limiting the overall share of project costs that those incentives pay for.

Dr. OWEN last discussed the report's recommendation related to the territorial restrictions on municipal utilities and electric cooperatives providing broadband in Tennessee. He said that Public Chapter 228, Acts of 2017, authorized electric cooperatives to become retail broadband providers within their electric service areas, consistent with recommendations in the Commission's 2017 report. But electric cooperatives—like municipal utilities—remain subject to territorial restrictions that, with limited exceptions, prevent them from providing broadband outside of their electric service areas. Dr. OWEN said that even without the current territorial restrictions, cost will still be a barrier in some areas. The potentially high cost of building broadband networks introduces risks to which electric cooperatives and municipal electric systems are not immune. The draft report finds that who shoulders these risks is important.

Dr. OWEN said that like any other provider, electric cooperatives and municipal electric systems often take on debt to finance the construction of their broadband networks. For debts backed by electric system assets or revenues, if broadband revenue isn't enough to make debt payments, electric ratepayers shoulder the risk of repaying them. While the risks can be justified inside a cooperative's or utility's electric service area at least in part based on the benefits to electric ratepayers that can result from communications networks that support management of the electric grid, this dual justification doesn't exist for a cooperative or utility outside its electric service area.

State law prohibits electric cooperatives and municipal utilities from using their electric operations to subsidize their broadband operations. However, these provisions don't prevent cooperatives or utilities from pledging electric system assets and revenues to finance the construction of their broadband networks within their electric service areas. Because of the risks involved in broadband projects, Dr. OWEN said the draft report recommends that if the state were to eliminate or ease existing territorial restrictions on electric cooperatives and municipal electric systems, it should consider ways it can protect electric ratepayers, for example, by prohibiting these cooperatives and utilities from pledging, loaning, or otherwise using electric system assets or revenues to finance broadband projects outside their electric service areas.

In response to Mayor Jill HOLLAND's question about whether the draft report recommends that the electric cooperatives be authorized to go outside their service area to provide broadband service, Dr. OWEN responded that the draft report does not take a position on whether the state should or should not ease or eliminate the territorial restriction on electric cooperatives. He clarified that the draft recommendation says that if the state were to eliminate the territorial restriction, then it should consider ways it could protect electric ratepayers. Mayor HOLLAND then asked whether he said the broadband infrastructure would be attached to the existing utility poles. Dr. OWEN responded that whether wireline infrastructure is attached to utility poles can vary from project to project. He said that in areas where the construction of the network is above ground, it's very common for the fiber optic cable or other wireline infrastructure to be attached to utility poles.

In response to Assistant Commissioner Sammie ARNOLD's question about whether a 3-megabit per second upload speed is good enough to support two-way video, Dr. OWEN answered that the system or connection requirements recommended by a lot of the commonly used video conferencing platforms say that a 3-megabit per second upload speed should be fast enough. However, he said the report notes that there is at least one major university system that is recommending that its students have greater upload speeds. And he said providers have told TACIR staff that since the onset of the pandemic they have seen many of their customers choose to subscribe to faster service because of increased use at home. He said that the number of individuals sharing a connection at one time can also affect whether that connection is fast enough. He said that technology that can be scaled to accommodate faster speeds can help ensure that future broadband needs are met, and he said that the scalability of technology is one of the metrics ECD's staff takes into consideration when scoring grant applications.

Vice Chairman BROOKS observed that the report discusses the well-known limitations of the FCC's coverage data. He said that when Georgia created its own state broadband map it showed a 32% increase in the number of census blocks designated as unserved when compared with the FCC broadband map. He said many communities in our state could greatly benefit from a better mapping system, and he wondered whether a stronger recommendation for the state of Tennessee to create its own map would be pertinent and substantially helpful. Dr. OWEN replied that is something the state could do. He mentioned that staff spoke with Georgia officials about their mapping project, and he said having more detailed coverage data would be of benefit for the state. He said that although Congress has passed a law directing the FCC to improve the quality of its

coverage data in a way that will show more specifically which locations have service and which don't, we are in limbo concerning when that map will be implemented, and the FCC has not been appropriated the funding yet to undertake the improvement. Once they get that data, we do not know at what level that data will be made available to the state. He said he could also provide more data for the final report on what mapping would cost the state and whether there are options for the state to do that in house or contract out with third parties.

Vice Chairman BROOKS said that he thinks the map is something the state could take on. He said this would help the legislature make decisions based on better empirical data. Mayor Tom BICKERS said that he agreed that we could include a recommendation in the report that the state create its own map, so we have more accurate information. County Clerk GAITHER agreed with Vice Chairman Brooks and Mayor Bickers. She suggested that staff consider whether the providers could be required to report the locations where broadband is available and the speeds that are available.

Vice Chairman BROOKS asked whether the Commission should vote on adding the recommendation to the report or just make the recommendation verbally. Executive Director LIPPARD said he did not think it required a vote. Vice Chairman BROOKS asked whether there were any objections from the Commission. There were no objections.

### *Small Cell Wireless Facilities—Final Report for Approval*

Policy Coordinator Dr. OWEN presented the final report on Public Chapter 819, Acts of 2018, for approval. Dr. OWEN said that because concerns related to the effect of small cells on community aesthetics are unlikely to diminish as the number of small cells increases, the report includes two recommendations: First, the report encourages local governments to both update existing ordinances that set aesthetic standards for their communities to ensure their requirements apply to small cells and include small cells in any new standards they adopt. Second, the report finds that the General Assembly could consider authorizing local governments to require colocation of small cells in areas with existing poles. Care would need to be taken to ensure this authority could not be used to block the deployment of small cells in situations where applicants can demonstrate that colocation is not feasible either for technical reasons or because of added costs, like limitations on colocation requirements adopted in Georgia. Regardless, some new poles will be necessary to improve wireless service given the limited distance traveled by some of the wireless signals used by providers. And because colocation will likely involve the use of electric utility poles, any colocation requirements should also ensure the continued authority of local power companies to protect the safety and reliability of the electric grid.

In response to Mayor Jill HOLLAND's question about whether current law authorizes local governments to regulate the aesthetics of small cells but prevents them from requiring that they be placed in certain locations or colocated on existing poles, Dr. OWEN said that she is correct. Public Chapter 819, Acts of 2018, authorizes local governments to set aesthetic standards for small cells provided that the standards are non-discriminatory, generally applicable, and don't preclude all deployment of small cells. However, local governments must allow small cell applicants to seek waivers that would authorize placement of new poles for small cells in areas where electric, cable, and other communications infrastructure is otherwise required to be underground; they cannot require that small cells be placed on specific poles or categories of poles, preventing them from requiring colocation on existing poles; and they cannot require that small cells or the poles supporting them be spaced a minimum distance apart.

Mayor Buddy BRADSHAW moved that the report be approved. Mayor Tom BICKERS seconded the motion. The Commission unanimously approved the report.

### *Local Government Revenue and Services—Final Report for Approval*

Senior Research Associate Michael MOUNT presented the final report for the Commission's approval. He presented language that was added to the report as requested by Mayor Keith MCDONALD and Mayor Jill HOLLAND. Mayor Terry FRANK moved, and Mayor Tom BICKERS seconded, to approve the report, which passed unanimously.

### *Right to Shop Programs in Healthcare—Final Report for Approval*

Senior Research Associate Jennifer BARRIE presented the final report addressing cost savings of right to shop programs for the Commission's approval. Ms. BARRIE explained that revisions were made to the draft report to address questions and concerns expressed by Commission members at the November meeting. She said detailed information was added to the report about resources and assistance available to consumers, the cost and challenges for states when implementing healthcare cost websites, and participation rates in other states' employee health plan incentive programs. The final report also emphasizes that healthcare is not a commodity and that quality is as important as cost.

The findings of the report remain the same, except for one additional sentence that was added highlighting the importance of consumer education and promotion of the tools. The final report found that shopping for healthcare services can result in some savings for consumers and insurers, and when price tools are combined with incentive programs, they have the potential to save more. But usage for both the tools and the incentive programs varies widely. A few states have implemented incentive programs for state or other government employee health plans or have required private plans to implement them. During interviews with Commission staff, stakeholders emphasized the importance of educating consumers about healthcare and promoting the tools to encourage their use. The data show that the programs produce cost savings, but there is not yet enough data to determine whether the savings are significant over the long term.

Mayor Jill HOLLAND moved that the report be approved. County Clerk Mary GAITHER seconded the motion. The Commission unanimously approved the report.

### *Shared Resources in Counties with Multiple School Systems—Final Report for Approval*

Research Associate Emma JOHNSON presented the final report for approval. The report was prepared in response to Senate Joint Resolution 593 of the 110<sup>th</sup> General Assembly, sponsored by Senator Haile, which directs TACIR to study the overall effects on public K-12 education of the laws relating to the sharing of resources among school systems in the same county. SJR 593 further notes that "the creation of new school districts has in the past created conflict regarding the ownership of existing school buildings and facilities." In response, the report also considers options for the transfer of school property to new city school systems.

Ms. JOHNSON summarized changes that were made to the report since the draft was presented at the September 2019 Commission meeting. Additions to the report include maps and tables showing school systems by county, the number and type of school systems by county, and grades served by school systems; information about a proposed new school building in Jonesborough; information on Tennessee statutes and case law pertaining to building transfer issues; clarifying language regarding student and taxpayer inequities;



and, following an October 2020 meeting of the Commission's local government working group, language reiterating the need for a comprehensive review of the Basic Education Program funding formula. Ms. JOHNSON explained changes to the mixed drink tax revenue distribution statute that occurred since the draft report was presented and said the report's recommendations, with the exception of the mixed drink tax recommendation that was removed, remain largely unchanged from the draft report.

Mayor Tom BICKERS moved to approve the report and Mayor Terry FRANK seconded the motion. The Commission voted to approve the report with only Representative Antonio PARKINSON abstaining.

### *Tennessee Valley Authority Payments in Lieu of Taxes—Update*

Senior Research Associate Bob MOREO presented an update of issues potentially affecting the payment in lieu of taxes (PILOT) from the Tennessee Valley Authority (TVA), including the status of TVA's long-term wholesale power contracts with local distributors and that Memphis Light, Gas and Water (MLGW) is studying whether to leave the TVA system. This update was requested by the Commission when these issues were originally discussed as part of the Commission's January 2020 annual report. In addition, Mr. MOREO updated the Commission on the potential effects that COVID-19 may have on the PILOT.

Mr. MOREO said that, as of November 16, 142 of the 153\* local power companies (LPCs) TVA serves had signed new 20-year agreements that include 3.1 percent credits for the LPCs, up from 131 at the time of the Commission's January 2020 report. [\*Two companies merged in July 2020, reducing the total number of LPCs from 154 to 153.] These LPCs were responsible for 81.5% of TVA's revenue from sales of power to LPCs and 75% of total operating revenue in federal fiscal year 2020. The long-term partnership credits were valued at \$163 million in TVA's 2020 federal fiscal year, reducing the potential overall PILOT by \$8.1 million. Based on TVA's projected revenue for federal fiscal year 2021, Mr. MOREO said the credits this year could total between \$190 and \$200 million.

Mr. MOREO said that MLGW's current contract with TVA has a 5-year termination notice, and that MLGW has not agreed to a new 20-year partnership contract. The MLGW board approved an Integrated Resource Plan (IRP) in July 2020, which detailed several power supply alternatives that include the possibility of leaving TVA. However, Mr. MOREO explained that the Memphis City Council voted down a contract with the consultants MLGW chose to help it through the process of obtaining the bids necessary to make that decision, leaving MLGW unsure how to continue, adding that if MLGW continues to move towards a bidding process for power outside TVA, it will likely be 12 to 18 months before a decision can be made and the five-year TVA contract termination period would begin.

Mr. MOREO said that, without revenue from selling power to MLGW, TVA's PILOT for all its states could be reduced by nearly \$50 million, and because Tennessee's share of TVA's power sales would drop from 67% to 63%, Tennessee could see its PILOT amount reduced by nearly \$42 million. However, Mr. MOREO explained that a provision in Public Chapter 1035, Acts of 2010 (Tennessee Code Annotated, Section 67-4-3101), could restore some of that money, but how much will depend on how MLGW and its new suppliers structure their contracts. Mr. MOREO said that if MLGW chooses to leave TVA, federal fiscal year 2028 would potentially be the first year of significantly reduced revenue, resulting in possible lower PILOT amounts for 2029 and beyond.

Finally, Mr. MOREO discussed how COVID-19 (novel coronavirus disease) may affect the PILOT—stating that, while business activity has recovered somewhat since the initial outbreak, decreased demand for

electricity is affecting TVA's revenue, which reduces the PILOT amount. Mr. MOREO also said that in August 2020 the TVA Board approved a \$200 million Pandemic Relief Credit in federal fiscal year 2021 for its LPCs, their large commercial and industrial customers, and TVA's directly served customers. With this credit and a slowly recovering economy, TVA is projecting FFY 2021 revenue will remain slightly below FFY 2020, meaning PILOT payments received in late 2021 and most of 2022 are likely to be similar to current amounts.

Mayor FRANK asked whether the provisions of Tennessee Code Annotated, Section 67-4-3101 would require legislative clarification or whether the application of this section is a matter for the Tennessee Department of Revenue to decide. Mr. MOREO responded that this section was originally intended to manage the situation of TVA leasing its facilities and then buying power back from that entity. Furthermore, he said that there has not been a situation where this section has been tested and that if it were to be applied then there could be questions; however, the process would be that TVA provides the PILOT to the Tennessee Department of Revenue and the department makes the decision on how to distribute the funds based on the state's distribution formula.

Representative PARKINSON asked for the purpose of this update to the Commission. Mr. MOREO replied that the purpose was to provide information regarding issues that had the potential to affect the PILOT. Director LIPPARD added that the January 2020 report to the Commission had brought up these issues and that the Commission asked staff to monitor the evolving situation and then to provide an update on the status.

## January 7, 2021

### *Broadband Internet Deployment, Availability, and Adoption—Final Report for Approval*

Policy Coordinator Matthew OWEN presented the final report on broadband deployment, availability, and adoption in Tennessee for approval. He described changes made to the report since the draft was presented at the December 2020 meeting, including the addition of maps in two appendixes, a revised staff estimate of the number of homes remaining in census blocks where no broadband provider reported service of at least 25 megabits per second download and three megabits per second upload as of December 2019 that are unlikely to receive service through existing state- or federally funded projects, and a new recommendation added to the report based on feedback from Commission members that the state should obtain improved broadband coverage data from providers and develop its own broadband maps. Vice Chairman Kevin BROOKS said that in contrast to the federal data, a recent study shows that 26% of Bradley County lacks broadband access and that obtaining better coverage data is important for the state and its local governments.

Vice Chairman BROOKS proposed that the report's final recommendation be strengthened to recommend that the state should consider eliminating or easing existing territorial restrictions on electric cooperatives and municipal electric systems—which currently prevent them from providing broadband outside their electric service areas—and in doing so, the state should also consider ways it can protect electric ratepayers, for example, by prohibiting these cooperatives and utilities from pledging, loaning, or otherwise using electric system assets or revenues to finance broadband projects outside their electric service areas. In response to Chairman Mike CARTER's question about whether the amended recommendation would direct the state to remove the territorial restriction or simply consider removing it, Vice Chairman BROOKS clarified that the recommendation is that the state consider removing the restriction. The amended recommendation was moved by Mayor Tom BICKERS, seconded by Mayor Rogers ANDERSON, and approved unanimously.

Vice Chairman BROOKS moved approval of the amended report with Mayor Terry FRANK seconding the motion. The amended report was approved unanimously.

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

Senior Research Associate Rabia CHAUDHRY presented the report for approval. Ms. CHAUDHRY said the report documents \$58.6 billion of needed infrastructure improvement projects, which were in development during the five-year period of July 2019 through June 2024.

Mayor Keith MCDONALD moved approval of the report with Vice Chairman Kevin BROOKS seconding the motion. The report was unanimously approved.

### *Tennessee Valley Authority's Payments in Lieu of Taxes—Annual Report for Approval*

Senior research associate Bob MOREO presented the annual update on Tennessee Valley Authority (TVA) payments in lieu of taxes (PILOT) for approval. He said that while the Commission sees no immediate need for legislative changes, TVA's revenue from power sales fell by \$1 billion in federal fiscal year 2019-20—due in part to reduced demand for electricity amid the COVID-19 pandemic—leading to a sharp, unexpected drop in PILOT funding. The report says that the slowly recovering economy, along with long-term contract incentives for local power companies and pandemic relief credits for TVA's distributors and large commercial and industrial customers, could continue to have a negative effect on revenue and TVA's overall PILOT. Mr. MOREO said that TVA's largest customer, Memphis Light, Gas and Water (MLGW), is studying whether to leave the TVA system, which could reduce the PILOT significantly. The report explains the possible timeline for when these changes could begin to take effect, points out existing provisions in Tennessee law that could help the state recoup some of the potential loss, and notes that local governments served by MLGW would no longer receive PILOT funds through the state's allocation formula.

Mayor Jill HOLLAND moved approval of the report with Representative Susan LYNN seconding the motion. The report was unanimously approved.

After the vote, County Executive Jeff HUFFMAN asked whether staff were aware of any long-range studies of the potential impact electric vehicles might have on electricity consumption. Mr. MOREO shared that the TVA board had recently adopted a policy regarding electric vehicles and that staff will look into it and include something in next year's report. County Executive HUFFMAN expressed his concern that revenue for local governments from fuel taxes will decrease as electric vehicles replace gasoline-fueled ones. He wonders whether there would be an increase in the TVA PILOT from the electricity used to charge these vehicles. Mr. MOREO said he had not read anything yet that would indicate enough electric vehicles were in use to affect overall electric demand, and that increased energy efficiency in other areas is driving demand downward in a way that might offset increases from electric vehicles. He said that many other states are concerned about decreased revenue from fuel taxes, but that the topic goes beyond the scope of this particular report.

County Executive HUFFMAN also asked Mr. MOREO to clarify the time it would take for the loss of revenue to affect the PILOT were MLGW to leave the TVA. Mr. MOREO said that in the case that MLGW decides to end its contract with TVA, it would continue to purchase its power from TVA through the five-year termination period. He explained that the TVA PILOT is determined by TVA's revenue from the previous fiscal year, using an example that if the termination period were to coincide with the end of TVA's fiscal year 2027-28,

then TVA's revenue in 2028-29 would be lower without MLGW, meaning a lower PILOT in federal fiscal year 2029-30.

Mayor Keith MCDONALD said he supports County Executive HUFFMAN's questions and shares his concern about decreasing revenue for infrastructure. He also wants to be prepared for the possibility of MLGW leaving.

Vice Chairman Kevin BROOKS said he gets asked in his community about more support for electric vehicles and sees sales of EVs increasing. He supports further discussion of the issue.

Mayor Tom BICKERS echoed the concerns about the effects on revenue that increased electric vehicle use may have and thinks the Commission should work on the issue.

Executive Director Cliff LIPPARD suggested that staff can gather information and speak to various state agencies to see what research has already been done. If other work is in progress, then staff will share it with the Commission. If there is a need for more research, then staff will prepare a research plan for the next commission meeting. Anything relevant to the TVA report will be shared as an update. Mayor BICKERS supported the idea to prepare a plan for a new study.

## **June 9, 2021**

### *Fiscal Year 2020-21 Accomplishments*

Deputy Executive Director Melissa BROWN summarized the Commission's major accomplishments for the past fiscal year, which will be incorporated into the commission's biennial report for fiscal years 2020-21 and 2021-22.

### *Legislative Update*

Senior Research Associate Emma JOHNSON reviewed legislative action during the first session of the 112<sup>th</sup> General Assembly on issues related to Commission studies. The legislature passed or considered legislation on several issues related to the Commission's work, some dealing directly with findings and recommendations from Commission reports. Ms. JOHNSON noted the laws that were passed consistent with the Commission's recommendations from its reports regarding internet sales tax and county jails.

Ms. JOHNSON said the General Assembly enacted three pieces of legislation requiring studies by the Commission pertaining to the feasibility of creating a state gold depository, non-fish and game recreational activities, and childhood obesity. A fourth study was requested by the Speakers of the House of Representatives and the Senate on issues pertaining to right-of-way reservations. The House of Representatives additionally passed a bill requesting a Commission study regarding disparities in the issuance or award of state contracts to businesses owned and operated by African Americans.

### *Work Program Amendment and New Research Plans*

Deputy Executive Director Melissa BROWN presented seven amendments to the fiscal year work program for the Commission's consideration, and all passed unanimously. An eighth amendment was added during the meeting and passed unanimously. The first study required by Public Chapter 585, Acts of 2021, directs the

Commission to study the feasibility of creating a state gold depository. Public Chapter 503, Acts of 2021, directs the Commission to conduct a comprehensive evaluation on the socioeconomic impact childhood obesity has in Tennessee and its short and long-term effects. Public Chapter 497, Acts of 2021, directs the Commission to study funding for all non-fish and game recreational activities, particularly the use of non-motorized vessels. The Speakers of the Senate and House requested a study of Senate Bill 1604 by Senator Bailey and House Bill 366 by Representative Williams related to right-of-way. The bill would require local governments to pay property owners if they take possession of rights-of-way. Senate Bill 1235 by Senator Gilmore and House Bill 1593 by Representative Miller, which passed the House but not the Senate, requests the Commission study disparities in the issuance of state contracts to businesses owned and operated by African Americans. Regarding studies requested by the Commission, at its January 2021 Commission meeting, several members raised concerns about the increased adoption of electric vehicles (EV) as replacements for gas- or diesel-powered vehicles and the potential for reduced state-shared tax revenue—specifically from state fuel taxes—that the state and local governments use to build and maintain roads; the possibility that any decrease in revenue from one state-shared tax might be at least partially offset by increases from another; and members noted the growing demand from residents for more EV charging infrastructure and asked staff to study these issues.

Chairman YAGER, on behalf of the city of Oak Ridge, requested a study related to the Tennessee Department of Environment and Conservation’s (TDEC) post-award grant implementation process. During discussion of the request, members said there were similar issues with grants awarded by other state agencies including the Tennessee Department of Transportation and the Department of Economic and Community Development—issues with grants seem to stretch across all state departments and staff was asked to include grants that are awarded to non-profit organizations as part of their research. Commission members also said there are issues with changing rules and requirements once grants have been awarded and asked staff to clarify the source of grant requirements—state or federal—and whether requirements are established by the state or federal government or whether it is part of administrative rule making. The Commission directed staff to offer recommendations on how the grant system can work more efficiently and be less burdensome. Mayor BICKERS moved to expand the scope of the study to include a more systematic review of the grant implementation and enforcement process in Tennessee utilizing the experience of Oak Ridge with the TDEC grant. Senator YAGER seconded the motion, which was adopted without objection.

Prompted by what began as an issue of illegally dumped tires in Cleveland, Tennessee, Vice Chairman BROOKS requested that the Commission study the issue of litter in Tennessee—what is the problem and why are we not solving the problem. He said that Tennessee currently ranks 47<sup>th</sup> in trash, litter, and the recovery of these items in the state. In response to a question from Senator LUNDBERG about the specific focus of the study, Vice Chairman BROOKS said he wants Commission staff to focus on why litter, and the enforcement of litter ordinances, are not working. He agreed that it is a broad issue, but it is not one regarding bottles or deposits. In response to Senator LUNDBERG’s question as to whether commission staff had enough direction for the research, Executive Director LIPPARD said it will be a large study and the first steps will be to determine the extent of the problem and what is the available data on the issue. Senator LUNDBERG said litter had been a focus of the General Assembly for several years, with a couple of issues being defeated and those issues don’t need to come into this study—the “so called bottle bill” and mandating alternatives to plastic grocery bags. Mayor BRADSHAW said he wants the report to include language that would make it simpler to offer rewards to catch individuals who illegally dump. Mr. PEACH requested staff review the convenience and costs of trash disposal for citizens and how it affects illegal dumping. Staff was directed to provide information on funding of litter programs and how the money is distributed.

Regarding research plans for the potential studies, Mayor FRANK asked that the litter study address obstacles of enforcing litter laws; that the childhood obesity study address food banks and the quality and types of foods that are made available to people in distressed areas or those in need and that staff look at the effect of access to food on obesity; and asked for clarification on the fees mentioned in the water resources research plan—are the fees for managing or policing.

Representative PARKINSON moved for the adoption of the five work program amendments related to legislatively requested studies with Senator LUNDBERG seconding the motion. The motion passed unanimously—20 ayes.

Mayor BICKERS moved for the adoption of the three amendments to the work program requested by commission members with Mayor ANDERSON seconding the motion. The motion passed unanimously—20 ayes.

### *Fiscal Capacity for Fiscal Year 2021-22*

Senior Research Associate Michael MOUNT presented the annual update on TACIR's fiscal capacity index and background information about the index and education funding in Tennessee. He provided an update of Tennessee's 95 counties' 15-year fiscal capacity trends. Mr. MOUNT said that almost all the data used for TACIR's fiscal capacity calculation predates the COVID-19 pandemic.

Mayor Keith MCDONALD asked whether the fiscal capacity calculation takes the cost of living into account. Mr. MOUNT said that it does not, but the cost of living may be reflected in per capita income or sales tax base, for instance. [Staff note: the cost of living is reflected in the state's Basic Education Program (BEP) model.]

Mayor Terry FRANK asked whether the fiscal capacity calculation takes tax increment financing (TIF) agreements into account. Mr. MOUNT said that it does not and that, in general, local decisions are not meant to affect the fiscal capacity calculations. He referred to TACIR's 2018 report Encouraging More Cooperation and Accountability in Payment in Lieu of Tax Agreements, which includes information about TIFs. Executive Director LIPPARD said that in that report, the Commission recommended that the fiscal capacity calculation should be updated to include current Industrial Development Board assessment amounts rather than the 1993-1995 PILOT payments data currently used. He added that the Commission does not have the autonomous authority to do this. Rather, it would have to be approved by the commissioners of the departments of Finance Administration and Education. He said the issue will be discussed later this year with the Basic Education Program Review Committee, and that he'd keep the Commission informed of any changes that come out of that. [Staff note: After the meeting, Mayor FRANK was emailed contact information for experts knowledgeable about the TIF issue: Greg LeRoy (goodjobs@goodjobsfirst.org; 202-232-4258) and J. Thomas Trend, Jr. (ttrent@bradley.com; 615-252-2327).]

### *Electric Vehicles and Other Issues Affecting Road and Highway Funding—Update*

Senior Research Associate Bob MOREO presented an update to the Commission on the topic of electric vehicles (EVs) and other issues affecting road and highway funding, which was requested at the Commission's January 2021 meeting. Mr. MOREO said that increased EV adoption could reduce state-shared revenue, but the effect would be small compared with the reduction in that revenue related to inflation and increased fuel efficiency in general. He explained that the existing \$100 annual registration fee paid by EV owners should make up for

the loss of state fuel tax revenue, but because that fee currently goes entirely to the state highway fund, local governments would receive less shared revenue from the state.

Mr. MOREO compared Tennessee’s vehicle-related taxes and fees to those in other states, noting how some states distribute revenue from their EV-registration fees to local governments, or use a portion to help expand their EV-charging networks. Even as EVs become more common, Mr. MOREO said the amount of electricity used to charge them is such a small fraction of total consumption that any resulting increases in the payments in lieu of taxes (PILOTs) the state receives from the Tennessee Valley Authority (TVA) will be minimal. However, he said some of the potential increase would go to local governments, helping to offset their reduced fuel tax revenue. Mr. MOREO concluded by saying the forthcoming report will include the latest initiatives the state, TVA, and other stakeholders are using to increase EV adoption and develop the state’s charging infrastructure.

Mayor Tom BICKERS suggested that the tipping point for rapid growth of the electric vehicle market is coming sooner than some estimates predict, and that he doesn’t want the state to underestimate the speed at which EVs will take over. He also asked staff to stress the point that EV-registration fees are not shared with local governments and do not make up for decreases in shared fuel tax revenue.

## ***Fiscal Year 2021-22 Scheduled Commission Meetings***

### **September 15-16, 2021**

#### *Right-of-Way Dedications and Land Use—Panel*

Mr. Bill TERRY, senior research consultant, preceded his introduction of the panelists by disclosing to the Commission that he is a registered lobbyist with the Tennessee chapter of the American Planning Association (TAPA) and had told TAPA he could not represent them if the bill comes back up. Representative Ryan WILLIAMS asked him how he would be able to separate the research he does for the Commission from the fact that he is still a TAPA lobbyist and had lobbied against the bill. Mr. TERRY responded that he would not represent TAPA in any matter related to the bill. Executive Director Cliff LIPPARD said that Mr. Terry had been a Commission consultant for several years and had shown objectivity in his work. He added that there are other staff members working on the project as well. Representative WILLIAMS stated that he appreciated Mr. Terry disclosing his conflict of interest and looked forward to seeing his objectivity with regards to the study.

Mr. TERRY then introduced a panel of experts who represented different perspectives on the issue of right-of-way dedications. The panel included

- Ms. Sandra KNIGHT, Bradley County highway superintendent, Tennessee County Highway Officials Association representative;
- Mr. Kevin RIGSBY, town planner, Town of Smyrna, Tennessee Municipal League representative;
- Mr. Benjamin MOORMAN, legislative chair, Tennessee Association of Professional Surveyors; and
- Mr. Charles SCHNEIDER, chief executive officer, Home Builders Association of Tennessee.

Ms. KNIGHT said that highway departments can work only on property officially dedicated and accepted by the county. If property owners dedicate extra right-of-way, the department can work on things such as ditches and driveway tiles. She said she thinks decisions about dedications should be made at the local level. Representative WILLIAMS asked whether all the rights-of-way were being utilized in Bradley County prior

to five years ago for widening projects. Ms. KNIGHT said the ditches, driveway tiles, and people's access to public roads in the rights-of-way were utilized by the department but not all the rights-of-way were used for road widening.

Mr. RIGSBY gave a brief overview of the purpose, use and benefits of property dedications. He also presented the Tennessee Municipal League's three reasons for opposing Senate Bill 1604 by Senator Bailey and House Bill 366 by Representative Williams. First, it would impair a local government's ability to fully exercise its subdivision regulation authority in a consistent and equitable manner. Second, the bill is based on the flawed premise that any right-of-way dedication required by a local government is a taking and violates the US Constitution. The US Supreme Court held in *Dolan v. City of Tigard* that when a requirement for a right-of-way dedication is in response to an identifiable impact in which a governmental entity has a legitimate public interest and the dedication provides a solution that is both related to and proportional to the anticipated impact, such dedications are constitutional. Third, it would have the effect of transferring from the property owner to the local taxpayers any costs associated with accommodating alterations to existing or planned streets that may be required to ensure the safety of the motoring public and pedestrians.

Representative WILLIAMS asked whether Smyrna typically gives abandoned streets or rights-of-way back if there are two adjoining property owners who want to close them. Mr. RIGSBY said they have given abandoned streets or rights-of-way to the property owners if the town has not utilized the property in many years. Representative WILLIAMS followed up asking whether this is a common practice across the state. Mr. RIGSBY said he did not know. Representative WILLIAMS said in his community they do charge property owners and the property owners must pay for an abandoned right-of-way or street.

In response to Representative WILLIAMS's question about whether a grandmother would have to dedicate property to Smyrna if she just wanted to deed her property to her three grandchildren, Mr. RIGSBY stated that she would have to dedicate property if it was going to be developed intensely. If she wanted to divide her 100-acre property among her three grandchildren, she would not have to dedicate property because the lots would be over five acres and would not be a subdivision. Representative WILLIAMS asked whether the grandmother would have to dedicate right-of-way if her property was less than five acres and she wanted to divide it among her three grandchildren. Mr. RIGSBY said she would have to dedicate right-of-way in that case.

Representative WILLIAMS asked whether the use of the grandmother's land is different from that of the developer that must subdivide. Mr. RIGSBY responded that whether it's a 639-unit development or two one-acre lots divided off a farm, under state law, it is a subdivision. It must comply with the subdivision regulations. If the right-of-way is not adequate per the adopted major thoroughfare plan, they would have to dedicate right-of-way.

In response to Representative WILLIAMS's question about whether they would be more amenable to a bill like this if there was a requirement for the local municipality to build a road within a certain time period, Mr. RIGSBY replied no because the plan is a long-term plan; the road may be needed 10 years from now but not today. One also must consider the city's budget.

Representative WILLIAMS asked what he should tell the grandmother who subdivides her property and must dedicate land for a right-of-way while her neighbor who doesn't subdivide her property is paid by the local government for her right-of-way. Mr. RIGSBY said that the grandmother subdivided her property which created value on her property. Representative WILLIAMS remarked that he did not think it was fair for the grandmother to have to dedicate a right-of-way while her neighbor got paid for her right-of-way.



In response to Mayor Tom BICKERS's question about what roads would be impacted by this legislation, Mr. RIGSBY answered that this legislation would not affect the ability of communities to require rights-of-way for new streets being developed. It would only affect the ability of local governments to require dedications of rights-of-way along existing roadways. Mayor BICKERS asked whether a city could require a developer to build improvements in the right-of-way. Mr. RIGSBY responded that you could require them to build improvements, but you could not require them to give you the right-of-way if this bill became law. Mayor BICKERS asked whether it would be wise if presented with the situation created by this bill to require the developer to go ahead and build the improvements which would impose greater expense on the developer on the front end. Mr. RIGSBY replied yes.

Executive Director LIPPARD read a statement from Mr. Calvin CLIFTON. Mr. CLIFTON wrote that "I have serious concerns regarding this legislation. While the dedicated right-of-way may not have been used to date for roadways widening or intersection improvement it is utilized constantly for the provision of stormwater drainage via surface ditches or underground piping. It is also the location for necessary utilities to serve the existing and future development; these include water, wastewater, natural gas, and electric utilities. It is important that these utilities be located within dedicated roadway for their practical operation and future maintenance and/or repairs. Additionally, the local government public works agency typically mows and maintains these rights-of-way at the expense of the taxpayers. The developer and/or property owners receive immediate benefit from the dedication of these rights-of-way as they receive immediate maintenance of the shoulders, ditches, and related facilities located there not to mention the availability for future expansion."

Mr. MOORMAN shared the concerns the Tennessee Association of Property Surveyors has about right-of-way dedications and gave an overview of the provisions of Senate Bill 1604 by Senator Bailey and House Bill 366 by Representative Williams. Mayor BICKERS asked whether he had any basis to suggest that the revenue lost from dedicated property would be greater than the cost if the county or municipality had to purchase property. Mr. MOORMAN responded that it would be dependent on a lot of factors such as how much the property had appreciated over the years. Mayor BICKERS said in his city they approve two, three and four lot subdivisions regularly with no required dedication of a right-of-way. Mr. MOORMAN replied that in most of the jurisdictions he has worked in dedications are required.

In response to Mayor BICKERS's question asking whether he was aware of court decisions where courts have indicated that dedications are a taking, Mr. MOORMAN said he was not aware of any specifically. Mayor BICKERS asked whether it was his position that requiring the developer to use a portion of the property for stormwater detention is a taking. Mr. MOORMAN responded no, he considers that to be a choice by the developer. There are other options such as underground detention and use of pervious pavers that do not require them to give up property for stormwater detention. Mayor BICKERS said he suspected that Mr. Moorman didn't mean it in the literal sense when he used the word extortion to describe current practices but that when developers develop property any project costs are divided among the buyers of the developed property. Mr. MOORMAN responded that developers may get compensated but what about small farmers. Mayor BICKERS stated that in his community they approve small subdivisions of property among family members typically without requiring dedications. Mr. MOORMAN said that Mayor Bickers' community was in the minority.

Mayor Keith MCDONALD asked whether he had documentation showing that most local governments require property to be dedicated when considering small divisions of family-owned property. He said in his experience most communities do not require dedications in the case of small divisions of family-owned property. Mr. MOORMAN stated he would welcome the opportunity to work with his professional associates

to acquire that. He added that he would like to see the highway commissioners tell the Commission how many of them are purchasing rights-of-way for road improvements and how often they do that.

Mayor Jill HOLLAND said she is the mayor of a small town and that, on the few occasions they have had to compensate owners for easement dedications, the payment to them has not been minimal. The city had to hire a surveyor and appraiser and had to pay the property owner. It is money out of the taxpayers' pockets. She said this is a local problem and each municipality can figure out what is best for them. Representative WILLIAMS remarked that the reason for the legislation is not to restrict local governments but to give guidance to local governments because we are taking people's property without compensation.

Representative Harold LOVE Jr. said he had concerns about situations where landowners may not be aware of what's going to happen to their property. He had a situation where the city asked him to dedicate six feet of property or pay into a sidewalk fund to get a permit to build an addition to his house.

Mayor MCDONALD asked whether he considered money to be the only kind of compensation available. Mr. MOORMAN replied no, but he did not consider the right to subdivide property to be compensation. Mayor MCDONALD said they get value from the ability to develop land for a profit and get access to the city's infrastructure and services like roads, water and sewer. Mr. MOORMAN noted this legislation is primarily earmarked for small developments and divisions of family property because these are the people being hurt most by not being compensated. He said they had proposed limiting this legislation to small developments, but this proposal was rejected by opponents to the legislation.

Mayor MCDONALD said there had been situations where owners of smaller parcels had chosen not to sell to the developer and after property values went up, they decided to sell the property. The city had to buy the right-of-way and pay attorney's fees when the owners decided to take the city to court over the value of that right-of-way. In those cases, the owners caused the city to spend a lot of extra money and they would need to address that in any legislation. Mr. MOORMAN told him that there is no way to control for that on an individual level, but they will be marking on the property maps where the reservation line is so current and future property owners can be made aware the area is reserved for right-of-way purposes.

Mr. SCHNEIDER said that the Home Builders Association did not take a position on the bill because concessions are a part of doing business in the home building industry. He then gave a brief overview of right-of-way dedications and other land regulations. He ended by saying that you cannot look at any land use restriction in isolation. They all play a role in limiting the amount of land a builder can build on and this impacts the price of homes. Mayor MCDONALD asked how many counties or cities would allow a developer to come forward with a plan that would not lose any buildings by perhaps building on smaller lots. Mr. SCHNEIDER added that his point was that when you have state environmental regulations and zoning regulations that are not synched up, it can really take a lot of land out of production.

In response to Mayor Terry FRANK's question about whether anyone was tracking dedications at a state level, Mr. MOORMAN replied that he didn't know. Mr. SCHNEIDER remarked that if developers are required to dedicate property, they can often get concessions on other aspects of the development such as how far apart the homes must be. Private landowners who are not developers may not be aware that they could ask for these types of concessions.

Representative WILLIAMS asked how the Tennessee Department of Transportation obtains rights-of-way. Mr. MOORMAN said they purchase the property.

In response to Representative WILLIAMS's question about statewide data on what percentage of total lots are large multiunit developments, Mr. SCHNEIDER said he didn't have the total number but thought that most new homes were in subdivisions of less than 200 acres. Representative WILLIAMS stated that in Putnam County 88.1% of total lots were in subdivisions with three or less lots. Mr. SCHNEIDER said that is not unusual in counties with a population of under 100,000 and in more populous counties there would be more large developments.

### *Childhood Obesity—Speaker*

Dr. Kevin VANZANT, research associate, introduced Dr. Shari BARKIN, director of pediatric obesity research at the Vanderbilt Diabetes Center, who presented information about the negative effects childhood obesity has in Tennessee and possible policy responses. She said childhood obesity affects health, economics, and even national security and explained why it is important to intervene early with sufficient and sustained efforts. She opened with a chart showing the rising prevalence of obesity in the US since the 1960s. To explain this increase, she pointed to the environment in the US where we have easy access to cheap, low nutrient foods, as well as the increasingly sedentary lifestyles of young people.

Dr. BARKIN gave childhood obesity statistics for Tennessee including the 20.4% adolescent obesity rate, fourth worst among the 50 states. She said obesity is both a disease and a risk factor for other chronic diseases and that about 80% of obese adolescents remain obese into adulthood. Dr. BARKIN said these numbers are why it is so important to intervene early.

Dr. BARKIN said the national healthcare costs associated with childhood obesity are estimated at \$14 billion annually in direct health expenses. Adult obesity costs are between \$147-210 billion a year. In Tennessee, Dr. BARKIN said that in 2014, the cost of overall obesity was \$2.49 billion. She said obesity even affects national security—nearly one in four young adults are too heavy to serve in the military.

Dr. BARKIN said that low-quality food and lower activity levels change how a child's body functions and sets up individuals with childhood obesity for later chronic disease. She said this is a tough problem to fix because ultra-processed foods are cheaper and more available while being lower in nutrients. Dr. BARKIN also said it was important to understand how larger societal forces affect individual choices and behavior. She said there are five stages of childhood development with different effects of exposure to obesity during each one—pregnancy, infancy and toddlerhood, preschool, elementary, and adolescence.

Mayor Jill HOLLAND asked Dr. BARKIN what can be done without government officials being dictatorial, and what are incentives for parents to make healthier decisions for their families and children. Dr. BARKIN said it is important to understand what drives our processes and systems on this issue. She said the "default settings" in our environments are important and cited an experiment performed by the Disney Company as an example. The experiment involved changing the default food options and making the standard option healthier (such as fruit instead of fries), while still allowing individuals to change their order if they would like to. Dr. BARKIN said that this experiment showed that most people did not switch to the less healthy options.

Dr. BARKIN also said that, in her experience working with the parents of her patients, they are motivated to be healthier for their kids. She said the Tennessee Obesity Task Force worked with private companies, like Nissan, which changed policies for its employees to allow them to be more active, as an example of attempts to change people's defaults in everyday life.

Senator YARBRO asked Dr. BARKIN how she organizes the problem conceptually. Dr. BARKIN said she had organized her presentation around the different stages of childhood development so policymakers can think more about what are the policy levers that exist for each one. She said the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is not being fully utilized in Tennessee now. [Note: WIC is one of the nation's largest federal nutrition programs, serving approximately 6.3 million people, including about half of all infants born in the United States.] Augmenting utilization could be something policy makers could consider. Dr. BARKIN then highlighted that for preschool-age children the importance of getting 10 minutes of exercise or activity every hour and how that can help build muscle mass, which helps change metabolism and reduce chronic diseases later. She also explained the challenge of competing priorities within school systems but said we do have the policy option of making physical activity in schools more of a priority. For school-age students, she focused on increasing insurance coverage and encouraging more use of green spaces.

Vice Chairman Kevin BROOKS asked about specifics of Tennessee's ranking on childhood obesity. Dr. VANZANT said Tennessee's percentage of obese children from ages 10-17 is 20.4% compared to the national average of 15.5%.

Vice Chairman BROOKS asked about the problem of food deserts. Dr. BARKIN said food deserts (where you can't find any healthy food) and food swamps (where it is very easy to get unhealthy food) are both problems. She said that creating economic incentives that are good for both business and good for public health is clearly one of the tools in the toolkit of policy makers.

Representative Ryan WILLIAMS asked whether there are any states that are moving the needle on this issue and said the Tennessee General Assembly had previously considered removing the sales tax on unprocessed foods. Dr. BARKIN said it is the right approach to look at and compare Tennessee to what other states are doing. Charlotte, North Carolina, has made targeted efforts to make healthy food widely available, has created partnerships with private businesses within the city, and has dedicated more staff for its parks and recreation division than is the case currently in Tennessee.

Mayor Terry FRANK asked whether there are any studies that track the supplemental food programs with obesity rates. She said there are some areas that have both high obesity rates and high poverty rates and many of the supplemental food programs, as well as the school food programs, feature foods that are the cheapest and the easiest to transport and are hyper-processed. Mayor FRANK said that she doesn't want to limit choice away from these less healthy options but asked Dr. BARKIN whether that is something policy makers may need to consider. Dr. BARKIN said that in her experience younger kids were often more open to trying new food options than adults. She said food-management skills in combination with access to healthy foods can make a big difference and that the Lancet report showed that WIC in preschool was one of the only successful interventions that has slowed down preschool obesity rates.

Mayor Tom BICKERS asked how the education system can be incentivized to focus on some of these important life skills, so we have a healthier population. Dr. BARKIN said learning how to cook and be physically active are critical life skills that will improve your health and your economic earning potential. She also said it is important to decide what it is that we're measuring. For instance, instead of measuring body mass index, we could measure amounts of physical activity in schools to ensure that children receive at least the minimum needed for good health.

### *The Effect of the Covid-19 Recession on Public Infrastructure Needs—Draft Staff Report for Review and Comment*

Research Director Mark MCADOO presented the interim staff report on the effect of the COVID-19 recession on public infrastructure needs for review and comment. Dr. MCADOO said the Coronavirus Disease 2019 (COVID-19) beginning in early 2020 and the health response to the pandemic resulted in an economic recession. He explained that staff is conducting a two-part analysis with the interim report focusing on the effects of the Great Recession to establish a baseline for the next report focused on the recession caused by COVID-19.

Dr. MCADOO said because the COVID-19 pandemic is ongoing, it is uncertain whether or to what extent the pandemic will affect public infrastructure needs long-term, but that the Great Recession does not appear to have shaped trends of needs reported in TACIR's Public Infrastructure Needs Inventory. He said an analysis of public infrastructure inventory needs data collected during 2020 will be compared to the historical trends established by the analysis included in the interim staff report and that the results will be provided in a follow-up staff report, anticipated to be presented to the commission in September 2022.

Senator YARBRO asked whether the report was accounting for the temporary use of private facilities for COVID-19 testing. Dr. MCADOO responded that there were operational changes that were mentioned in the interim report, but that the report focused on public infrastructure needs primarily during the Great Recession from December 2007 to June 2009 and that the effects of the recession caused by COVID-19 on public infrastructure needs remain uncertain and will be examined in the next report.

### *Comprehensive Litter Review—Panel*

Research manager Jennifer BARRIE reminded Commission members that Mayor Kevin BROOKS, at the last commission meeting, requested TACIR conduct a comprehensive study of litter, and after a discussion in which it was clarified that the study was not to focus on a bottle deposit or on plastic bags, the Commission unanimously voted to add the study to the work program. Staff will present an update of the research at the January 2022 meeting, the draft report at the fall 2022 meeting, and the final report at the January 2023 meeting.

Ms. BARRIE introduced a panel of experts representing different perspectives on the issue. The panel included

- Ms. Shawn BIBLE, transportation manager, Tennessee Department of Transportation (TDOT) Highway Beautification Office;
- Mr. Rich FOGE, president, Tennessee Malt Beverage Association;
- Ms. Missy MARSHALL, executive director, Keep Tennessee Beautiful;
- Ms. Janet BOSCARINO, founder and executive director, Clean Memphis;
- Mr. Mike BUTLER, chief executive officer, Tennessee Wildlife Federation (TWF); and
- Mr. Bill KETRON, mayor, Rutherford County.

Ms. BIBLE described the office's efforts to address litter in the state, including the state litter grant program and other programs, activities, and partnerships. Mayor BROOKS asked how the TDOT Beautification Office quantified the reported 43% reduction in litter. He said he has not seen a decrease in his area and that there has been an uptick in litter because of COVID. Ms. BIBLE said they hired a national firm to survey a statistically viable sample of roads and compared the results from the 2006 and 2016 studies to determine

the reduction. Because of COVID, prisoner litter crews have not been able to go out as often, and there has been a big reduction in normal litter pick up. Chairman Ken YAGER asked whether the Beautification Office requires training for litter grant coordinators and said he has observed that the county litter programs are as strong as the coordinators are. Ms. BIBLE said the coordinators are required to attend annual training, and the office also does some training on how to conduct litter education because that can be more challenging for some counties than the pickup is.

In response to Mayor Tom BICKERS's question about whether it is TDOT's responsibility to clean up pieces of tires and vehicle debris on the interstates, Ms. BIBLE said it is, and \$12 million of the \$19 million that TDOT spends on litter is contracted mowing and litter pickup. TDOT also contracts with some counties that take crews out to clean up along county roads. Mayor BICKERS asked whether TDOT could dedicate more funding to stewardship of existing roads rather than new construction. For example, overgrown rights-of-way foster more litter. Louisville does its own clean up, but if the burden shifts to municipalities, they will need more funding, and TDOT should pay them. Ms. BIBLE said she does not deal with overall TDOT budget priorities but agrees about rights-of-way and said TDOT is trying to address mowing. Mayor BICKERS also said the Tennessee Wildlife Resources Agency (TWRA) access ramps in Louisville have a lot of litter, and he would like to know what can be done. Ms. BIBLE acts as a liaison and tries to work with other agencies and invited Mayor BICKERS to call her.

Mayor Jill HOLLAND said tires and plastic bags are problems in her community and asked how TDOT works with TDEC (Tennessee Department of Environment and Conservation) to deal with tires and what is being done about plastic bags. Ms. BIBLE responded that TDEC is responsible for disposal of tires, and because tires are a big problem, TDOT partners with TDEC and is involved with tire collection and storage. To address plastic bags, TDOT is focusing on reusable bags and did a statewide reusable bag giveaway and education about bags. Mayor BROOKS said he is looking for solutions to clean up the tires in his area, and TDEC has cited and put liens on a private property with illegally dumped tires. He will call Ms. BIBLE for help. Mayor HOLLAND asked about education for school children, and Ms. BIBLE said all litter grants fund education, almost all their county partners are doing school programs, and other partners, like Keep Tennessee Beautiful and Clean Memphis, also do school programs. TDOT is also starting to do litter education as part of driver's education.

In response to Mayor Terry FRANK's question about what TDOT needs to do or is doing about enforcement, Ms. BIBLE said they want tickets written and enforced. Fines are an important tool, and judges need to support law enforcement. The TDOT Beautification Office is studying what other states are doing with incentives and grants for litter law enforcement programs. Because some people won't stop littering unless they think they will get a ticket, there needs to be messaging about consequences and enforcement.

Mr. FOGUE explained how beer and beverage tax revenue funds the TDOT litter grant program and Keep Tennessee Beautiful and how a coalition of industry associations is working to address litter in the state. He said the state beer tax generates about \$17 million per year, and it funds the litter grant program. He said local governments receive \$134 million a year from the wholesale beer tax. Mayor MCDONALD commented that the \$134 million is not a lot of money. When the funds are divided among all the local agencies, it is not enough to do enforcement and handle litter in municipalities. Mr. FOGUE said the wholesale beer tax goes directly to the local government where the beer is sold. For example, in 2019, the City of Bartlett directly received \$732,000, which goes to the city's general fund. Mayor BROOKS said Cleveland does not receive any litter grant money, although it does receive some beer tax money. He is a proponent of Tennessee's program, but said something systemically is not working—the state is 47<sup>th</sup> in the nation on recycling and litter pickup.

Some states have programs that are working. Mr. FOGG agrees and is working with an industry coalition that thinks the existing framework is good and would like to see additional resources to expand and build on what we have. Chairman YAGER suggested that the study needs to look at the litter laws and maybe tighten them up.

Ms. MARSHALL described how the organization's programs, affiliates, and partnerships address litter and how their goal is to inspire Tennesseans to change their behavior by focusing on education, engagement, and enforcement.

Ms. BOSCARINO described the organization's efforts in Memphis and Shelby County to address litter and dumping through education, engagement, and connections in schools and the community and its focus on a culture of sustainability and environmental stewardship. Mayor HOLLAND asked whether Tennessee has incentives for recycling companies to come to the state. Ms. BOSCARINO said she believes that TDEC and ECD (Department of Economic and Community Development) do have incentives for these types of "green" businesses and that companies have goals to reduce waste and want solutions. It is important that the state encourage circular economies with funding and economic development. Mayor BROOKS agreed that public-private partnerships are incredibly important and asked how connected the state is to the private sector. Ms. BOSCARINO said her job is to make connections and collaborate, and she is organizing an advisory council to get those people in a room to figure out the issues and opportunities.

Mr. BUTLER said litter is a gateway issue for conservation and discussed the coalition that TWF is organizing that relates to the promotion of a circular economy. Following Mr. BUTLER's presentation, Mayor MCDONALD asked what the Tennessee Wildlife Federation is doing to educate hunters and get them to pick up trash and be stewards. Mr. BUTLER said when it comes to prevention because the Federation's approach is to focus on policy, he points hunters to Keep Tennessee Beautiful cleanups and other cleanups.

Mayor KETRON requested that the TACIR study do a deep dive into the litter laws and tire disposal fees, including where the fee revenue is going and how it is being used. He responded to Mayor HOLLAND's question about whether fines are relevant to the amount of litter. He said the first offense is \$25, and it increases from there. The legislation needs teeth. Convenience centers being closed also contributes to dumping. Ms. MARSHALL clarified that the act of littering is illegal, and the fines are based on the amount (weight) of litter.

Mayor FRANK clarified that counties receive the tire fees directly now instead of through grants from the state. She said counties don't have resources to deal with solid waste and asked whether TDEC could provide more technical guidance to local governments. Ms. BOSCARINO said TDEC has a role to help local governments and does coordinate a materials marketplace. Mayor KETRON said legislation has not changed regarding how tire money is used, and the TACIR study should do a deep dive with TDEC about the tire fund. Dr. LIPPARD added that this study will revisit and update the previous TACIR study of illegal tire dumping.

Mayor MCDONALD requested contact information for the panelists. [Staff emailed the information to the Commission members after the meeting].

### *State Gold Depository—Draft Report for Review and Comment*

Research Associate Kevin VANZANT presented the draft report on Public Chapter 585, Acts of 2018, for review and comment. The Act directed the Commission to "study the feasibility of creating a state gold depository, including whether other states or jurisdictions have created one."

Dr. VANZANT said the cost to build a depository is high and, to make enough revenue from storage fees to cover costs, a depository would need about \$1 billion in deposits. Furthermore, for a state depository in Tennessee to reach enough in deposits to be viable, it would need deposits from both institutional investment funds and individual investors, but it seems rare for large investment funds like university endowments to invest in gold. Dr. VANZANT said that because no in-state institutional investment funds have said they will buy or store gold in Tennessee, and because Tennessee's sales tax makes buying and storing gold in Tennessee unattractive to both institutional investment funds and individuals, the draft report finds that there does not appear to be enough demand for a state gold depository to be viable.

Dr. VANZANT said Tennessee is one of only eight states that does not exempt any of the sales of precious metal coins and bullion and stakeholders say a sales tax exemption could make it more likely that Tennesseans would purchase precious metals from in-state dealers and would bring in more tourism dollars in Tennessee by attracting coin shows to the state. He also said that stakeholders point out that Tennessee does not apply the sales tax to other types of investments, like stocks and bonds. Dr. VANZANT said that for these reasons the draft report recommends that the General Assembly could consider a sales tax exemption for precious metal coins and bullion once it's clear that the exemption will not violate the American Rescue Plan Act, which includes a provision that requires states to give back federal funds used for "a reduction in the net tax revenue."

Mayor Terry FRANK asked why past efforts to pass a sales tax exemption had failed in Tennessee. Mayor Kevin BROOKS said that, in his experience serving in the Tennessee General Assembly, the argument against the sales tax exemption has had to do with the overall importance of the sales tax in Tennessee, as a state with no income tax, and the hesitancy of Tennessee legislators to erode the tax base by passing exemptions on such an important source of revenue for the state.

Mayor FRANK asked for details about the fiscal consequences for the state of passing the exemption. Dr. VANZANT said that the most recent legislation proposing an exemption on precious metals [Note: Senate Bill 870 by Senator Stevens and House Bill 514 by Representative Gant] had a fiscal note that reported a \$360,800 decrease in revenue for the state and a \$117,800 decrease in revenue for local governments.

Mayor Keith MCDONALD asked about a change in the fiscal notes for legislation proposing a sales tax exemption on precious metals from the 109<sup>th</sup> General Assembly to the 112<sup>th</sup> General Assembly. [Note: Beginning in 2017 and the 110<sup>th</sup> General Assembly, Fiscal Review began using specific data on the number of precious metal dealers in Tennessee from a 2016 survey by the Industry Council for Tangible Assets (ICTA) as part of its calculations, resulting in lower estimates of the decreases in state and local sales tax revenue. Mayor BROOKS had also noted this change in the fiscal notes over time in his earlier comments.] Dr. VANZANT said that the change had to do with a new data source being used by the Fiscal Review Committee to calculate the cost of a sales tax exemption on precious metals to the state. Executive Director Cliff LIPPARD said that some other states target investments with their exemption, but the tradeoff can be that that type of targeting can present administrative challenges. Dr. VANZANT said that Indiana tries to exempt only the sales of precious metals that go into an IRA account and that Indiana has reported to TACIR staff that the exemption can be difficult to administer.

### *Expanding Opportunities for State Contracting—Update*

Research Manager Bob MOREO presented an update to the Commission of findings from staff's examination of Tennessee's procurement processes. The study, to determine whether disparities exist in the issuance of



state contracts to businesses owned and operated by African Americans, was directed by Senate Bill 1235 by Senator Gilmore and House Bill 1593 by Representative Miller. The bill directed the commission to study the effects of such disparities among the African-American business community and recommend actions to reduce any disparities going forward.

Mr. MOREO explained the meaning of disparities and the legal context in which disparity studies are necessary for governments seeking to implement race-based procurement initiatives. Historically, Tennessee has not pursued such initiatives, instead relying on race-neutral strategies to assist minority-owned businesses, and Mr. MOREO explained the relevant statutory history of these programs, including the 2003 creation of the Governor's Office of Diversity Business Enterprise (Go-DBE). He said the memo includes findings from a 2009 disparity study commissioned by the Go-DBE, which determined only 0.4% of state spending from fiscal year 2003 through fiscal year 2007 had gone to African-American owned suppliers and said that many of the recommendations from that 2009 report have been incorporated into the state's procurement policies to some extent.

Mr. MOREO explained how staff continues to work to gather comparable data needed to make direct comparisons to the statistics presented in the 2009 report and provided some Go-DBE and Census Bureau data that appear to show improvement with regards to the share of state dollars going to African-American owned businesses. The memo cautions, however, that increased spending alone doesn't determine whether the disparity between spending and availability has narrowed or been eliminated. Mr. MOREO said that staff continues to work with Go-DBE and procurement staff to get more data and will interview members of the African American business community.

Representative Harold LOVE Jr. asked about the factors that influence the disparity ratio for a given type of procurement and said the ratios in the 2009 report for all but the Other Services category were "grim." Mr. MOREO explained how the disparity ratio is calculated. Representative LOVE asked that the Commission's report include amounts the state spends in different business categories (e.g. construction, professional services).

Representative PARKINSON asked Mr. Moreo to explain what "availability" means in a disparity study. Mr. MOREO said the studies determine a relevant geographic market for each business category being studied and determine the percentage of firms owned by minorities within those markets and categories; these firms are available to bid on contracts for that particular item or service. Representative PARKINSON asked whether there are barriers to availability. Mr. MOREO said he hopes this research will help identify those barriers and help the state target its efforts where African American availability is underrepresented. Representative PARKINSON said the state should help develop the types of African American businesses where availability is low, because when there is low availability the expected utilization remains low.

Deputy Commissioner Paula DAVIS asked whether staff had gathered information about best practices from other states. Mr. MOREO said yes, along with federal guidelines as well. Mayor Jill HOLLAND spoke of the importance of education and learning certain business skills but said that businesses need help understanding how to bid on government contracts and may not be aware of government assistance that's available.

## December 1-2, 2021

### *State Gold Depository—Final Report for Approval*

Research Manager Michael MOUNT presented the final report on the feasibility of a gold depository in Tennessee for the Commission’s approval. The report was required by Public Chapter 585, Acts of 2021, which directed the commission to study “the feasibility of creating a state gold depository, including whether other states or jurisdictions have created one.”

Mr. MOUNT said, since the draft report was presented at the last meeting, staff had added information regarding the fiscal notes for sales tax exemption bills, added information regarding the effect of sales tax exemptions on state and local sales tax bases, and continued to refine other information in the report. He also said that, although information was added to clarify all the factors that make storing precious metals in Tennessee less attractive to both institutional and individual investors than storing it in other states, the finding that a state gold depository is not viable remained unchanged from the draft report. He added that the draft report made one recommendation that the General Assembly could consider a sales tax exemption for precious metal coins and bullion if it becomes clear that the exemption will not violate the American Rescue Plan Act or once all the federal funds have been spent. Mr. MOUNT said Kentucky and Tennessee contested the constitutionality of a provision of the Act that requires states to give back federal funds used for “a reduction in the net tax revenue.” He said although the district court ruled in favor of Kentucky and Tennessee, the decision could be appealed, and the recommendation remains unchanged from the draft report.

Mr. Calvin CLIFTON asked when an appeal of the federal district court ruling in favor of Kentucky and Tennessee in *Kentucky et al v. Yellen* could occur? Mr. MOUNT said it’s not clear. He said not every district court has finished their lawsuits, which would in turn determine the timeline for an appeal. Mayor Tom BICKERS added there would typically be 30 days to file a notice of appeal. He said, because district and appellate court rulings can conflict, it could be months or a year before there’s any clarity on that. [Note: The US Treasury filed a notice of appeal to challenge the district court’s decision in *Kentucky et al v. Yellen*, and the case is pending.]

Representative Bud HULSEY spoke in favor of gold as an investment, spoke in favor of a sales tax exemption for precious metal coins and bullion, and expressed concerns regarding federal policy. He spoke in favor of creating a state gold depository, adding that a group of investors wants to build it. He asked the Commission for help in finding a way to make that work, adding that the state would get to run a state gold depository, which would create a revenue stream for the state at no expense to Tennessee’s taxpayers.

Mayor Terry FRANK asked whether a law recognizing gold and silver coins as legal tender, like laws in Wyoming, Utah, Oklahoma, and Arizona, would be beneficial to what he is trying to accomplish with a state depository. Representative HULSEY said that any alternative way to buy and sell would be a good thing.

Mayor BICKERS moved approval of the amended report with Mayor Keith MCDONALD seconding the motion. The report was approved unanimously.

### *Childhood Obesity—Panel*

Research Associate Dr. Kevin VANZANT said Public Chapter 503, Acts of 2021, directed TACIR “to perform a comprehensive evaluation on the socioeconomic impact childhood obesity has in Tennessee and its short and long-term effects.” He said TACIR staff are studying the societal costs of childhood obesity and the

challenges of implementing and evaluating public health policies that seek to address childhood obesity, given the complexity of the problem and the many different factors involved.

Dr. VANZANT introduced a panel of stakeholders representing different perspectives on the issues affecting childhood obesity in Tennessee. The panel included

- Dr. Jacqueline Yenerall, assistant professor, Department of Agricultural and Resource Economics (ARE), University of Tennessee;
- Lori Paisley, senior director, District Operations, Tennessee Department of Education, Coordinated School Health Program; and
- Ms. Leslie Meehan, director, Office of Primary Prevention, Tennessee Department of Health (TDOH).

Ms. MEEHAN said a recent initiative of the TDOH is the Healthy Built Environment Grants. These grants create opportunities for local communities to create programs, like a running club, or improve infrastructure, such as building a new greenway or playground. Local community interest has far exceeded available funding. Senator Jon LUNDBERG asked Ms. MEEHAN about the holistic approach to obesity and whether a playground in every school or a farmer's market in every town was going to be as effective as other possible initiatives. Ms. MEEHAN said that TDOH staff do hear anecdotally from Tennesseans that barriers like not having a park or a full-service grocery store do matter, but that the TDOH works through encouragement, not through mandates, and they understand that no single solution is a silver bullet.

Chairman YAGER asked about some counties not having playgrounds and whether Healthy Built Environment Grants target those counties as a result. Ms. MEEHAN said that the TDOH grant application process accounts for the economic status of the community. Chairman YAGER suggested that TDOH consider accounting for both the economic distress of a county and a lack of certain facilities.

Mayor Jill HOLLAND asked about the causes of the wage penalty for adults with obesity and specifically about the statistic cited by Dr. Yenerall that white women's wages decline by 2.8% for every additional 10 pounds. Dr. YENERALL responded that research shows that the primary cause of this wage penalty for women appears to be discrimination, which is substantiated by studies that show that the wage penalty is particularly pronounced in service industries.

County Executive Jeff HUFFMAN asked whether the cases of Type 1 diabetes are rising alongside the cases of Type 2 diabetes in children and whether the increasing prevalence in diabetes in children overall is leading to increased health care costs as they become adults. Dr. YENERALL said that a medical problem in childhood persisting into adulthood could lead to increased medical costs, but it would depend on other factors as well, including the quality of medical treatment received. County Executive HUFFMAN asked how the prevalence of childhood diabetes in Tennessee compares to other states in the southeast. Ms. PAISLEY said that she does not have the exact numbers with her, but CSH does track that information and she believes Type 2 diabetes is increasing in Tennessee's student population. Chairman Ken YAGER asked for the information to be provided to Executive Director Cliff Lippard. [Ms. Paisley provided the information, and Dr. Lippard sent the information to Commission members via email.]

Representative Patsy HAZLEWOOD asked about the idea that childhood obesity is not a strong predictor of adult health conditions. Dr. YENERALL said the research she mentioned included children just barely meeting the threshold for obesity — when looking only at those that have severe obesity there is a correlation

with adult health conditions. Dr. YENERALL also said that obesity is just one risk factor for other health conditions and other factors would have an influence as well.

Mr. Jeff PEACH asked Ms. PAISLEY whether she thought the nutrition in school meals and the amount of physical activity required of students could be improved. Ms. PAISLEY said the US Department of Agriculture (USDA) regulates school meals for Tennessee schools and Tennessee physical education and physical activity laws apply as well. She said CSH has an annual physical education/physical activity report that they produce for the General Assembly on progress in this area. Mr. PEACH asked whether any schools in Tennessee were interested in exceeding USDA regulations and Ms. PAISLEY said cafeteria managers want to serve food that meets federal guidelines but also want to serve food that kids will eat, and that can sometimes be a difficult balance to find.

Mayor A. Keith MCDONALD said that healthy food preparation may need more emphasis in our school curriculum. Mayor Larry WATERS asked about students' sedentary habits and amount of screen time. Ms. PAISLEY said that they collect that information from students in Tennessee and the results indicate that screen time among kids is only increasing.

### *Right-of-Way Dedications and Land Use—Update*

Senior Research Director Leah ELDRIDGE presented an update to the Commission of findings from staff's study of Senate Bill 1604 by Senator Bailey and House Bill 366 by Representative Williams. The Lieutenant Governor and House Speaker had sent a letter to the Commission requesting that it study the bill. Senate Bill 1604 and House Bill 366 would prohibit a local government from requiring dedications of land along existing roads; dedications are conveyances of land to a government for public use. A government could negotiate with the property owner to reserve a portion of land for transfer to the government in the future, but the government would have to pay just compensation to the owner if it took possession of it. Ms. ELDRIDGE said that a draft report would be presented at the January 2022 Commission meeting.

Ms. ELDRIDGE explained that before approving subdivisions of property local governments may require property owners to dedicate land or an easement along existing roads that either are not wide enough to accommodate the new development or fail to meet the width requirements of the local major street plan. The US Supreme Court has held that governments can require dedications subject to the requirements of the *Nollan/Dolan* test that was developed in two cases, *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*. A dedication that does not meet these requirements violates the Takings Clause of the US Constitution. The question is how to ensure local governments comply with the requirements of *Nollan/Dolan* test. Other states have passed laws that include requiring local governments to pay just compensation for dedicated property, limiting the use of dedications in certain situations, putting the language from the *Nollan/Dolan* test in their state statutes and requiring analysis of dedications.

In response to Mayor Tom BICKERS's question about whether the bill is inconsistent with the holdings in the US Supreme Court cases, *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*, Ms. ELDRIDGE responded that it is inconsistent. He then asked whether a developer who was aggrieved by the scope of a dedication could pursue a remedy in court in order to determine whether it met the requirements of the *Nollan/Dolan* test. Ms. ELDRIDGE said that the developer could take the matter to court. Mayor BICKERS asked whether any effort had been made to determine the bill's fiscal impact on governments. Ms. ELDRIDGE replied that staff had contacted the state Division of Property Assessments to see whether they had information on property that had been dedicated but they did not have that information. She said that they will continue

to try to determine that impact as they continued with the study. Mayor BICKERS asked whether there was any information on how often these dedications took place. Ms. ELDRIDGE said they had surveyed planners to try to get this information and would include the results in the draft report.

Mayor Jill HOLLAND asked which state prohibited dedications of property if the subdivision of property involved farmland. Ms. ELDRIDGE responded that Delaware prohibited local governments from requiring dedications if the property would continue to be used as farmland or if the property was being transferred to a family member who would use it as farmland or as their principal residence. Mayor HOLLAND asked why there was a provision in the bill that a real estate agent would have no duty to inform any party to the real estate transaction concerning the reservation. Ms. ELDRIDGE replied that she believed that the realtors had asked that the language be included in the bill and they may have been concerned about liability.

Mayor Rogers ANDERSON said that, because of the added cost to counties, he thinks the issue of a city's planning commission requiring a county to dedicate sidewalks on county property needs to be addressed as well.

### *Water Recreation Resources—Panel*

Research Manager Jennifer BARRIE said the General Assembly passed Public Chapter 497, Acts of 2021, directing the Commission to study the effects of non-fish-and-game-related recreational activities, such as paddle boarding, canoeing, kayaking, and tubing, on Tennessee's waterways, and strategies to fund, manage, and protect water and land resources affected by these activities. She said that according to stakeholders, there has been an increase in recreational boating activities on Tennessee's waterways in recent years, in part because of increased use of nonmotorized vessels such as canoes and kayaks. Stakeholders agree both that this has led to congestion and access issues as well as conflicts between members of the public using the water for recreation and that there is a need for new strategies to manage these resources. Ms. BARRIE said these challenges are not unique to Tennessee, and commission staff is reaching out to other states to learn what they are doing to address similar issues. Staff will present the draft report at the summer 2022 meeting and the final report in December 2022.

Ms. BARRIE introduced a panel of stakeholders representing different perspectives on the issues affecting water recreation and Tennessee's waterways. The panel included

- Mr. Thomas Moncrief, associate general counsel, Tennessee Wildlife Resources Agency (TWRA);
- Mr. Mike Robertson, director of operations, Tennessee State Parks;
- Mr. David Brown, executive director, Tennessee Paddlesports Association;
- Ms. Andrea White, Tennessee state director, American Canoe Association (ACA);
- Ms. Jane Polansky, education and outreach program manager, Harpeth Conservancy; and
- Mr. Mike Butler, chief executive officer, Tennessee Wildlife Federation (TWF).

In response to a question from Mayor BICKERS regarding whether the statutory mandate of TWRA includes litter cleanup and maintenance of TWRA access areas, Mr. MONCRIEF said the charge of TWRA is to manage wildlife and natural resources for the benefit of Tennessee citizens and visitors. If wildlife in a public park could potentially be harmed by litter, then TWRA would be responsible for dealing with the litter. Otherwise, TWRA gives grants each year for stream cleanup, but its mandate generally doesn't include litter cleanup. Mayor BICKERS asked what TWRA can do to devote more attention to its access areas. Mr. MONCRIEF said

he is not sure, but he will talk to the director and deputy director and offered to share his contact information with Mayor BICKERS to follow up. [Staff emailed Mr. MONCRIEF's information to Mayor BICKERS after the meeting.]

Mayor BICKERS described issues with people leaving trash behind when tubing on the Little River and asked what can be done at the state and local level to maintain and regulate these types of situations on rivers. Mr. BUTLER responded that the Little River is an example of a situation where a river-specific management plan would be a good idea, but it would require leadership and all stakeholders at the table during the process. He suggested using the American Rivers' *Guide to Sustainable River Recreation Management Planning* as a resource. In response to Mayor BICKERS's question about whether legislation would be necessary to give local governments authority to implement management plans and charge fees, Mr. BUTLER said he thinks there is existing authority but isn't sure. He also suggested the idea of public-private partnerships to manage access areas. Mr. MONCRIEF also said he is not sure about local government authority.

In response to Mr. Calvin CLIFTON's questions about whether anyone is reaching out to other states that are comparable to Tennessee and what those states are doing, Mr. BROWN responded that Ohio is similar to Tennessee because people engage in the same type of boating activities in Ohio as they do in Tennessee. Mr. MONCRIEF added that TWRA staff Betsy Woods and Darren Rider have communicated with other states about regulations. For example, Ohio has a hybrid system wherein people can either register each boat they own or buy a license, and both options generate revenue for the state. Mr. BUTLER has looked at the Current River in Missouri, which has a management plan, and he has a list of four or five rivers with management plans, in addition to the Ocoee River example in Tennessee.

Mayor FRANK mentioned the issue of overlapping regulations and funding mechanisms and asked whether there is sufficient collaboration between agencies and who has responsibility. Mr. BROWN agreed that overlapping fees and regulations are an issue, there are many regulatory state and local agencies, and there is no overarching entity, and that this study is an opportunity to address this. Ms. POLANSKY added that there is a potential for lease agreements, for example with the county rescue squads that are unfunded, and management plans could address who is responsible for what. Mr. BUTLER agreed and said management plans need to be river specific, and more collaboration is needed. Ms. WHITE added that the Ocoee River fee structure should be considered.

Mayor FRANK likes the idea of the Texas sporting goods sales tax and asked Mr. Brown to explain how it works and whether we have enough data to recommend something similar. Mr. BROWN explained that the revenue from the Texas tax is deposited into a fund for recreation opportunities and that the tax only applies to sporting goods that are not already subject to the federal excise tax. We don't know how much a similar tax would generate in Tennessee and would have to decide which products to tax. He added that if there was an additional fee, the commercial paddlecraft outfitters would like a credit on the state sales tax, but not the local option tax.

### *Electric Vehicles and Other Issues Affecting Road and Highway Funding—Update*

Research Manager Bob MOREO presented some announcements and news from recent months related to the Commission's study of electric vehicle (EV) adoption in Tennessee and noted the topic was recently discussed during budget hearings for the Tennessee Department of Transportation. Ford Motor Company will develop new facilities at the state's Memphis Regional Megasite and start building electric F-series trucks in 2025, and the Tennessee Valley Authority announced plans to replace much of its own vehicle fleet with electric vehicles

by 2030. Hertz is ordering 100,000 Tesla vehicles for its rental car fleet, a sign that EVs are expanding into the rental sector. Mr. MOREO said additional information and possible alternatives will be presented to the Commission at its spring meeting with a draft report planned for the fall and final report ready for approval in December 2022.

Mayor Tom BICKERS shared that a recent survey of auto executives projected that half of new vehicles sold in 2030 will be EVs. He said the rate of EV adoption will affect how Tennessee funds its highways and roads. Mr. MOREO said staff will work to gather up-to-date projections for the report and share them at the spring meeting.

Vice Chairman Kevin BROOKS said the memo presented by staff at the June 2021 meeting included an estimate of 100,000 EVs in Tennessee in 2030 and shared his opinion that EV growth is happening faster than anticipated. Mr. MOREO said that even as more new EVs are being sold, many traditionally fueled vehicles will remain in use for years to come and the replacement of gasoline-powered vehicles by EVs will be spread out over time.

Mayor Rogers ANDERSON asked whether the next update could explain how much fuel tax is paid per vehicle, on average, and where the money goes. Mr. MOREO said some of that information was included in the last update and the next update will include that information as well. Mayor ANDERSON said he is concerned, at the local level, how much it will cost to maintain current levels of funding. Mr. Calvin CLIFTON said recent TDOT budget hearings gave a figure of about \$300 in taxes generated by the average vehicle. Executive Director LIPPARD said these are the types of questions the report is going to try to answer. Mayor ANDERSON asked whether the study will look at revenue from aviation fuel and fuel used for boating as well. Dr. LIPPARD said that was not specifically included in the research plan, as the study is focused on how EVs will affect road funding.

### *Expanding Opportunities for State Contracting—Draft Report*

Research Manager Bob MOREO presented the draft report on Senate Bill 1235 by Senator Gilmore and House Bill 1593 by Representative Miller and for review and comment. The bill directed the Commission to study whether disparities exist in the issuance of state contracts to businesses owned and operated by African Americans; provide information on the effect of any such disparities on the African American business community, as well as the manner in which other states have addressed disparities; and report its findings no later than January 31, 2022, including any recommendations for reducing disparities if they are found. He said the final report will be presented to the Commission for approval at the January 2022 meeting.

Mr. MOREO said a study commissioned by the Governor's Office of Diversity Business Enterprise (Go-DBE) in 2007, published in 2009, documented evidence of disparities and made recommendations to reduce those disparities. The draft report shows the state has implemented most recommendations to some degree. The state has not commissioned a follow-up disparity study, and, because current state data is not tailored to serve as a foundation for such studies, TACIR staff could not fully update the analysis from the 2009 disparity study for this project.

Mr. MOREO said Go-DBE data provided to TACIR does, however, allow for some comparisons. This data shows that state procurement spending with African American-owned businesses has increased overall, but aspirational agency-level spending goals for minority-owned businesses are not often being met, and

the state's procurement spending with African American-owned businesses is highly concentrated in two agencies and very few types of services.

Mr. MOREO said the draft report notes certain barriers that disproportionately affect African American-owned businesses' ability to compete for state contracts and describes existing state resources and programs available to small businesses and African American-owned businesses alike in Tennessee. The report describes how governments' authority to adopt race-conscious procurement policies is limited under state policy and federal laws and discusses Tennessee's race-neutral approach to procurement and assistance to small- and minority-owned businesses. The draft report finds that race-conscious procurement policies are not feasible at this time and concludes that incremental improvements to the state's race-neutral approach can be made, suggesting two recommendations to improve data collection and the reporting of disparity efforts across state agencies.

Chairman Ken YAGER asked whether commissioning a new disparity study would require legislation. Mr. MOREO replied that it would not, necessarily, but would be a matter of Go-DBE funding the study. Senator Jeff YARBRO asked what the possible cost would be. Mr. MOREO said that the cost of studies in other states have ranged from several hundred thousand to perhaps one million dollars.

Chairman YAGER said staff should contact the General Assembly's Fiscal Review Committee to find out whether they have information about the number of contracts they review that are awarded to African American-owned companies.

## **January 20-21, 2022**

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

Research manager Bob MOREO presented the annual update on Tennessee Valley Authority (TVA) payments in lieu of taxes (PILOT) for approval. He said there are no recommended actions to be taken by the General Assembly in this year's report, and that TVA estimates its payment to Tennessee will be \$345 million in federal fiscal year 2021-22, a \$5.7 million increase from the previous federal fiscal year. As a percentage of the total available PILOT, Tennessee's share decreased slightly from the previous federal fiscal year. Mr. MOREO said as TVA rebalances its generation fleet, shifts in the value of power property from state to state could continue to affect each state's share of the PILOT. Memphis Light, Gas, and Water (MLGW) has continued to evaluate whether to leave the TVA system, and it may reach a decision by the end of 2022. Should MLGW leave the TVA system, it would decrease Tennessee's share of the PILOT.

Chairman Ken YAGER asked whether staff could quantify the potential effect on Tennessee's share of the PILOT should TVA decide to retire the coal-fired plants at Cumberland and Kingston. Mr. MOREO said the state's share of TVA power property could decrease from its current level of 68% to about 62%. He emphasized that it is a preliminary estimate and that he will request updated information from TVA for next year's report. Chairman YAGER asked how these plant retirements could affect direct payments TVA makes to the counties where the plants are located. Mr. MOREO said TVA doesn't normally provide TACIR staff with details about direct payments because those payments are made directly to counties from TVA, but TACIR will request additional information from TVA for next year's report regarding these payments.

Representative Ryan WILLIAMS asked for clarification of the information in table 1 of the report and how the information would change should the Cumberland and Kingston plants be retired. Mr. MOREO said the table shows the state's total share of the TVA PILOT, which is determined by the average of two things: the



state's share of TVA's revenue from the sale of electricity and its share of the value of TVA's power property. Plant retirements would only affect the property value half of the calculation.

In response to Representative Patsy HAZLEWOOD asking whether Tennessee's share of electricity sales was growing relative to other states, Mr. MOREO said that share decreased as well and that TVA hadn't provided a reason for the decrease.

Chairman YAGER asked whether TVA's depreciation of the Bull Run plant was factored into this year's calculations of the PILOT. Mr. MOREO said it was, and that TVA cited depreciation as a reason that Tennessee's share decreased. Chairman YAGER asked that the Commission be updated when more information becomes available.

Tipton County Executive Jeff HUFFMAN asked how much additional electricity might be used by Ford's Blue Oval City project in West Tennessee and what effects the factories could have on TVA's PILOT. Mr. MOREO said he would research that for next year's report.

Mayor BROOKS made a motion to approve the TVA report and County Executive HUFFMAN seconded the motion. The report was unanimously approved by voice vote.

### *Tennessee's Public Infrastructure Needs—Annual Report for Approval*

Research Manager, Tyler CARPENTER presented the report for approval. Mr. CARPENTER said the report documents \$61.9 billion of needed infrastructure improvement projects, which were in development during the five-year period of July 2020 through June 2025.

Mayor Larry WATERS asked whether the development districts consistently interviewed the appropriate level of respondents for the survey—interviewing school system directors, not county mayors, regarding school needs for example. Mr. CARPENTER said that the local officials interviewed include city and county mayors, and school system directors. Dr. LIPPARD added that TACIR conducts annual training for the development districts to ensure consistency.

Mayor Jill HOLLAND asked who was surveyed and whether this report captured or should have captured public infrastructure needs associated with the Blue Oval industrial site in Haywood County. Mr. CARPENTER said that TACIR contracts with the nine development districts that interview local government officials to collect information on public infrastructure needs. Additionally, TACIR collects information from state agencies, community colleges, and universities. He said that because the Blue Oval development was announced recently, most of the public infrastructure needs associated with the site would be reflected in future reports. Dr. LIPPARD added that needs are self-reported by local governments and that, while TACIR and the development districts make every effort to be comprehensive, the process is dependent on the officials responding to the survey.

Mr. CLIFTON asked how TACIR adjusted for inflation and whether this reflected the most current increases. Mr. CARPENTER clarified that the data was adjusted on per capita in 2020 dollars using the Federal Reserve Bank of St. Louis State and Local Government Consumption Price Index for trend analysis; however, these adjustments were made early in the data analysis, and therefore did not factor in the most current inflation.

Representative Harold LOVE Jr. asked for clarification on which institutions comprised the post-secondary education category. Mr. CARPENTER responded that the category includes all the community colleges

under the Tennessee Board of Regents, as well as all the state universities. Representative LOVE asked what infrastructure was included. Mr. CARPENTER said that most of the needs would be related to buildings; however, all capital facilities and land assets under public ownership or operated or maintained for public benefit, which were not considered normal or routine maintenance and had a capital cost of at least \$50,000, would be included.

County Executive HUFFMAN moved approval of the report with Mayor BROOKS seconding the motion. The report was unanimously approved.

### *Expanding Opportunities for State Contracting—Final Report for Approval*

Research Manager Bob MOREO presented the final report on state contracting and African-American-owned businesses for the Commission's approval, which was prepared in response to Senate Bill 1235 by Senator Gilmore and House Bill 1593 by Representative Miller in the 112<sup>th</sup> General Assembly.

Mr. MOREO said, since the draft report was presented at the last meeting, staff had added information regarding contracts reviewed by the Joint Fiscal Review Committee. He said the committee only reviews non-competitive contracts over \$250,000 and, although the committee doesn't keep records about minority ownership, its executive director estimates five to 10 of approximately 300 contracts reviewed each year are awarded to minority- or women-owned companies. Mr. MOREO said the report's remaining findings and recommendations did not change from the draft report.

Representative Antonio PARKINSON urged the state to do better than it has and said that helping minority-owned businesses generate more income would improve the quality of life for generations. Mayor Terry FRANK agreed that the state could do more to encourage members of minority groups to start and grow small businesses. She asked how disparity studies determine the number of businesses available when calculating disparity ratios. Mr. MOREO said the authors of disparity studies separate a government's spending into business categories (construction, for example), and analyze every contract opportunity and the firms that bid on them. They determine a geographic area in which most of the bidding firms are located and use lists of registered minority-owned companies that provide the category of goods or services needed to establish the market of available firms. He said it takes many sources of data, often compiled at the national level for some types of contracts. Representative PARKINSON asked about the barriers for women- and minority-owned businesses to demonstrate their willingness to compete and grow that availability. Mr. MOREO said that it does take time for a company to get registered and make itself available to bid on government contracts and that companies also need to prove their capability to fulfill contracts of the size needed, which is often difficult for smaller firms.

Representative Harold LOVE Jr. asked about difficulties comparing current data with the previous disparity study and whether better data would allow the state to better track the state's progress. Mr. MOREO agreed, saying the report found improvement in some data over time, but could not make detailed comparisons of disparity levels. Representative LOVE added that he hoped communities and businesses of diversity will be included when large infrastructure projects are needed to accommodate developments like Ford's Blue Oval City.

Representative Ryan WILLIAMS asked whether staff found minority-owned businesses are reluctant to work with state government. Mr. MOREO said there are aspects of government contracts that potential bidders of all types find cumbersome and the report suggests helping all small firms overcome the initial barriers will

benefit African American-owned businesses. Representative WILLIAMS asked whether staff could compare Tennessee’s contract awards to African American-owned companies with levels in other states. Mr. MOREO said the data available from other states was not comparable enough to make accurate comparisons.

Senator Katrina ROBINSON said there were instances where the TACIR report said businesses were “certified as African American-owned,” and expressed concern that the language was inaccurate. [Note: Staff clarified the language for final publication of the report.] Senator ROBINSON asked how African American owners are identified. Mr. MOREO said owners can indicate their race when they apply for certification and Go-DBE verifies it.

Senator ROBINSON asked whether there is a statewide goal for purchasing from minority-owned businesses and asked how agencies might be incentivized to reach their individual goals. Mr. MOREO said there is no statewide goal and that the 2009 disparity study recommended that attainment of these goals be considered in the performance reviews of procurement personnel.

Chairman YAGER asked whether recommended changes could be implemented by the procurement office or whether legislative action is needed. Mr. MOREO said most of what had been implemented since 2009 had been policies that did not require legislation, but the changes recommended in the report would not require legislation.

Mayor BROOKS moved approval of the report with Representative WILLIAMS seconding. The report was unanimously approved.

### *Right-of-Way Dedications and Land Use—Draft Report*

Research Manager Michael MOUNT presented the draft report on Senate Bill 1604 by Senator Bailey and House Bill 366 by Representative Williams for review and comment. The Lieutenant Governor and House Speaker sent a letter to the Commission requesting that it study the bill, which would prohibit a local government from requiring dedications of land along existing roads; dedications are conveyances of land to a government for public use.

Mr. MOUNT said that because courts have found dedications that meet the *Nollan/Dolan* test are a constitutional means for governments to regulate land use, because new developments can and often do add to a community’s infrastructure needs and costs, because dedications can help offset those costs so that they don’t fall solely on the entire community’s taxpayers, and because of Tennessee’s long-standing tradition of local control regarding land use regulation, the draft report does not recommend the proposed legislation. Five states have incorporated the language of the *Nollan/Dolan* test into their state statutes. He said that based on the actions taken by other states to protect property owners’ rights while maintaining local authority to require dedications and to provide guidance to local governments, the draft report finds that the General Assembly should codify in state law the *Nollan/Dolan* test, the constitutionally-based standard that has been established and applied by the US Supreme Court for dedications.

Representative WILLIAMS asked whether right-of-way dedications in Tennessee are unconstitutional because we haven’t adopted the *Nollan/Dolan* test. Mr. MOUNT said that the *Nollan/Dolan* test that was developed by the US Supreme Court can be used to determine whether right-of-way dedications are constitutional in any lawsuit. Executive Director Cliff LIPPARD said that the states that have codified the *Nollan/Dolan* test are just more intentional in setting out the test in their statute so everyone is aware of what the requirements are, and this will make it less likely dedications will be unconstitutional.

Representative WILLIAMS asked whether local governments can sell dedicated rights-of-way they have abandoned and decided not to use. He added that he doesn't see how a local government that has decided it doesn't want the dedicated land can charge money to sell it. Mr. MOUNT said that the report didn't focus on that topic but at the September Commission meeting the point was made that they could charge to sell the land. Representative WILLIAMS said that if local governments don't pay property owners for dedicated property, they shouldn't charge to give it back. It seems unconstitutional to charge for that right-of-way. Mayor Larry WATERS said that Sevier County normally divides that right-of-way between the two property owners and transfers it without charging for it. Representative WILLIAMS said that other cities and counties across the state are charging people, and he thinks the state should codify something so there is uniformity across the state.

Mayor Terry FRANK asked whether the draft recommendations would help to maintain local control while protecting citizens from overreach and whether codifying *Nollan/Dolan* would help educate property owners and give guidance to local governments. Mr. MOUNT said that it would.

Representative WILLIAMS asked whether the team studied the difference between how the Tennessee Department of Transportation (TDOT) plans for roadway expansion and how local officials and planners do it. Mr. MOUNT replied that they had talked to a TDOT representative who said that they acquire ownership of rights-of-way to comply with federal law and that the acquisitions are connected to a project they are active on. He said that it's different for local governments, which can acquire right-of-way with no plan to widen the road immediately.

Representative WILLIAMS asked whether other states require local governments to use dedicated property within a certain period of time. He noted that in Tennessee after the property is annexed the city must provide services within a certain period of time. Mr. MOUNT said they didn't do a review of other states' laws on annexation and plans of service for this report. [Note: Staff found one state, North Carolina, with a statute that states that if dedicated land has not been used by the public within 15 years after its dedication it is presumed to have been abandoned and an easement cannot be enforced on the land. However, no abandonment shall be presumed until the dedicator records a declaration in the register's office withdrawing the land from public use.]

### *Post-Award and Implementation Process for State Grants—Panel*

Dr. Matthew OWEN introduced panelists representing local governments and a development district who discussed their experiences navigating the post-award and implementation process of various state grant programs with an emphasis on issues that affect grantees' ability to utilize state grants and examples of programs or processes they consider to be best practices. Panelists included

- Dr. Mark Watson, city manager, Oak Ridge;
- Mr. Bart Walls, chief administrative office, Madison County Highway Department; and
- Ms. Lorie Fisher, community development director, South Central Tennessee Development District.

A fourth panelist—Mr. Bob Rial, mayor, Dickson County—was invited but could not attend the meeting.

Dr. WATSON said local governments appreciate the funding they receive through state grant programs, but some projects are taking a long time to complete. Citing a goal of helping Tennessee perform better, as well as a recent increase in federal funding, he said one concern is how to get projects done quickly. He described

grant-funded projects that had been delayed in Oak Ridge. For a bikeway project, he likened the step-by-step process the city must follow to comply with grant requirements to the process required when building a highway interchange and questioned why the city would need to follow such a process when only building a bikeway, saying there is a need to look at how to simplify the processes required for some grants. He said the state may also need to hire additional grant staff to process projects quicker, citing Oak Ridge's experience with delays on a grant-funded renovation of its high school football field. And he said Oak Ridge has had grants, such as a grant for traffic light modernization, where grant requirements have been changed in the middle of the project, leading to the need for environmental reviews and delays.

Dr. WATSON described how delays increase costs for local governments. He said that losing time means losing buying power. Representative WILLIAMS said that if the cost of a project increases because of delays it might help if the state had some skin in the game, which would incentivize it to act more quickly. He said that a community in his district had received a grant for an \$800,000 sidewalk project, but after delays the cost increased to \$2.4 million.

When describing causes behind the project delays Oak Ridge has experienced, Dr. WATSON said some may result from federal requirements. He said if federal requirements are to blame, then the state should alert its congressional delegation of the need to study and potentially modify these requirements. Representative WILLIAMS said that sometimes requirements that are perceived as state requirements are in fact federal requirements. In response to Mr. CLIFTON's request that the Commission's study include information clarifying the source of requirements for state grant programs, Dr. OWEN said staff would include this information in the report.

Mr. WALLS described the state aid road funding program, which provides approximately \$21 million annually allocated among the state's 95 counties by a formula to help them complete projects on their state aid road networks, which account for approximately 15% to 20% of the road mileage in any given county and are typically county roads that connect to state highways. He said Madison County receives approximately \$260,000 annually through the program, which is enough to pave approximately three miles of the 145 miles of road eligible for the program in the county. Because funds allocated to a county can be carried over from year to year, he said most counties allow their state aid road funds to accumulate for two to four years to use them on larger projects.

Mr. WALLS said the program provides much-needed assistance, and he said a change in recent years made by the state reduced the local matching funds required for the program, enabling distressed counties to use the program more easily. He also said the General Assembly has provided additional one-time allocations to the program on at least two occasions. He said if he could recommend any changes to the existing program, he would recommend more funding because construction costs and inflation keep rising.

Mr. WALLS said county highway officials are concerned about new requirements proposed by the Tennessee Department of Transportation (TDOT) that would increase costs for counties to participate in the program by potentially tens of thousands of dollars per year. He said these costs would take away from funding that could otherwise be used to improve roads under the program. In response to Mr. CLIFTON's question about what the proposed changes would require of county highway departments, Mr. WALLS said that highway departments would be required to assess and rate each mile of road in their county annually and use the ratings to help determine where the county should spend its state aid road funding each year. He also said it would be better to retain local discretion over which projects to do. He said county highway officials are working with TDOT to resolve the issue.

Chairman YAGER asked whether funding would be conditioned on implementation of TDOT's proposed requirements, and Mr. WALLS responded that it is his understanding that it would be. In response to Chairman YAGER's question about whether the proposed requirement would be limited to the state aid road program, Mr. WALLS said it is, but he said it is his understanding that TDOT plans to make changes to the state bridges grant program after changes to the state aid road program are finalized.

In response to Representative WILLIAMS's question about what percentage of highway department funding comes from the state aid road program and would be subject to the new requirements, Mr. WALLS said state aid road funding is just a fraction of the Madison County Highway Department's \$4.5 million to \$7.5 million annual budget. Representative WILLIAMS said that if it would cost a county \$100,000 annually just to implement the requirements when it receives only \$200,000 in state aid road funding per year, then it is not worth it for the state aid program, particularly if the program accounts for only a fraction of a county highway department's annual budget and the county only expends its state aid funding every fifth year after saving for larger projects.

Ms. FISHER said that in her multidecade experience helping local governments navigate state grant programs there is a lot of frustration with grants. She offered four recommendations for improving the efficiency of grant programs based on best practices she has seen:

- First, Ms. FISHER said there is often a lack of communication between staff of state agencies overseeing a grant program and the people on the ground implementing a grant project. She recommended that agencies establish advisory committees for their grant programs like the one established by the Tennessee Department of Economic and Community Development (ECD), which includes local officials and others involved in the implementation of grant projects. ECD uses its advisory committee to receive input from stakeholders and revise proposed changes to grant programs before they are implemented.
- Second, Ms. FISHER said that almost every state agency has adopted its own grant management system [Note: The term grant management system typically refers to an online portal that can be used to submit and review grant documents and to communicate between grantees and grant management staff]. But she said these systems need to be user friendly. And local officials, particularly those from small towns, may not have time to learn how to use different systems adopted by different agencies and may find them intimidating. She recommended the state adopt a single grant management system for every agency to use.
- Third, Ms. FISHER said the duplication of forms and certifications can be frustrating. She provided an example of agencies requiring grantees to certify they have completed training for compliance with Title VI of the federal Civil Rights Act, which prohibits discrimination in any program or activity that receives federal funds. She said Title VI compliance is important, but agencies won't recognize training or certification from another state agency, instead requiring grantees to complete each agency's training individually. She recommended the state establish a database for tracking these types of forms and certifications so that grantees won't have to duplicate tasks they've already completed for other agencies.
- Finally, Ms. FISHER said that not receiving timely reimbursement from the state for grant expenses can be a problem. She said it can take months for local governments to be reimbursed, with some agencies allowing reimbursement requests only once per quarter, and she knows some local officials who have decided against applying for grants because they can't afford to wait for the state to reimburse them for project costs. She said this can contribute to the divide between the haves and

have nots because wealthier communities are more easily able to float payments while waiting for reimbursement. She recommended the state consider alternatives to streamline the payment of grant funds so that small communities won't be prevented from applying for grants.

Several of the Commission's local members described similar frustrations with grant programs to those described by panelists. Differing opinions were expressed on whether post-award processes for grants that use federal funding are more complicated and take longer than those that use state funding. Mayor WATERS, with whom Mayor ANDERSON and Mayor FRANK agreed, said federally funded grants tend to be more complicated. However, Dr. WATSON said federal requirements are communicated more clearly to grantees, and Ms. FISHER said that although there are more rules and regulations with federal funds, federal requirements don't change after a grant is awarded; she said state requirements change a lot in comparison. Mayor ANDERSON and Mayor FRANK provided examples of grant programs with simplified requirements that they have had better experiences with, including grant funding provided under the American Rescue Plan and direct allocation grants from the state.

Mayor ANDERSON said there is a lot of paperwork involved in following grant requirements and that something needs to be fast tracked for grants in general and highway grants in particular. He is considering hiring a grants coordinator to help his county manage the grants that all of its different departments receive in part because if requirements aren't followed the county might have to return grant funding. Citing the costs that fall on local governments when managing grants, he said that although some grants may not be worth applying for, local governments cannot afford not to apply for them in some cases because the public would be upset if it found out local officials were not pursuing grant opportunities, and he questioned what is driving the adoption of grant requirements. Representative WILLIAMS asked whether rules for grant programs must be approved by the Joint Committee of Government Operations and whether they are subject to any other approval. Dr. WATSON responded that some rules are reviewed by Tennessee's Transportation Planning Organizations, which are regional organizations that help identify local transportation needs, assist local governments, and support state transportation planning processes.

In response to Chairman YAGER's question about whether grant rules typically allow a percentage of grant funding to pay for administrative costs of the grant, Dr. WATSON said that many grant programs do allow grantees to use grant funding to cover some of their administrative costs, and for those grant programs that don't, the cost of administration can be used as an in-kind contribution to the grantee's matching requirements. Mr. WALLS responded that although grant funding can often be used for grant administration, reducing the cost of administration would allow more funding to be spent on the project itself and could be a more effective use of funds. Ms. FISHER said grant funding used for administrative costs is subject to any matching requirements for the grant overall. She said that the South Central Tennessee Development District tries not charge administrative fees to local governments for smaller grants.

Chairman YAGER said the state's development districts are a valuable resource for communities, but smaller cities may not be aware of the services available from the development districts. Ms. FISHER said her staff tries to contact local governments in their district regarding grant opportunities, but manpower can be an issue with only four staff and 13 counties and 36 cities in the district.

### *Comprehensive Litter Review—Update*

Research manager Jennifer BARRIE presented an update on the comprehensive litter review, which, as the members determined at the June 2021 meeting, will not focus on policies that impose deposits on bottles

or bans on plastic bags. Ms. BARRIE said staff continues to gather evidence for the study, and this update provides an initial overview of findings regarding the status quo for litter issues and policies, programs, and laws adopted to reduce litter in the state; feedback from stakeholders; and an initial review of other states' laws. Staff will present the draft report at the fall 2022 meeting and the final report in January 2023.

Several members had questions and comments about the Tennessee Department of Transportation (TDOT) Highway Beautification Office litter grant program. Senator Katrina ROBINSON asked whether staff has information on how counties spend the litter grant funds, details on the counties that aren't spending the full amount, and how they would use additional funding if they were to receive it. Ms. BARRIE responded that staff is gathering and analyzing county-level data and will include it in the draft report. She said stakeholders have said that more funding would help, and how they would use the funding is a question that staff will try to answer by reaching out to counties. In response to a question from Senator ROBINSON about the grant application process, Ms. BARRIE said that to receive the grant funds, counties are required to pass a resolution and submit a work plan, budget, and education plan. County Clerk Mary GAITHER said the litter grant is great, but it only applies to counties. She asked whether it could be utilized by municipalities. Ms. BARRIE said that within the current program structure, the funds are allocated to county governments, and the counties then decide how to use those dollars and could work with cities. This structure might be something that could be changed. Chairman YAGER said that a percentage of the litter grant funds are required to be spent on education, but education is broadly defined, and he would like the study to look at the definition of education. He also mentioned that the line of command for cleaning up dumps is not clear and is an issue we need to look at.

Representative Ryan WILLIAMS asked whether the \$3.8 million of unspent litter grant funds comes back to the department [TDOT]. Ms. BARRIE said that money stays in the litter grant fund and does not get diverted, and every few years the Highway Beautification Office awards competitive grants—called special litter grants—that local governments, state agencies, and nonprofit organizations can apply for. Representative WILLIAMS said he would like to know whether the Tennessee Department of Environment and Conservation (TDEC) and TDOT communicate with each other about cleaning up litter and illegal dumps and available funding and whether improved communication between the agencies could be a recommendation. He said that even though we have a \$1 per tire fee, waste tires are still one of the biggest problems.

Mayor Kevin BROOKS said that he would like the study to look into what is happening with the \$3.8 million of unspent litter grant funds. He said the Keep America Beautiful (KAB) and TDOT visible litter studies don't seem relevant to what he sees on the roads, and he would like to take a closer look at how much litter there is in the state. He suggested that TACIR could recommend another visible litter study. He also mentioned that there are questions in his area about the waste tire fund and where waste tires are going, and said they are having difficulty prosecuting offenders. Chairman YAGER asked what a visible litter study is and whether the KAB national study focused on Tennessee. Ms. BARRIE responded that the KAB study was a nationwide study, and the TDOT 2016 study was statewide and used a methodology to count litter on a sample of 120 road segments on different types of roads across the state. Chairman YAGER commented that we need quantifiable data to help us reach solutions, and he would like staff to consider how to get quantifiable data. Mayor Jill HOLLAND asked whether the draft will show which counties or areas have the most or least amount of litter. She would like to see where most of the accumulation is and would like to know what cities and counties can do. Ms. BARRIE said the TDOT study does not include detail about specific communities, and staff will reach out to counties and cities to learn what is happening at the local level.



Mayor Jeff HUFFMAN said that the KAB report discusses the psychology of littering and the difference between intentional or unintentional litter. The TACIR study should look at intentional and unintentional litter and which programs are effective. He would also like to know how the covered load law is working and whether more law enforcement is needed. He mentioned that the pandemic has affected litter pickup and the inmate programs, and as a result, the data for the last couple of years might be erratic.

Mayor Terry FRANK said she has three requests for the study. First, she would like to know whether other states incentivize litter law enforcement or adopt-a-road programs, and if so, how they do it. Second, she would like information on how other states are doing litter education. And third, she asked how other states manage waste tires and whether there is a way to track tires and find out where they are going. She would like to know whether the responsibility for managing waste tires in Tennessee could be shifted from the counties to the tire dealers.

In response to a question from Mayor HOLLAND about accountability for the management of waste tires, Ms. BARRIE said the 2020 Commission report on waste tires and illegal dumping addressed the waste tire program and related issues. Staff is reviewing and updating that report as needed and will include a copy in the litter report. In response to comments from Representative Harold LOVE Jr. about used tires, Ms. BARRIE said that the waste tire report addressed the issue and recommended a pre-disposal fee for used tires.

Mayor Buddy BRADSHAW said that Loudon County got permission from the state to offer a \$1,000 reward for an illegal dumper, and the county prosecuted the offender to the fullest extent of the law. He would like to see rewards become an easier process. He also suggested that small tire businesses should be held responsible for dealing with illegal dumpers and mentioned that the litter grant is one of the best things they get from the state of Tennessee.

Mr. Calvin CLIFTON said that even though the study will not focus on policies that impose deposits on bottles or bans on plastic bags, he hopes it will take a good objective look at plastics. Plastics are one of the biggest problems because they so readily end up in the waterways. He would also like the study to look at how the market for recyclables is changing and how it affects litter and curbside recycling programs. He also thinks there is a workforce issue at play. For example, businesses are having a hard time hiring employees to take out the garbage, and then that garbage becomes everyone's problem.

## **June 15-16, 2022**

### *Fiscal Year 2021-22 Accomplishments*

Senior Research Director Leah ELDRIDGE summarized the Commission's major accomplishments for the past fiscal year, which will be incorporated into the Commission's biennial report for fiscal years 2020-21 and 2021-22.

### *Legislative Update*

Research Associate Michael STRICKLAND presented the legislative update for 2022, with a review of bills that were either considered or passed in the second part of the 112<sup>th</sup> General Assembly that related to the Commission's work.

Dr. STRICKLAND recounted bills related to broadband internet, court fees and criminal law, education, election security, land use and right-of-way, littering, local government conflicts of interest, precious metal sales, the professional privilege tax, and state contracting, making note of those that reflected recommendations the Commission had made in past reports on these topics. He presented seven distinct bills that had been put forward to the Commission requesting a total of six possible new studies. Three of these were passed as public chapters and direct the Commission to study passenger rail service in Tennessee and utility-scale solar energy development. Another three bills passed in the Senate, but did not pass the House of Representatives, and were presented to the Commission as requests; these concerned reference-based pricing in healthcare, emergency communications on college campuses, and “liquor-by-the-drink” taxes. A fourth bill did not pass either chamber of the General Assembly and requested a study on the use of criminal fines for funding ambulance services.

### *Work Program Amendment and New Research Plans*

Executive Director Cliff LIPPARD presented five amendments to the fiscal year work program for the Commission’s consideration. Amendments one through four were adopted, with the Commission voting not to add amendment five to the work program. The first amendment adds two studies requested in bills passed by both chambers of the General Assembly. Public Chapters 1114 and 1124, Acts of 2022, direct a study to be conducted on the potential for passenger rail service to link the major cities of each grand division of the state. Public Chapter 1043, Acts of 2022, requires a study related to the overall effects of utility-scale solar energy development in Tennessee. Amendments two, three, and four add studies requested in bills that passed the Senate but were either referred for summer study or taken off notice in the House. Senate Bill 2330 by Senator Hensley and House Bill 2456 by Representative Sparks, which passed the Senate but was referred to summer study by the House, directs a study to be conducted related to the effects of health insurance prices when referenced-based pricing is used. Senate Bill 2827 by Senator Hensley and House Bill 2729 Representative Ogles, which passed the Senate but was referred to summer study by the House Finance, Ways and Means Committee, requests a study related to the routing and storage of emergency communications on colleges and universities in the state. Senate Bill 2262 Senator Briggs and House Bill 2419 by Representative Mannis, which passed the Senate but was taken off notice in the House, requests a study related to restaurants licensed or permitted or both, under title 57 chapter 4 or 5.

Mayor FRANK asked whether the rail study could examine existing rail infrastructure in Tennessee and review tourism issues, like scenic railways or other potential for economic development that use the existing rail structure. Representative PARKINSON said that, as a bill sponsor, it was his intent that the bill and research study the effects on tourism and the economic effect of a rail system. Dr. LIPPARD said that the guidance in the bills sent to the Commission requires a review of freight rail lines because of capacity issues, and staff would want to make certain any recommendations made didn’t disrupt the essential flow of freight rail in Tennessee.

In response to Mayor WATERS’s question as to why the House Finance, Ways and Means Subcommittee referred Senate Bill 2827 by Senator Hensley and House Bill 2729 by Representative Ogles to summer study instead of TACIR, Chairwoman HAZLEWOOD said the House has a limited number of studies that it can request from TACIR and the requests are prioritized. This study did not make the priority list and referring the request to summer study was the alternative. Representative WILLIAMS said he had talked with the bill sponsor and explained that a TACIR study could be advocated for if TACIR had available capacity to add the study to the work program. He also said that, because the House has more members than the Senate, to not overwhelm TACIR with studies, and to make certain TACIR could meet its purpose and not become an ad hoc

committee of the House and Senate, the House decided to limit the number of study requests sent to TACIR each year.

Mayor BROOKS asked that it be noted that if bills are taken off notice, or never even calendared, then these studies don't rise to the level of a directive by the General Assembly to send the study to TACIR, nor does it indicate there was an interest in one or the other chamber for the study to move forward. He said this should be considered with the large amount of work the Commission has already asked the staff to accomplish.

Chairman YAGER asked Dr. Lippard whether there is precedent related to the Commission accepting a study from only one chamber of the General Assembly. Dr. LIPPARD said the decision is entirely at the discretion of the Commission. He said if there is indication that there is interest from both chambers, the Commission has added the study to the work program as capacity allows. There is also a precedent from the Commission of adding studies to the work program when the study has been referred by only one chamber.

Deputy Commissioner Deniece THOMAS asked how studies are prioritized when there is no due date on the study. Dr. LIPPARD said studies without due dates are preferred as it gives the Commission flexibility to work them into the work program. Staff can focus on the studies that the General Assembly has shown to be a priority and can push the studies with no due date to a later time. He said that, for studies not referred by both chambers, staff prefers not to have a due date or a due date that is further out.

Senator Heidi CAMPBELL asked about the process for deciding a study hasn't been requested by both chambers and how the project is prioritized. Dr. LIPPARD said that if a bill passes both chambers and becomes a public chapter, the Commission is required to complete the study as it is a law — there is no instance where the Commission has not completed a study that was requested by law. He also said he is not aware of an instance when a study was requested by both chambers that the Commission did not conduct the study. Dr. LIPPARD said that when a study has been requested by a committee of one chamber, the Commission has nearly always added those studies to the work program. This issue is less clear when the study is only requested by a subcommittee or has clear opposition from one chamber. The only time the Commission hasn't accepted a study was when it was referred by a subcommittee or by a member and there was no indication of support from the other chamber.

In response to Senator CAMPBELL's question about the process of adopting studies to the work program and the overall workload of staff, Dr. LIPPARD responded that, though the Commission is considering the five amendments to add studies to the work program, the Commission already has a docket of studies that staff is continuing to work on, some of which are multi-year projects that won't be completed until next year, and any new studies added to the work program will have to work around the existing studies and the three statutorily required projects. He said that this consideration of the process and workload is why the House adopted its referral process to ensure that more studies than the staff can handle aren't being sent to the commission.

Councilman Chase CARLISLE asked if the docket is getting full of projects with no specified due date, have studies ever been amended or removed from the work program. Dr. LIPPARD said he is not aware of a study being removed from the work program though studies with no specified due date have been moved further down the list.

### *Right-of-Way Dedications and Land Use—Final Report for Approval*

Research Manager Michael MOUNT presented the final report on Senate Bill 1604 by Senator Bailey and House Bill 366 by Representative Williams for review and comment. The Lieutenant Governor and House Speaker sent a letter to the Commission requesting that it study the bill, which would prohibit a local government from requiring dedications of land along existing roads; dedications are conveyances of land to a government for public use.

Mr. MOUNT said that because courts have found dedications that meet the *Nollan/Dolan* test are a constitutional means for governments to regulate land use, because new developments can and often do add to a community's infrastructure needs and costs, because dedications can help offset those costs so that they don't fall solely on the entire community's taxpayers, and because of Tennessee's long-standing tradition of local control regarding land use regulation, the final report does not recommend the proposed legislation.

Mr. MOUNT said that five states—Arizona, Colorado, Florida, Minnesota, and Utah—have incorporated the language of the *Nollan/Dolan* test into state statute, which provides guidance to local governments to help ensure that the dedications they require meet the *Nollan/Dolan* test. He said that, based on the actions taken by these other states to protect property owners' rights while maintaining local authority to require dedications and to provide guidance to local governments, the draft version of this report that was presented to the Commission at its January 2022 meeting recommended that the General Assembly should codify in state law the *Nollan/Dolan* test, the constitutionally-based standard that has been established and applied by the US Supreme Court for dedications. Mr. MOUNT added that this year, in response to the draft recommendation, Senator Bailey and Representative Williams introduced and the General Assembly passed Public Chapter 1128 to incorporate language from the *Nollan/Dolan* test into Tennessee's statutes.

In response to Chairman YAGER's request to summarize the report recommendations, Mr. MOUNT said that the final report was updated to reflect that Public Chapter 1128 had passed. Representative WILLIAMS said that Public Chapter 1128 was a good compromise and that more work needed to be done on this subject.

Senator YARBRO moved approval of the report with Mayor BROOKS seconding the motion. The report was approved unanimously.

### *Post Award and Implementation Process for State Grants—Panel*

Director of Policy Matthew OWEN introduced panelists representing state agencies to discuss issues of concern for grants management, including compliance with state and federal requirements, as well as best practices and a new grants management system that the state has procured and is in the early stages of making available to some agencies. Panelists included

- Ms. Brooxie Carlton, assistant commissioner of community and rural development, Tennessee Department of Economic and Community Development (ECD);
- Mr. Bryan Chriske, legislative procurement compliance manager, Office of Management Services, Tennessee Comptroller of the Treasury;
- Ms. Kimery Grant, transportation manager, Local Programs Development Office, Tennessee Department of Transportation (TDOT);
- Ms. Anne B. Marshall, director, Recreation Resources Division, Tennessee Department of Environment and Conservation (TDEC); and

- Mr. Clyde Phillips, enterprise resource planning project director, Tennessee Department of Finance and Administration.

Assistant Commissioner CARLTON described the array of grant programs ECD oversees and said one concern is the effect of federal requirements. She used ECD's broadband grant program as an example, saying that it had been state-funded for several years and has been very easy to manage. However, because it will now be federally funded, grantees will have to do environmental reviews, they will have to comply with the federal Davis-Bacon Act's wage requirements, and several other compliance areas that they've never had to do before for this program. She said this will slow down the timeline for executing grants, and it's going to make them more expensive. Moreover, she said every federal agency has slightly different requirements, citing the US Department of Transportation's refusal to reimburse grantees for the cost of environmental reviews. She said the state may not be able to fully address issues stemming from federal requirements, but it's important to help grantees manage them.

Assistant Commissioner CARLTON said two other issues are a statewide grants management system (GMS) and state capacity. She said a statewide GMS is needed. And she said given the amount of grant funding that state agencies are dealing with, the state needs to keep talking about how it can keep up with the federal money that it's getting, or it will end up putting communities at risk of non-compliance.

Assistant Commissioner CARLTON said ECD's advisory board for its Community Development Block Grant program is a best practice. She said the board includes grant administrators, engineers, and local officials, who provide advice and help guide changes for improving the program, for example changing project scoring during the application process to encourage communities to apply for projects that they need rather than applying for larger, unneeded projects that simply score well. She said it also builds goodwill to have advice and suggestions from the communities coming in.

Mr. CHRISKE said the Office of Management Services, within the Comptroller's Office, is responsible for conducting compliance reviews of procurements and contracts that require approval by the Comptroller pursuant to Tennessee Code Annotated, Section 4-52-108, specifically grant contracts in excess of \$5 million. These grants are reviewed for compliance with procurement statutes as well as central procurement office rules, policies, and procedures. He said the Comptroller's Office is also responsible for the audit of state agencies, colleges and universities, and local governments, and it participates in the general financial and administrative management and oversight of the state as it relates to the post-award phase of grants through the audit process. He said grant policies vary by agency, and they can also vary within various divisions within the same agency, though he did not suggest this should be changed.

Mr. CHRISKE said Public Chapter 733, Acts of 2022, requires the state's Chief Procurement Officer to establish and maintain a central database of information regarding grant recipients and subrecipients for monitoring purposes by March 31, 2023. It also requires that all state agencies use that database and keep it updated. He said this will aid state agencies with grant monitoring, as well as assist the Comptroller's Office with audits.

Ms. GRANT said TDOT's Local Programs Office helps administer locally managed grant projects, of which there are approximately 600 local projects currently active. She said some of these projects are state-funded, but most have at least some federal funding, and once any federal funds are involved, then federal process must be followed for the entire project, not just the federally funded portion of it. She said TDOT's grant projects have six phases: eligibility determination, National Environmental Policy Act (NEPA) environmental review, design review, right-of-way review and acquisition, construction, and closeout. Combined, these six phases have 206 steps. She said because most of TDOT's grants are federally funded, these processes

have been adopted to ensure that local governments do not lose federal funding for their entire project or for specific phases of their project. She later acknowledged that TDOT's process is complicated, and TDOT hasn't worked with other agencies on joint solutions because of that. She said TDOT's grant programs are routinely audited by the Federal Highway Administration and the state. [Note: Several members later asked for an enlarged copy of the flowchart presented by Ms. Grant. Staff will include a copy in the final report.]

Ms. GRANT described several issues that can delay projects. Some of these delays, such as the amount of time needed to perform environmental studies, the 50 days that reviewing agencies have to review NEPA documents, the 120 days that Native American groups have to respond under the NEPA process, and delays related to relocating utilities, are out of grantees' control. In particular, she said federal authorizations take time, and she later acknowledged some delays may be related to staffing turnover at the state, saying it takes at least a year to train new staff on TDOT's process. Other delays can result from submitting incomplete documents, delays in hiring consultants, delays related to justifying changes to projects, and lack of local funds to meet matching requirements. She said her advice to local governments is to become familiar with TDOT's processes, hire knowledgeable staff to oversee projects and consultants, submit invoices regularly [Note: She said TDOT requires invoices to be submitted at least quarterly but no more than monthly], and above all else communicate early and often with TDOT. She later said TDOT meets with metropolitan planning organizations to identify projects that aren't moving forward. In response to Vice Chairman BROOKS's question about whether local officials could attend these meetings or schedule separate meetings with TDOT, Ms. GRANT said she would encourage them to do both of those things.

Director MARSHALL said TDEC's Recreation Resources Division provides planning, technical assistance and grant services to local governments and state parks. She said their grant programs include those that are state and federally funded. Examples include the Local Parks and Recreation Fund, which is a state program funded through the real estate transfer tax, the Recreational Trails Program, which is a federal program for trails and greenway development, and the Land and Water Conservation Fund, which is also federally funded. She said that the state and federal requirements placed on these grant programs are part of TDEC's commitment to steward public dollars in the most responsible way. She said this is in part why they require local governments and state parks to have comprehensive masterplans, because as grant recipients, they are also stewards of these dollars, and TDEC wants to make sure that funds are going towards the priorities that are set forth in that community. It also includes making sure that all projects are compliant with the Americans with Disabilities Act (ADA), playgrounds are designed and installed in a safe way, and projects are built according to correct specifications. She acknowledged that complying with some requirements, in particular the environmental clearance process, can be quite lengthy. In response to Mayor HOLLAND's question about whether the requirement for planning is a state or federal mandate, Director MARSHALL said it is a federal requirement for the state to produce a Statewide Comprehensive Outdoor Recreation Plan.

Director MARSHALL said TDEC's Recreation Resources Division began using a GMS for its grants in 2018. She said there's a learning curve with the GMS, and some people like it, while others don't. But TDEC has found it beneficial because it keeps all the information for a grant project together in one place. She said it's very easy for grantees to submit everything from the application to the environmental clearance documents to Title VI certification (certifying compliance with Title VI of the federal Civil Rights Act). It's a matter of uploading and checking a box, and then TDEC staff can review those documents and communicate back and forth with the grantee. Mayor HOLLAND agreed that there is a learning curve for TDEC's GMS, especially if you're not using it every day.

Director MARSHALL said that to help TDEC do a better job making requirements and process easier for local governments they are reestablishing a grant review committee, similar to ECD's advisory board, that last met in 2008. She said the grant review committee is a very good way to get diverse input from across the state from every type of entity involved in TDEC grants, whether that's development districts, consultants, or local officials.

Director PHILLIPS said that in 2020, the Office of Customer Focused Government recommended that the state adopt a single, statewide GMS. He said potential benefits of a statewide GMS include having a single landing page for grantees to search for grant opportunities as well as a single system for grantees to use when managing grants from different agencies, making it easier to track applications and reimbursements. Having a single GMS rather than each agency having its own would reduce costs and reduce training time. By having the GMS interface with Edison and federal systems, it would also reduce the need for manual data entry, reducing the risk of errors. He said potential risks are that the system needs to be flexible enough to handle different grant requirements for different programs. When first implementing the GMS with a new agency, decisions also have to be made about whether to convert old data to the new system, and staff have to buy in to help with the transition.

Director PHILLIPS said so far, the Department of Labor and Workforce Development is the first agency to have adopted the new state GMS, and they went live on the platform in May 2022. Other agencies that have expressed interest include the Department of Finance and Administration, the Department of Agriculture, the Commission on Children and Youth, TDEC, which would upgrade to the state GMS from its current system, and ECD. He said the system currently interfaces with Edison for things like grantee or vendor information as well as for payments, and it can verify an entities nonprofit status, and they are continuing to add additional functions. Vice Chairman BROOKS said he would insist on the state having a statewide GMS if he were in the legislature. Councilman CARLISLE said he is interested in a statewide GMS, provided that it is user-friendly, and he asked why the current rollout is voluntary for agencies and not mandatory. Director PHILLIPS responded that at least initially the state is working with agencies that have volunteered to use the GMS. He said agencies have different processes, some have more requirements than others, and eventually the state will add more bells and whistles to the GMS to hopefully encourage more agencies to volunteer. He said it may be required in the future, but the state isn't there yet. He said some agencies, like TDOT, may have processes that are too complicated for the GMS to handle.

Vice Chairman BROOKS said streamlining grant processes is something that needs to be talked about, because things like trails, greenways, and sidewalks are quality of life issues for communities, and he described how the city of Cleveland recently had to give back a \$898,000 grant from TDOT because the NEPA process took too long, which he said is not a unique experience. He said it is confusing that state funding for private-sector economic development projects can be fast-tracked, but it still takes five years to build a sidewalk. Ms. GRANT said the grant that Cleveland had to return was part of the Transportation Alternatives Program, which is federally funded, and the federal government requires those projects to be construction-ready within three years or funding will be given to other projects.

Mayor HOLLAND said some grant programs are easier to work with than others in part because they are state funded rather than federally funded. She described several grants that the city of McKenzie has received that have been delayed, saying that the back and forth with state agencies can be frustrating, especially when you submit documents for review and don't get responses for a month. She said whatever can be done to streamline state grants would be beneficial, though she acknowledged the state may not have the same leeway with federally funded grants. Mayor ANDERSON later expressed similar frustration with federal

requirements and the need to address concerns with grant processes, saying that the federal government is going to continue to send more grant money to state and local governments in the coming years. Deputy Commissioner THOMAS agreed and said that the more requirements and restrictions the federal government places on federally funded grants, the more difficult things will be for state and local governments. She said disparate requirements could make it difficult to have a statewide GMS and already are making it more difficult to train grant management staff at the state. Even if someone has worked on grants at one agency, it isn't translating to grants management at other agencies anymore. She said there has to be some pushback on federal requirements.

In response to Mayor HOLLAND's question about whether there is an expected turnaround time for submissions especially for the NEPA process and whether there's a checklist that could help grantees, Ms. GRANT said environmental reviews are coordinated by TDOT's Environmental Division and some of the entities reviewing environmental documents have mandated timeframes for reviewing them and some don't [Note: Some of the entities reviewing these documents are federal agencies or other non-state entities]. Mayor WATERS asked whether approval for environmental clearance under NEPA for transportation grants comes from TDOT or the federal government. Ms. GRANT responded that some types of reviews can be approved by TDOT, but others require approval from the Federal Highway Administration. Mayor WATERS said the post-award process can be very frustrating.

In response to Mayor HOLLAND's question whether it's necessary for each state agency to have its own training for grantees to certify compliance with Title VI of the federal Civil Rights Act or whether the state could simply have one training that all agencies accept, Assistant Commissioner CARLTON said the state does allow agencies to accept Title VI certification from other agencies' training. Mayor HOLLAND said in small towns, mayors are directly involved in a lot of their grant projects, and as a result, duplicative grant processes can be burdensome, because they take time away from other things. Mayor BICKERS said smaller cities likely don't have fulltime employees for finding, applying for, and managing grants, and as a result they don't have equal access to funding opportunities. He said with grants spread throughout the different agencies, with different application processes, different monitoring processes, and different reporting systems, officials from small cities don't have the time and the resources to go through all of it. He asked staff to look at whether there is a bureaucratic barrier to funding for smaller cities and said it is important to ensure processes are equitable. Assistant Commissioner CARLTON said ECD's grants allow funding to be used for grant administration, and the application scoring process awards extra points to distressed communities.

Senator CAMPBELL asked what authority the state has regarding federally funded grants and whether there are federal programs the state is not an intermediary for. Director MARSHALL responded there are other federal programs and other private funding sources that cities can apply directly to that aren't managed by the state. She said for state-managed, federally funded grants—such as the Land and Water Conservation Fund—states are managing those programs on behalf of the federal government. As a result, states must follow federal guidelines and requirements, which does add some steps and can add a lot of time. She said a statewide GMS that interfaces with federal systems could be helpful by eliminating the need to fill out separate forms, for example an application form the grantee submits to TDEC that TDEC staff then use to fill out a separate form to send to the federal government.

In response to Mayor FRANK's question about whether there are opportunities for the state to use federal funding for state needs so that more grants to local governments would be state funded and not subject to federal requirements, Director MARSHALL said that for TDEC, most of the federally funded Land and Water Conservation Fund grants go to state parks, whereas they use the state-funded Local Parks and Recreation



Fund to provide grants to local governments. Because this fund is state-funded, TDEC has been able to make a lot of process improvements to it, including shortening the environmental review process.

Mayor FRANK said there appear to be a lot of federal requirements that the state doesn't fully control and asked whether the state is working with its federal partners to assess whether some of those requirements are too cumbersome. Ms. GRANT responded that TDOT has worked with the Federal Highway Administration to develop an accelerated process for local projects, but she said only two local governments had used it because it didn't speed up projects significantly, and it placed more of the risk for non-compliance on the local governments. She said any changes to program requirements would need federal approval. Assistant Commissioner CARLTON said some of the federal American Rescue Plan funding had fewer requirements and could be tracked to see whether it worked and could be an alternative.

In response to Mr. CLIFTON's question about differences between state and federal requirements and whether agencies have adopted federal requirements for some state-funded programs, Ms. GRANT said for TDOT the processes aren't that different from federally funded to state-funded grants, and the state requirements tend to mimic the federal requirements. Mr. CLIFTON asked why road resurfacing projects require NEPA clearance and right-of-way review. Ms. GRANT responded and said they are both federal requirements and said they shouldn't take as long for resurfacing projects but said you could lose funding on an entire project if the requirements aren't met.

Councilman CARLISLE said workforce development needs to be considered with grant projects, saying that Memphis puts millions of dollars a year into paving projects but has difficulty finding people to do it. Assistant Commissioner CARLTON said with the huge amount of broadband funding the state is receiving it will be able to train people not only how to use broadband but also how to install fiber optic cable to deploy broadband.

Chairman YAGER said with federal requirements state and local governments are working under someone else's rules. He said we need to find ways to simplify grant processes.

### *Tangible Personal Property Tax—Panel*

Research Manager Michael MOUNT introduced panelists with knowledge of the personal property tax in Tennessee. Panelists included

- Mr. Jim Brown, state director, National Federation of Independent Businesses (NFIB);
- Mr. Will Denami, executive director, Tennessee Association of Assessing Officers;
- Mr. Kelsie Jones, attorney, Jones Law Office PLLC;
- Mr. Kevin McAdams, certified public accountant, Elliot Davis;
- Ms. Karen Paris, trustee, Williamson County; and
- Mr. Daniel Sohn, vice president of finance and operations, Vireo Systems.

Mr. Jim BROWN said that TACIR was asked to study personal property taxes because of the complexity of the issue. He said that the smallest businesses have hundreds of dollars in compliance costs to pay a tax that can amount to between \$10 and \$25, and midsized and larger companies spend even more time and money to comply. He added that a group that gathered last summer was interested in exempting smaller businesses from paying the tax, but there were some constitutional issues with that, and an exemption would likely be

challenged by a lawsuit. Mr. BROWN said that other states have already enacted various exemptions, and Wisconsin's legislature voted to eliminate their personal property tax, but the governor vetoed it. [Note: West Virginia enacted House Joint Resolution 3 in 2021 setting a referendum for November 2022 on whether to amend the state constitution to authorize the Legislature to exempt certain tangible personal property from property tax.] Mr. BROWN said that many NFIB members consider personal property tax to be a double tax because they have already paid sales tax on the property. Councilman Chase CARLISLE said that it's a triple tax for businesses that pay franchise tax.

Mr. Will DENAMI said the personal property tax is complex, and it is required by Tennessee's constitution. He said that Tennessee has a good system for administering personal property taxes, but it can be improved. He added that assessors want to treat everybody fairly, so the system needs to reflect fair market value. Mr. DENAMI referenced a 1996 lawsuit by a group of airlines seeking more favorable personal property tax treatment [*Northwest Airlines et al. v. Tennessee State Board of Equalization*]. He indicated that the 15% discount placed on the airlines' personal property in the settlement amounted to an admission that current depreciation schedules [adopted in 1990] undervalue personal property.

Mr. Kelsie JONES gave some of the historical background of the property tax in Tennessee. He said that there once was a state property tax but it was replaced by the sales tax in 1947, and now property tax is a local tax. He said that the personal property tax is more difficult to administer than the real property tax but that the state's reappraisal cycle, and the program of professionalization of local assessor officers, brought Tennessee to the top tier in property tax administration, and that is still true today. Mr. JONES said that federal law requires that states reasonably apportion the multi-state operations of railroads, power companies, telecommunications, and transportation companies like motor carriers and barge lines, and that is why they are centrally-assessed by the state.

Mr. Kevin MCADAMS said the cost of compliance to a company is often more than the annual tax that they pay. He said that companies pay personnel costs and outside professional fees to comply with personal property taxes, and they have to maintain data that is not needed for anything else, for example, the Internal Revenue Service does not require businesses to itemize and depreciate personal property below \$2,500. Mr. MCADAMS added that the inevitable personal property tax audits are an additional cost and the results are often disputed. He said that, when there is a dispute, it is often cheaper for the taxpayer to walk away.

Ms. Karen PARIS said trustees are uniformly in the corner of our business community, are elected to serve our citizens, and are on the front lines of collecting personal property taxes. She said that the personal property tax is challenging and frustrating for businesses that may be assessed for years after they have closed, and that may end up in the court system. She shared figures demonstrating that the 7,090 smallest personal property accounts in Williamson County generate just \$210,000 to \$294,000 but added that the total personal property tax revenue of \$10.8 million is important to the county. She said that if the small accounts did not need to be administered, the assessor's and trustee's offices could save costs by reducing personnel.

Chairman YAGER said that the figures reaffirm that we need to look at other states to see whether there are any best practices to give some relief to people who are spending hours to pay a tax that is less than \$100, or in some instances, less than \$10. Deputy Commissioner Deniece THOMAS suggested that we need to go beyond what was enacted in other states and look at the potential loss of revenue for local governments and how to ease that burden. [Note: Because businesses in Tennessee may claim a credit against their business tax for personal property taxes paid, a decrease in personal property taxes could increase state business tax

revenue and vice versa. See, for example, the fiscal note for Senate Bill 2877 and House Bill 2726 (100<sup>th</sup> General Assembly).]

Mr. Daniel SOHN said that complying with Tennessee’s personal property tax is extremely burdensome to medium sized companies like Vireo Systems and would appreciate any state efforts that would help them reduce the red tape that inhibits their ability to grow and add new jobs. He described the process of complying as time-consuming and costing far more than the taxes that would be collected. Mr. SOHN gave an example of his facilities manager running around trying to find a stapler. Mr. CARLISLE agreed that that isn’t the best use of time. Mr. SOHN estimated that it took his facility manager and his assistant three days to identify and locate every single item on that list. He estimated that they spent over \$2,000 to complete their personal property tax inventory and review. He recommended that the state reduce the burden or repeal the tax completely.

County Executive Jeff HUFFMAN said that it bothers him that compliance expenses can be more than the tax and that companies have difficulty figuring out how to pay this complex tax. He said that assessors and state employees try to be fair but that it’s difficult. Councilman CARLISLE said that, for the assessor’s office and the trustee’s office, property tax administration is almost an overwhelming task for them. Councilman CARLISLE said that large businesses can hire help with complying with personal property taxes, but most small businesses cannot.

County Executive HUFFMAN said that the study should show how much personal property tax revenue each county receives, and that the study looks at how other states are handling the issue. Chairman Ken YAGER said that it’s very important that we look at what the personal property tax generates on a county by county basis and statewide. Mr. MOUNT said that, according to preliminary calculations, personal property taxes generate \$400 million to \$500 million statewide, and the percentage of property tax assessments that are personal property tax assessments varies widely across local governments in the state.

Mayor Tom BICKERS said the state could simply eliminate personal property tax but would need to figure out how to replace the revenue, for example, by offsetting the revenue with taxes that businesses already pay. He asked whether NFIB members would be amenable to that. Mr. BROWN said they would have to engage the membership to see what they’re good with. Mr. MCADAMS suggested the franchise tax could be apportioned to local governments, Mr. BROWN noted that the Chamber of Commerce is talking about some franchise and excise tax updates. Mayor Jill HOLLAND asked whether the legislature would look again at the state-shared sales tax and the single item tax as a way to make up the revenue. She asked whether there is any reason why we can’t go ahead and implement changes to the personal property tax. Mr. BROWN said he didn’t think there is, but it’s a matter of getting the interested parties together to talk about it. Mr. JONES said there are ways to change personal property taxes while holding local governments harmless, but the changes may require a constitutional amendment.

Mayor Terry FRANK said that a constitutional amendment is not too difficult and asked for recommendations regarding personal property taxes. Mr. DENAMI noted that the personal property tax is required by Tennessee’s constitution but that a constitutional amendment (creating Article 2, Section 28) is how we got here. Mr. BROWN said that they haven’t decided on a solution but suggested they would favor a repeal of the personal property tax while recognizing the need to make local governments whole. Ms. PARIS said that she is not advocating eliminating the personal property tax. She said we should consider how to make the process easier and more streamlined and suggested that businesses meeting a small business classification pay some minimum amount that is still personal property tax but that makes reporting easier. Mr. BROWN noted that

there is an ease of filing option for accounts with \$1,000 or less in personal property but wasn't sure whether it's constitutional. Councilman CARLISLE said that blighted properties plague Memphis but restoring the properties to the tax rolls can make up for lost revenue, something to consider as we think through alternative revenue streams.

Mayor FRANK asked whether the 7,090 small accounts in Williamson County are ever audited. Mr. DENAMI said there are desk audits and specialty firms that go out and look at individual properties and occasionally find a property that wasn't self-reported. Ms. PARIS added that Williamson County audits accounts with tax bills as small as \$10. She said that personal property taxes are more delinquent than real property taxes, and half the accounts that are \$10 or less are delinquent today. County Mayor Buddy BRADSHAW said that for some large industries, they have found millions of dollars of improvements that were never reported.

County Mayor Larry WATERS said that forced assessments can result in higher personal property tax bills, but the bills cannot be reduced until the following year. Mr. DENAMI said that forced assessments happen when a business does not file. He said that if you file on time, you get a sales ratio discount that can be up to 40%. He added that you pay a 25% overage in the year that you didn't file timely, and then you can correct it the next year. Mr. JONES added that businesses with forced assessments lose the right to amend their personal property tax schedule. Mr. BROWN said that businesses want to file but are not aware of the requirement. He suggested that new businesses get an email detailing the taxes they will pay. Councilman CARLISLE said that there aren't many resources for small business owners to get that kind of advice on the front end. Chairman YAGER asked whether there is any authority to send out a notice to the business owner that their personal property taxes are due. Ms. PARIS said that there is. Mr. DENAMI added that Tennessee Code Annotated, Section 67-5-903(a), and State Board of Equalization rule 600-05-041 require the personal property schedule to be mailed to the business owner by February 1. He said that more needs to be done to make filing easier such as E-filing that would auto populate the previous years' items.

County Executive HUFFMAN asked whether other states are doing something like Tennessee's payment-in-lieu-of-tax (PILOT) agreements. Mr. JONES said that every state provides incentives, and PILOT agreements are one of many types of incentives. Councilman CARLISLE said that large businesses in Shelby County use PILOTs, which are the main part of the county's economic incentive packages. He said that he is curious about the overall economic effect of exemptions.

### *Fiscal Capacity for Fiscal Year 2022-23*

Research Associate Presley POWERS presented the annual update on TACIR's fiscal capacity index and background information about the index and education funding in Tennessee. She provided an update of Tennessee's 95 counties' 15-year fiscal capacity trends. Mrs. POWERS explained the visible and emerging effects of the COVID-19 pandemic. She explained that the effects of the COVID-19 pandemic would likely become more evident as more years of data from that time become available. Mrs. POWERS explained that the Basic Education Program (BEP) will be replaced by Tennessee Investment in Student Achievement (TISA) in the 2023-24 school year, but the TACIR model will continued to be used.

### *Comprehensive Litter Review—Update*

Research Manager Jennifer BARRIE presented a brief update on the comprehensive litter review including county-level litter grant data and results from the county and municipal surveys that staff conducted. Staff will present the draft report at the fall 2022 meeting and the final report in January 2023.

In response to a question from Mayor HOLLAND about whether staff has any data showing where the tire fee money has been going and why counties don't have tire shredding machines, Ms. BARRIE said staff has been looking at the tire fee data and will include it and information about the tire shredders in the draft report.

Chairman YAGER asked whether the 60% survey response rate is common or low, and Mayor BROOKS said he doesn't think 59 survey responses out of 95 counties is good enough to show the big picture. Ms. BARRIE said that is a high response rate for a survey, and Director LIPPARD added that it depends on the survey and the audience, but 60% is a high response for a TACIR survey of local governments. Mayor BROOKS said it is important that we have a very comprehensive look at the old [visible] litter studies, and a comprehensive study in the state is very important. He asked whether we will discuss glass, plastics, and other materials; explain the corporate role; and include best practices and experiences from other states in the study. Ms. BARRIE responded that the study will include those topics while keeping within the scope.

Mayor FRANK commented that only 21% of counties responded in the survey that they would spend extra funds on enforcement, and this might be because someone else does enforcement. She asked whether there is a way to track that survey answer for the report or another way to measure the need for enforcement that we might look at.

Chairman YAGER asked whether salaries that are funded through the litter grant are tied directly to litter abatement. Mayor BICKERS asked whether counties can use litter grant funds for inmate litter crews and whether staff has data on how much counties are spending on different activities. He said that it would be helpful to see exactly how counties are spending the dollars today because the Commission has been tasked with identifying ways to improve the system, and perhaps the money spent on litter pickup could be spent in another way. Ms. BARRIE said she will work with TDOT beautification office staff to get more detail on how counties are spending their funds, and that counties can spend their funding on inmate pickup, and a lot of them do.

Senator CAMPBELL asked whether there are any parameters for the education requirement. Ms. BARRIE said yes, and she read the clarifying language in the litter grant manual. Senator CAMPBELL is concerned that the concept of recycling is not solving any problems and said encouraging reduction is an important idea to cover in education in addition to recycling.

Mr. PEACH asked whether there is a TDOT litter grant program for municipalities and whether there could be a recommendation for distributing money to cities. Ms. BARRIE responded that the litter grant funding goes directly to counties, not cities, but that does not mean that counties are not working with cities on litter and illegal dumping. She added that staff can look at a potential recommendation and that cities can apply for competitive special litter grants. Councilman CARLISLE said that it is critically important to look at cities, and he is very interested in looking at how to provide direct funding for municipalities in specific instances.