Report of the Tennessee Advisory Commission on Intergovernmental Relations

TACIR

# Intergovernmental Challenges and Achievements

Biennial Report

Fiscal Years 2022-23 and 2023-24

JANUARY 2025

# TACIR
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Report of the Tennessee Advisory Commission on Intergovernmental Relations

# Intergovernmental Challenges and Achievements

## Biennial Report

### Fiscal Years 2022-23 and 2023-24


Senator Ken Yager
Chairman

❖

Mayor Kevin Brooks
Vice Chairman

❖

Cliff Lippard
Executive Director


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January 31, 2025

The Honorable Randy McNally
Lieutenant 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 2022-23 and 2023-24 pursuant to Tennessee Code Annotated, Section 4-10-108. This report was approved by the commission on January 31, 2025, 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

The Tennessee Advisory Commission on Intergovernmental Relations

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# MEMORANDUM

**TO:** Commission Members

**FROM:** Cliff Lippard
Executive Director

**DATE:** 31 January 2025

**SUBJECT:** Biennial Report for Fiscal Years 2022-23 and 2023-24—Final Report for Approval

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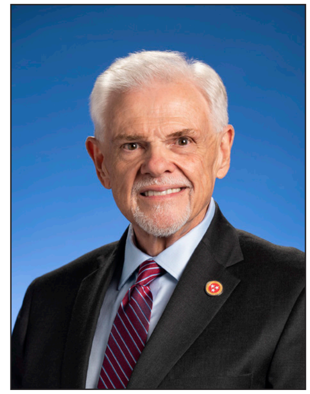
The biennial report on the commission's work for fiscal years 2022-23 and 2023-24 is submitted for your approval. The report, required by the Tennessee General Assembly, follows the general framework established in previous reports and provides an overview of several of the important program areas—personal property tax, state grants to local governments, Tennessee's waterways, childhood obesity, electric vehicles, reference-based pricing in healthcare, litter and illegal dumping, passenger rail, solar development and property rights, safety and security at colleges and universities, alcohol regulation and the hospitality industry, housing affordability, 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.

# Contents

## 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 2022-23 and 2023-24. 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 2022-23 and 2023-24 are listed in appendix A.



**Senator Ken Yager**
**Chairman, TACIR**

The report describes the work of the commission in service to the State of Tennessee and offers a focused overview of key issues the commission addressed during the period covered, including personal property tax, electric vehicles, housing affordability, 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.

**Cliff Lippard**
**Executive Director, TACIR**

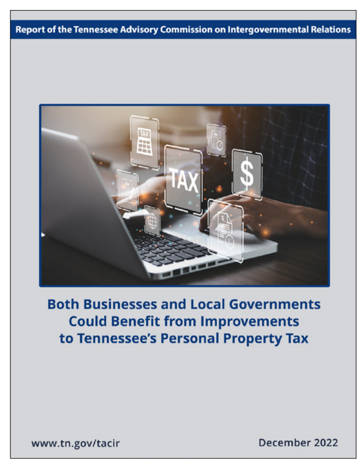
# Focus Issues

The commission and its staff addressed a variety of issues during fiscal years 2022-23 and 2023-24. Highlights include personal property tax, state grants to local governments, Tennessee's waterways, electric vehicles, passenger rail, housing affordability, 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.

## *Tennessee's Personal Property Tax*

Local governments rely on personal property tax revenue to fund schools and other essential services. Some business representatives say that filing to pay the tax is burdensome. Property assessors say that, for small tax bills, it is possible that they spend more on the work of assessing personal property than businesses ultimately pay in the tax itself; however, Tennessee's constitution requires that local governments with a property tax apply it uniformly to all commercial, industrial, and public utility personal property. With these issues in mind, at the commission's January 2022 meeting, Senator Lundberg asked TACIR to study the personal property tax in Tennessee, and the commission agreed to the study.




In its 2022 report, *Both Businesses and Local Governments Could Benefit from Improvements to Tennessee's Personal Property Tax*, the commission found that the state constitution would have to be amended to exempt businesses from personal property taxes, and equitably replacing personal property tax revenue would prove challenging. During the first session of the 113th General Assembly, House Joint Resolution 81 by Representative Darby proposed amending Article II, Section 28 of the Constitution to prohibit property taxation by the state. The resolution was adopted in the House, though a companion resolution was not introduced in the Senate. Short of amending the constitution, the commission identified several alternatives that would potentially address stakeholder concerns about the personal property tax, including those that would ease administrative burdens of the tax and those that would otherwise encourage compliance.

The report recommended that the General Assembly add one or more tiers at greater dollar amounts, which could give a plurality of businesses in the state a means of expediting their assessments. Public Chapter 341, Acts of 2023 enacted this recommendation by establishing two certification tiers, one for $2,000 and one for $10,000. Additionally, the law requires that the commission monitor and periodically report on the impact of the act to the General Assembly.

The report also found that about two-thirds of Tennessee's counties continue to rely on paper filings while a third offer electronic filing (e-filing) as an option. Processing the thousands of paper forms that paper filings result in can be time-consuming for these counties. Based on this, the report recommended that county assessors adopt e-filing and that the state continue to encourage them to do so.

Additionally, many newer businesses only first learn of the personal property tax when they receive notice in January, and information on state websites regarding the tax could be easy to overlook. To assist with this the report recommended that new businesses receive an email upon registration of their business licenses that outlines all the taxes they might owe, including local taxes.

Finally, the report found that in 1997, the Standard Industrial Classification (SIC) system was replaced with the North American Industrial Classification System (NAICS). Tennessee's business tax continues to use SIC. In contrast, personal property tax account data use NAICS. The report recommended that the General Assembly update the industry classifications used for the business tax from the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS).

## *State Grants to Local Governments*

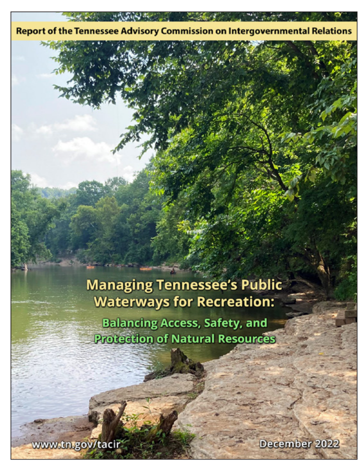

State-administered grants—including those that are federally funded—provide hundreds of millions of dollars to local governments in Tennessee each year. But they can also be a source of frustration for grantor and grantee alike when verifying that projects comply with grant requirements. In response to a request from its chairman, Senator Yager, the commission reviewed the post-award phase of state grants to local governments to identify any changes warranted to streamline grant processes so that grant funds may be more effectively utilized. The post-award phase is the stage in a grant's lifecycle when the activities for which funding has been awarded are carried out. Both the grantor and the grantee have responsibilities during the post-award phase that involve complying with grant requirements, which help ensure the use of taxpayer funds is accountable and transparent. In its 2022 report, *State Grants to Local Governments: Improving the Post-Award Phase So Funding May be More Effectively Utilized*, the commission identified alternatives for improving the post-award phase of state grant programs, while maintaining accountability and transparency over the use of taxpayer funds.

The report found that while ensuring grant funds are used accountably and transparently is an indispensable component of grants management, so too is ensuring that grant processes support local governments' ability to carry out projects effectively. They are essential if state and local governments are to be good stewards of the taxpayer dollars used to fund grants. To this end, the report recommended the state require agencies to use a single, statewide grant management system software to promote a more uniform, user-friendly experience across agencies for grantees, with exceptions provided for agencies that can demonstrate the system won't support functions necessary for their grant programs. Likewise, the report recommended state agencies accept Title VI training provided by other agencies when verifying compliance with federal and state law—unless they can demonstrate other agencies' trainings are inadequate for their programs—to eliminate the need for grantees to take multiple trainings when they have grants with multiple agencies.

The report also made two general recommendations to promote good stewardship of grant funds through the identification and adoption of best practices. State agencies could regularly convene grant advisory boards made up of representatives for local governments and the entities that assist them with carrying out grant projects—similar to the boards already established by the Department of Economic and Community Development and other agencies—to solicit feedback for improving grant requirements and processes and to prioritize issues of importance to grantees. For example, a grant advisory board could convene to consider new programmatic agreements with federal partners. The report's second general recommendation was for the state to consider establishing an interagency working group for sharing lessons learned from agencies' efforts to improve grant requirements and processes to promote the adoption of best practices across grant programs.

## *Tennessee's Waterways*

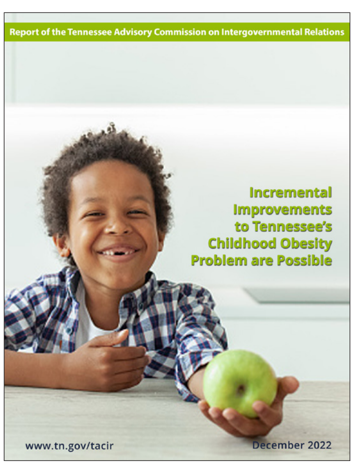
Recreation on Tennessee's waterways has been increasing. This benefits the state, but it also creates challenges for the state agencies that manage the state's waterways. Stakeholders say the increase in water recreation has resulted in user conflicts, congestion, inadequate access to waterways, safety concerns, trespassing, littering, and property damage. To help state agencies identify the best ways to manage the state's resources and address these challenges, the General Assembly passed Public Chapter 497, Acts of 2021, directing the commission to conduct a study of water recreation resources and the measures necessary to accommodate the increased use of the state's waterways.




The 2022 report, *Managing Tennessee's Public Waterways for Recreation: Balancing Access, Safety, and Protection of Natural Resources*, found that the state should continue to take a collaborative approach to strategic planning with multiple agencies and consider a statewide task force to address water recreation issues and work through conflicts, which could potentially be accomplished by augmenting the existing commercial paddlecraft advisory committee with a permanent statewide boating advisory board with representation and objectives for all affected stakeholder groups or by establishing a state office of outdoor recreation. Senate Bill 375 by Senator Campbell and House Bill 1337 by Representative Camper, introduced in 2023, would have created just such an office but the bill was taken off notice for further consideration. In August of 2024, Governor Bill Lee and the Department of Environment and Conservation announced the creation of an Office of Outdoor Recreation. The report also found that the state should continue to develop existing and new partnerships to improve access to waterways.

The report recommended the General Assembly add motorized and non-motorized boating to the list of subjects of which a Tennessee Fish and Wildlife Commission (TFWC) member should be well informed, which was codified by Public Chapter 120, Acts of 2023. Public Chapter 235, Acts of 2023 made several changes to the regulation of nonmotorized watercraft outfitters, including making the Tennessee Wildlife Resources Agency responsible only for regulating outfitters using waterway access ramps that it owns or manages itself, and not those owned and managed by other agencies. While this was not a TACIR recommendation, it does address the issue of duplication of regulation and fees noted in the commission's report. During the second session of the 113th General Assembly, Public Chapter 845, Acts of 2024 was passed, which permits the executive director of the TFWC to establish a temporary, slow no wake zone as necessary when there is an immediate danger to the public health, environment, safety, or welfare, and requires notice of the slow no wake zone to be published at least one time in a locally circulated newspaper.

## *Childhood Obesity*




The causes of childhood obesity are many and complex. In the United States, the recognition of the upward trend in the rates of childhood obesity and its many root causes has led to a wide array of responses from federal, state, and local governments. The General Assembly's concerns about childhood obesity in the state resulted in the passing of Public Chapter 503, Acts of 2021, which required the commission "to perform a comprehensive evaluation on the socioeconomic impact childhood obesity has in Tennessee and its short and long-term effects."

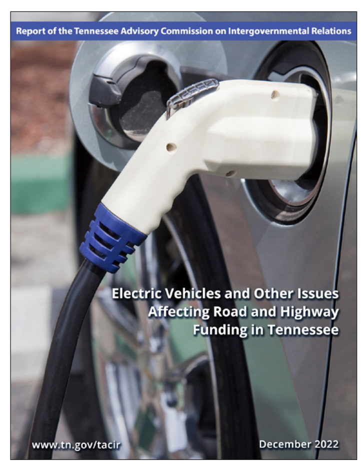
The commission's 2022 report, *Incremental Improvements to Tennessee's Childhood Obesity Problem are Possible*, found that despite concerns over childhood obesity rates nationwide, efforts to both understand and confront the problem have not been enough to halt and reverse the overall increasing trend of childhood obesity. Tennessee's childhood obesity rate has been trending higher for more than two decades, and every major report on childhood obesity shows that Tennessee is worse than the national average, with roughly a fifth of Tennessee's children and a third of Tennessee's adults obese.

The report offered several recommendations for approaching the childhood obesity problem while acknowledging that the likelihood of halting and reversing the trend at the state level will take time and efforts across multiple administrations. The report encouraged the Tennessee Department of Health to continue trying to increase participation in Tennessee's Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), though there is no data to show that its current efforts increase participation. The report recommended that the General Assembly ensure each district receives at least the same amount of state funds for Coordinated School Health under the Tennessee Investment in Student Achievement (TISA) public school funding formula as before the formula was implemented.

Additionally, the report recommended the administration and General Assembly strongly consider the recommendations of the Chronic Weight Management Task Force, given their medical expertise, and focus on improving treatment options for obesity. The report also recommended the adoption of a data-driven and community-level three-step approach to further address childhood obesity in the state, as suggested by both the Centers for Disease Control and Prevention and the Health and Medicine Division of the National Academies.

## *Electric Vehicles*

Commission members raised concerns about the effect the increasing adoption of electric vehicles (EVs) in Tennessee might have on state and local road funding, noting that this increased adoption has brought with it demands from residents to improve the state's EV-charging infrastructure. To address these concerns, the commission directed staff to study fuel taxes and the current intergovernmental funding structure for road construction and maintenance; investigate road maintenance and construction costs, fuel efficiency, and electric vehicles in Tennessee and their effects on that funding; and examine potential alternative means of financing transportation infrastructure to offset lost revenues without discouraging electric vehicle expansion.




In its 2022 report, *Electric Vehicles and Other Issues Affecting Road and Highway Funding*, the commission found that while the growing adoption of EVs might not become a major issue for road funding in Tennessee for decades, when combined with changes in fuel economy, increases in inflation, and decisions about the distribution of registration fees, the issue does point to the need for modifications to Tennessee's road funding system. The report recommended several approaches the state could take to address the need for road and highway funding while accounting for EVs.

The practical effect of the state's EV registration fee is to serve as a substitute for the gas tax by collecting revenue for road funding from vehicle owners who don't purchase gasoline—and therefore don't contribute to road funding through the gas tax. To better offset the revenue lost from state fuel taxes that those EV owners do not pay, the report recommended the state increase the EV registration fee, share EV registration fees with local governments in the same proportion as the gas tax, and apply a reduced EV registration fee to plug-in-hybrid vehicles and share this revenue with local governments in the same proportion as the gas tax.

Given the effect of inflation on the purchasing power of funding from the gas tax, and to assist lawmakers in evaluating whether to adjust the state's fuel tax rates, the report recommended the Department of Revenue or another entity such as the State Funding Board inform the General Assembly of the effect of inflation on the purchasing power of the state's fuel taxes at least once every two years. As the state confronts the tradeoffs associated with any potential alternatives to its current fuel-tax-based road funding framework, the commission recommended the state balance the ability to raise adequate revenue with equity for all drivers regardless of whether their vehicles are powered by gas, electricity, or some other method; ensure that revenue from any adopted alternatives is shared with local governments in an equivalent manner to the current sharing of fuel taxes; and ensure any alternatives intended to offset lost revenues are designed to do so without discouraging customers from purchasing electric vehicles.

Following the first session of the 113th General Assembly, Public Chapter 159, Acts of 2023, was enacted. Known as the Transportation Modernization Act of 2023, the legislation expanded on the report's recommendations by raising the registration fee for EVs to $274—and $100 for plug-in hybrid electric vehicles—and then indexed to inflation (although capped to a 3% annual increase), with 11.8% of the revenues shared to municipalities and 22% to counties.


## *Reference-Based Pricing in Healthcare*

The costs of healthcare and health insurance impose a significant burden for many individuals and their families. Today, healthcare consumes nearly one-fifth of US gross domestic product and a large portion of household budgets. The cost of insurance premiums and deductibles has outpaced inflation for years, and just over 40% of Americans carry some amount of medical debt, with Tennesseans bearing one of the highest rates of medical debt that has gone to collections.

Policymakers have weighed proposals for trying to restrain healthcare costs, from price transparency measures to incentive programs for using lower-cost services to regulating market consolidation and more. One measure that has gained attention in recent years is reference-based pricing, in which an insurer sets a limit on what it will pay for healthcare services, and that limit is indexed to some reference point, such as Medicare payment rates. In response to this, Senate Bill 2330 by Senator Hensley and House Bill 2456 by Representative Sparks, introduced in 2022, requested the commission study and report on the effects of reference-based pricing on health insurance prices.

In its 2023 report, *Savings and Challenges with Reference-Based Pricing in Healthcare*, the commission found that reference-based pricing is likely to generate savings for insurers and employers. California achieved savings of between 13% and 27% on certain medical procedures, while Montana's state health plan saw overall savings of 22%, and Oregon saw estimated savings of 33%. Reference-based pricing may generate savings for patients if it is structured to prevent healthcare providers from charging them for a balance beyond the reference price, and it can slow or halt premium increases; in Montana's state health plan, for example, premiums remained unchanged from 2016 up to at least 2023. Reference-based pricing might motivate higher-priced healthcare providers to lower their costs as has occurred in California, though this is not guaranteed. However, healthcare providers, and hospitals in particular, are strongly opposed to reference-based pricing and have resisted its implementation in each state that has adopted it, generally arguing that reference-based pricing may not meet their costs of providing services and that they would need to raise prices on services for other patients.

## *Litter and Illegal Dumping*


Litter and illegal dumping continue to be major concerns identified by Tennessee local officials. National experts agree on several best practices to address litter issues and that multiple approaches should be used concurrently. Such approaches are being taken in Tennessee, and although the state, local governments, and communities have been using best practices to address the problem, efforts could be improved and strengthened. At its June 2021 meeting, the commission requested a comprehensive study of litter and illegal dumping in Tennessee including research on the effects of littering and illegal waste dumping on the environment, economy, and overall quality of life in the state. The commission specified that the study would not focus on a bottle deposit or plastic bags because the General Assembly had already considered those issues.

Along with continuing to recommend the state implement the recommendations made in the commission's 2020 waste tire report, the report found that there are ways to improve the approaches Tennessee is taking to reduce litter and illegal dumping. The report recommended that cities in need of additional funding to deal with litter apply for special litter grants offered by the Tennessee Department of Transportation's Highway Beautification Office. Further, the report recommended that a permanent statewide litter task force should gather data and assess the needs of cities across the state and help them connect with funding opportunities like the special litter grants. Similarly, the report recommended the Highway Beautification Office and Keep Tennessee Beautiful collaborate to create an online toolkit with resources for local governments based on best practices to help them find resources and solutions.

The report found that improvements could be made to the enforcement of litter laws and recommended that the state support and facilitate more litter law enforcement training for law enforcement officers, prosecutors, and judges, and state and local governments consider focused enforcement of tarping laws in problem areas, such as roads that lead to landfills and convenience centers. Further, the report recommended that Tennessee create a permanent litter task force and consider following Pennsylvania's example and develop and implement a statewide action plan.

## *Intercity Passenger Rail*

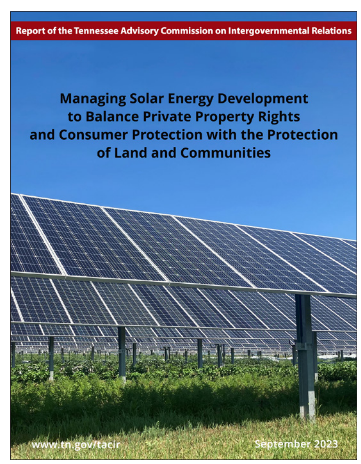

Tennesseans traveling around the state face challenges with a transportation network that is becoming strained by congestion, and in the coming years, those challenges are expected to intensify further as both population and travel demand continue to grow. The state has already taken some steps to meet these rising transportation needs, such as through the Transportation Modernization Act of 2023. In the interest of exploring additional alternatives, Public Chapter 1114 and Public Chapter 1124, Acts of 2022, together directed the commission to study and make recommendations regarding the potential for passenger rail service or other suitable alternatives for linking the major cities in each of the grand divisions of the state and beyond.

The report found that intercity passenger rail service could help increase connectivity and facilitate tourism and other economic development initiatives in Tennessee. The state would almost certainly have to subsidize any new passenger rail service through capital investment and ongoing operating cost support, but the cost to taxpayers of establishing and operating service on any given rail corridor cannot be known without more detailed engineering and technical analysis. Based on this, the report recommended the Tennessee Department of Transportation (TDOT) determine the cost, engineering, and any other requirements needed to implement passenger rail service on the following corridors, in order of priority according to the following tiers, with Tier 1 being the highest: Nashville to Chattanooga to Atlanta, GA (Tier 1); Memphis to Nashville (Tier 2); Chattanooga to Knoxville to Bristol (Tier 2); Memphis to Chicago via Carbondale, IL (Tier 3); and Nashville to Louisville, KY (Tier 3). Federal funding is available for these types of studies through the Federal Railroad Administration's (FRA) Corridor ID program, and the report recommended TDOT submit the required data and documentation to the FRA in support of the joint application to the program already made by local governments for the Nashville to Chattanooga to Atlanta and Memphis to Nashville routes.

The report recommended TDOT submit an application for the Chattanooga to Knoxville to Bristol route and consider submitting applications for the two tier 3 routes at the next funding opportunity. Further, the report recommended the state create an office of rail and public transportation within TDOT, collaborate with Virginia to identify opportunities to maximize the viability of rail corridors that might connect with that state and the wider Amtrak network. The report also recommended that the state evaluate establishing intercity bus service along the US-64 corridor, increasing intercity bus service along the I-40 and I-81, and opportunities for intercity bus service to support the goals of the Transportation Modernization Act. Per Public Chapter 679, Acts of 2024, TDOT is required beginning in January of 2025 to submit an annual report detailing the progress of public transit and passenger and freight rail at the state and federal level.

## *Solar Energy Development and Private Property Rights*

Property rights, land use, aesthetics, environmental effects, and the desire to protect landowners are driving disputes and raising questions among stakeholders about utility-scale solar development across Tennessee. The expansion of residential solar has led to different concerns about some installation companies possibly defrauding customers. Considering these concerns, the General Assembly passed Public Chapter 1043, Acts of 2022, directing the commission to examine solar energy development in the state.




In its report *Managing Solar Energy Development to Balance Private Property Rights and Consumer Protection with the Protection of Land and Communities* the commission addressed issues stemming from the development of utility scale solar facilities and the residential solar market in Tennessee. The report found that the state had existing tools available to balance private property rights and community interests for utility-scale solar, such as local governments' option to use zoning authority to regulate utility-scale solar development, putting land in trusts, and the state's new Brownfield Redevelopment Area Fund, which provides funding to local governments to encourage the identification, investigation, and remediation of potential brownfield sites to redevelop.

The report found there was no one-stop shop for information on utility-scale solar development that is specific to Tennessee and proposed that the Tennessee Department of Environment and Conservation (TDEC) Office of Energy Programs continue to expand and maintain its existing website with additional guidance and resources on utility-scale solar for local governments, landowners, developers, and the public, like Kentucky. Similarly, the report recommended that the TDEC Office of Energy Programs continue to expand and maintain its webpage that provides guidance and resources on residential solar for the public. Representatives of the office said they were amenable to these recommendations. During the 113th session of the General Assembly, Public Chapter 705, Acts of 2024, adopted these recommendations, requiring the Office of Energy Programs to expand and maintain its existing website with additional guidance and resources regarding utility-scale solar for local governments, landowners, developers, and the public and residential solar for the public. Public Chapter 705, Acts of 2024, also requires all solar power facility agreements to provide for a plan for the solar power facility at the end of its useful life for disconnection from the local power grid and decreases the megawatts a device or structure must be to be excluded from the definition of a solar power facility from 10 megawatts to five megawatts.

Consumers who contract with a company to install solar on their residence are protected by Tennessee's consumer protection laws—the Consumer Protection Act and Home Solicitations Sales Act. The maximum civil fine for violations of the Tennessee Consumer Protection Act is $1,000, which is on the low end of civil fine maximums compared to other states. A review of other states' laws finds their maximum penalties generally range from $1,000 to $50,000 per violation. Recognizing that care would need to be taken to avoid undermining the intent of the General Assembly's past efforts at tort reform, the commission also advised that the state consider raising the penalty for violations of the Consumer Protection Act if the good or service involved has a value greater than a monetary threshold set by the state.


## *Safety and Security at Colleges and Universities in Tennessee*

Being informed and aware of potential safety risks on campus is an essential part of college preparation. When lawmakers in the 112th General Assembly observed that some colleges and universities direct students to call campus police or security departments for emergencies instead of 911, there was concern that at some schools in Tennessee those calls aren't recorded, which legislators worried could hinder investigations or lead to underreporting of incidents. In response to these concerns, Senate Bill 2827 by Senator Hensley and House Bill 2729 by Representative Ogles directed the commission to report on the routing and storage of emergency communications on college and university campuses in Tennessee.

The resulting report, *Enhancing Safety and Security at Colleges and Universities in Tennessee* found that there are no federal or state laws that require postsecondary institutions to record calls to their campus police and security departments; however, they are permitted to do so in the state, and nearly all the state's public universities and some private institutions already record these calls. No community colleges reported that they record incoming calls. Stakeholders noted that recording these calls was operationally possible but added that cost could be an inhibiting factor in some cases.

Although the report found no evidence of higher crime rates or other public safety issues at colleges and universities that don't record calls to their campus police and security departments, it determined that recordings of those calls could help ensure compliance with federal and state crime-reporting requirements, help police with investigations, and protect institutions in case of disputes over the facts of a report. For these reasons, the commission recommended the state encourage colleges and universities to record and retain recordings of calls reporting crimes and conduct violations to campus police and security departments by providing additional funding to help postsecondary institutions obtain or improve emergency call recording systems.

The report found that federal law requires colleges and universities to publish statistics for specific crimes reported to campus security authorities but does not require them to publish statistics on the number complaints made to Title IX offices, where many students report acts of sexual misconduct or sexual violence. To fully provide parents and students with a comprehensive look at crime on and near campus, the report recommended that the General Assembly require colleges and universities in Tennessee to publish to their website's annual statistics for complaints of sexual misconduct and assault reported to their campus Title IX authorities. The report also recommended the Tennessee Bureau of Investigation develop a process to include statistics for crimes reported within one half mile of each college or university campus—a generally accepted walking distance—in its annual Crime on Campus reports, and that colleges and universities publish to their websites the statistics for their institutions from this report, which they are already required to make available upon request.

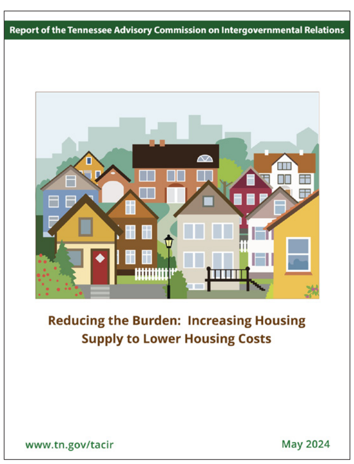

## *Alcohol Regulation and the Hospitality Industry*

Changes to the state's alcohol regulations and taxes affect businesses' profitability, state and local revenue, and—given the harmful effects of overconsumption—public health and safety. In response to these and other concerns, Senate Bill 2262 by Senator Briggs and House Bill 2419 by Representative Mannis in the 112th General Assembly requested the commission study liquor-by-the-drink and similar taxes for on-premise consumption of alcohol; licensing, permitting, and other fees under title 57, chapters 4 and 5 for the restaurant industry; staffing challenges with respect to server permits, wages, and applicable training necessary to operate such restaurants; and other barriers to entry for such restaurants that may be minimized or mitigated, as identified by the commission in conducting the study. The bill was taken off notice in the House of Representatives but passed in the Senate.

Prior to the completion of the report the General Assembly acted on one of the industry's concerns, passing Public Chapter 355, Acts of 2023, which reduced restrictions in state law that keep some people from obtaining a server permit from the Tennessee Alcoholic Beverage Commission (TABC) because of previous convictions. The final report, *Striking a Balance Between Tennessee's Alcohol Regulation and the Hospitality Industry: A Tale of Public Health and Safety, Barriers to Entry and Staff Challenges, and Pathways to Improvement*, found that the TABC could make additional changes.

The TABC requires businesses applying for a liquor license to obtain several documents from federal, state, and local agencies. The report found that by clarifying which documents are accepted and by further automating parts of the process, the cost and time to apply could be reduced. Ultimately, the report recommended that the TABC inform applicants that it accepts temporary occupancy and use permits for liquor license applications, and that Strategic Technology Solutions continue to investigate automating parts of the liquor licensing application process.

## Housing Affordability




When housing is unaffordable, it can have far-reaching effects on the state's workforce and larger economy, on how cities and counties grow—including demands placed on their infrastructure—on property values and property taxes, and even on community concerns like public health and homelessness. In light of this, House Joint Resolution 139 by Representative Sparks in the 113th General Assembly asked the commission to study housing affordability and how it might be affected by impact fees. After discussion with the sponsor, stakeholders, commission members, and legislative leadership, the scope of the study was broadened to consider other factors beyond impact fees. The resolution passed in the House, though it did not come to a vote in the Senate.

The final report, *Reducing the Burden: Increasing Housing Supply to Lower Housing Costs and Improve Affordability* found that the state and local governments have many policy and land use tools at their disposal to address the complex issue of housing supply, with the potential for the state to assist local governments in implementing selected reforms. A draft finding from the report, that the state could authorize local governments to make multiyear funding commitments to affordable housing, was enacted as Public Chapter 1012, Acts of 2024.

The report found that there are preexisting programs in place that subsidize and support affordable housing at the state and local level, including the Tennessee Housing Development Agency (TDHA), which has its own housing trust fund that receives no state appropriations. The report recommended the state fund either the existing housing trust fund or a new trust fund using a portion of the realty transfer and mortgage tax revenues or some other revenue source, and that the state could also reserve realty transfer and mortgage tax revenues for infrastructure in ways that soften the effects of economic downturns and forestall the loss of construction employment. Public Chapter 1051, Acts of 2024, authorized the chief legislative body of a municipality to create a voluntary attainable housing incentive program by ordinance to authorize certain incentives for property owners who seek to build multifamily attainable housing.

The report recommended that the state offer an incentive for local governments to adopt zoning reforms that support housing development. To protect existing residents from potential burden or displacement as a result of these zoning reforms, the report suggested that the state and local governments adopt policies to mitigate the effects, such as assessing property based on its zoning prior to reform. The report also suggested allowing all local governments to establish land banks and post links to their surplus real property on the state's website.

## *Tennessee's Public Infrastructure Needs*

During fiscal years 2022-23 and 2023-24, the commission released the 21st and 22nd 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

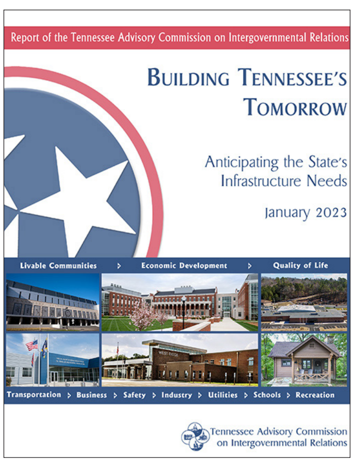
- improve the quality of life of all Tennesseans,
- support livable communities, and
- enhance and encourage the overall economic development of the state through the provision of adequate and essential public infrastructure.

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 2023




According to the 21st report in the series, Tennessee needed at least $62.9 billion of public infrastructure improvements during the five years from July 2021 through June of 2026. The need for public infrastructure improvements, as reported by state and local officials, was up $1.2 billion (2.0%) compared with the year before. The three categories of Transportation and Utilities; Education; and Health, Safety, and Welfare account for most of the need for infrastructure improvements. Needs for Transportation and Utilities followed by Health, Safety, and Welfare were responsible for most of the reported increase for the year. More than two-thirds (67.8%) of the estimated cost of needed infrastructure improvements reported in the inventory were not funded. Costs for all infrastructure needs fall into six general categories:

- Transportation and Utilities: $35.2 billion
- Education: $14.8 billion
- Health, Safety, and Welfare: $8.9 billion
- Recreation and Culture: $2.3 billion
- General Government: $1.3 billion
- Economic Development: $246 million

## January 2024

The commission's 22nd infrastructure report in the series estimated that Tennessee needs at least $68 billion of public infrastructure improvements during the five years from July 2022 through June 2027—a $5 billion (9%) 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 the categories of Health, Safety, and Welfare, Education, and General Government needs being responsible for most of the reported increase for the year. The percentage of funded infrastructure needs reported at the time the inventory was conducted increased by 1% from 2021 to 2022.


Costs for infrastructure needs fall into six general categories:

- Transportation and Utilities: $35.3 billion
- Education: $16.7 billion
- Health, Safety, and Welfare: $10.9 billion
- Recreation and Culture: $2.5 billion
- General Government: $2.5 billion
- Economic Development: $239 million

# Appendix A: Commission Members

## *Fiscal Year 2022-23 through Fiscal Year 2023-24*

### Legislative

- Senator Heidi Campbell
- Senator Jon Lundberg
- Senator Ken Yager
- Senator Jeff Yarbro
- Representative John Crawford
- Representative Harold M. Love, Jr.
- Representative Antonio Parkinson
- Representative Ryan Williams

### Statutory

- Senator Bo Watson, Chair, Senate Finance, Ways and Means
- Representative Patsy Hazlewood, Chair, House Finance, Ways, and Means
- Jason Mumpower, Comptroller of the Treasury

### Executive Branch

- Jim Bryson, Commissioner, Department of Finance and Administration
- Deniece Thomas, Commissioner, Department of Labor and Workforce Development

### County Government

- Rogers Anderson, Mayor, Williamson County
- Buddy Bradshaw, Mayor, Loudon County*
- Jeff Huffman, County Executive, Tipton County
- Bob Rial, Mayor, Dickson County
- Larry Waters, Mayor, Sevier County

### Municipal Government

- Tom Bickers, Mayor, City of Louisville*
- Kevin Brooks, Mayor, City of Cleveland
- Paige Brown, Mayor, City of Gallatin
- Chase Carlisle, Councilman, City of Memphis
- Jill Holland, Mayor, City of McKenzie*

### Other Local Government

- Terry Frank, Mayor, Anderson County, Tennessee Development District Association
- Mary Gaither, Tipton County Clerk, County Officials Association of Tennessee

### Private Citizens

- Calvin Clifton, Kingsport
- Jeff Peach, Smyrna

**No longer a member of the commission*

# Appendix B: TACIR Accomplishments by Research Area

## *Fiscal Year 2022-23 and 2023-24*

### Fiscal Year 2022-23

*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 the commission's report to the legislature on the tangible personal property tax. The report responded to a request by Senator Lundberg that the commission study the personal property tax in Tennessee to examine the costs to businesses, both large and small, to report and pay the tax; their levels of compliance in tax payment; how much the tax contributed to the overall revenue bases of local governments large and small, as well as the costs to those governments to collect on delinquent taxes; and possible revenue replacement models that could be used if the tax were reduced or eliminated.

*Education Finance*

- Completed the fiscal year 2023-24 fiscal capacity model.
- Completed a review for the Tennessee State Board of Education of Tennessee Department of Education proposed rules regarding the Tennessee Investment in Student Achievement Act.

*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, 346 municipalities, and 250 other entities.
- Completed the 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 post-award grant process. The report responded to a request from the commission's chairman, Senator Yager, to review the post-award phase of state grants to local governments and to identify any changes warranted to streamline grant processes so that grant funds may be more effectively utilized.
- Completed the commission's report on managing Tennessee's public waterways for recreation. The report was prepared in response to Public Chapter 497, Acts of 2021, which directs the commission to study ten questions addressing the procedural and financial measures necessary to accommodate the evolving recreational use of the state's waterways.

- Completed the commission's report to the legislature on childhood obesity. The report was prepared in response to Public Chapter 503, Acts of 2021, which directs the commission "to perform a comprehensive evaluation on the socioeconomic impact childhood obesity has in Tennessee and its short and long-term effects."
- Completed a report on reference-based pricing in healthcare. The report was prepared in response to Senate Bill 2330 by Senator Hensley and House Bill 2456 by Representative Sparks, introduced in 2022, which directed the commission to study the effects of reference-based pricing on health insurance prices.
- Completed a report on electric vehicles and other issues affecting road and highway funding. It was prepared in response to direction from the Commission members at its January 2021 meeting to conduct a study about the effect the growing market for electric vehicles (EVs) in Tennessee might have on state and local road funding, as well as to include information about increased adoption of EVs leading to demands from residents to improve the state's EV-charging infrastructure.
- Completed a comprehensive litter review. It was prepared in response to direction from the Commission at its June 2021 meeting to conduct a comprehensive study of litter and illegal dumping in Tennessee to include research on the effects of littering and illegal waste dumping on the environment, economy, and overall quality of life in the state.
- Monitored intergovernmental tax, fiscal, and education legislation.

### *Using Technology for Public Information*

- Disseminated all reports electronically and maintained detailed focus section about continuing research on TACIR's web page (https://www.tn.gov/tacir/tacir-publications.html).
- Continued to improve and refine data visualization and interactive analysis tools for infrastructure reporting (https://www.tn.gov/tacir/infrastructure/data-explorer.html).
- Continued to improve the public infrastructure needs inventory application to work with the latest versions of Microsoft supported software and streamlined the process of processing data.
- Continued to improve and refine data visualization and interactive analysis tools for fiscal capacity data and information (https://www.tn.gov/tacir/fiscal-capacity-for-education/resources1.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 (https://www.tn.gov/tacir/tennessee-county-profiles-redirect.html)
- Published timely information Tracking Tennessee's Economy in partnership with Middle Tennessee State University (http://capone.mtsu.edu/berc/tacir/tacir.html).
- 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)

## Fiscal Year 2023-24

### *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 the commission's report to the legislature on the liquor-by-the-drink tax and restaurant regulations. The report was prepared in response to Senate Bill 2262 by Senator Briggs and House Bill 2419 by Representative Mannis, in the 112th General Assembly, which directed the Commission to study the liquor-by-the-drink and similar taxes for on-premise consumption of alcohol; licensing, permitting, and other fees under title 57, chapters 4 and 5 for the restaurant industry; staffing challenges with respect to server permits, wages, and applicable training necessary to operate such restaurants; and other barriers to entry for such restaurants that may be minimized or mitigated as identified by the commission in conducting the study.
- Completed the commission's report to the legislature on housing affordability, prepared in response to House Joint Resolution 139 by Representative Sparks in the 113th General Assembly, which requested a study of impact fees and their relationship to housing affordability. After discussions with the sponsor, legislative leadership, and stakeholders, the scope of the study was broadened to explore factors affecting housing affordability beyond impact fees.

### *Education Finance*

- Completed the fiscal year 2024-25 fiscal capacity model.
- Updated the staff user's guide to fiscal capacity.

### *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, 344 municipalities, and 227 other entities.
- Completed the commission's annual report to the legislature on Tennessee's public infrastructure needs.
- Completed phase two of the staff's review of the effect of the COVID-19 recession on public infrastructure needs.

### *Other Research*

- Completed the commission's report to the legislature on the development of utility-scale solar facilities and concerns related to consumer protection in the residential solar market. The report was prepared in response to Public Chapter 1043, Acts of 2022, which directs the commission to study issues stemming from the development of utility-scale solar facilities in Tennessee, as well as concerns related to consumer protection in the residential solar market.

- Completed a report to the legislature on the routing and storage of emergency communications on the campuses of colleges and universities in Tennessee. The report was prepared in response to Senate Bill 2827 by Senator Hensley and House Bill 2729 by Representative Ogles, in the 112th General Assembly, which requested a study of the routing and storage of emergency communications on the campuses of colleges and universities in Tennessee.
- Monitored intergovernmental tax, fiscal, and education legislation.

### *Using Technology for Public Information*

- Disseminated all reports electronically and maintained detailed focus section about continuing research on TACIR's web page (https://www.tn.gov/tacir/tacir-publications.html).
- Continued to improve and refine data visualization and interactive analysis tools for infrastructure reporting (https://www.tn.gov/tacir/infrastructure/data-explorer.html).
- Continued to improve the public infrastructure needs inventory application to work with the latest versions of Microsoft supported software and streamlined the process of processing data.
- Continued to improve and refine data visualization and interactive analysis tools for fiscal capacity data and information (https://www.tn.gov/tacir/fiscal-capacity-for-education/resources1.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 (https://www.tn.gov/tacir/tennessee-county-profiles-redirect.html)
- Published timely information Tracking Tennessee's Economy in partnership with Middle Tennessee State University (http://capone.mtsu.edu/berc/tacir/tacir.html).
- 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 2022-23 and Fiscal Year 2023-24*

*Both Businesses and Local Governments Could Benefit from Improvements to Tennessee's Personal Property Tax*—Commission Report, December 2022

*State Grants to Local Governments: Improving the Post-Award Phase So Funding May Be More Effectively Utilized*—Commission Report, December 2022

*Managing Tennessee's Public Waterways for Recreation: Balancing Access, Safety, and Protection of Natural Resources*—Commission Report, December 2022

*Incremental Improvements to Tennessee's Childhood Obesity Problem are Possible*—Commission Report, December 2022

*Intergovernmental Challenges and Achievements Biennial Report Fiscal Years 2020-21 and 2021-22*—Commission Report, December 2022

*Electric Vehicles and Other Issues Affecting Road and Highway Funding in Tennessee*—Commission Report, December 2022

*Savings and Challenges with Reference-Based Pricing in Healthcare*—Commission Report, January 2023

*Comprehensive Litter Review: Strengthening and Coordinating Efforts to Reduce Litter and Illegal Dumping*—Commission Report, January 2023

*Tennessee Valley Authority's Payments in Lieu of Taxes: Annual Report to the General Assembly*—Commission Report, January 2023

*Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs*—Commission Report, January 2023

*Back on Track? Intercity Passenger Rail Options for Tennessee*—Commission Report, June 2023

*Managing Solar Energy Development to Balance Private Property Rights and Consumer Protection with the Protection of Land and Communities*—Commission Report, September 2023

*The Effect of the COVID-19 Recession on Public Infrastructure Needs Phase Two: Effects of the Great Recession and COVID-19 Recession Compared*—Staff Report, September 2023

*A Users' Guide to Fiscal Capacity in the Tennessee Investment in Student Achievement Funding Formula*—Staff Report, September 2023

*Enhancing Safety and Security at Colleges and Universities in Tennessee*—Commission Report, November 2023

*Striking a Balance Between Tennessee's Alcohol Regulation and the Hospitality Industry: A Tale of Public Health and Safety, Barriers to Entry and Staff Challenges, and Pathways to Improvement*—Commission Report, November 2023

*Tennessee Valley Authority's Payments in Lieu of Taxes: Annual Report to the General Assembly*—Commission Report, January 2024

*Building Tennessee's Tomorrow: Anticipating the State's Infrastructure Needs*—Commission Report, January 2024

*Spending Equity Generally Improved Under the Basic Education Program (BEP)*—Staff Report, May 2024

*Reducing the Burden: Increasing Housing Supply to Lower Housing Costs*—Commission Report, May 2024

# Appendix D: Staff Presentations

## *Fiscal Year 2022-23 and Fiscal Year 2023-24*

"Tennessee's Childhood Obesity Problem," to the Tennessee Livability Collaborative (September 20, 2022)

"Personal Property Tax," to the Tennessee Chamber of Commerce (September 21, 2022)

"Personal Property Tax," to the Tennessee Society of Certified Public Accountants (December 8, 2022)

"State Policy Update—Results of the TACIR Study and Policy Implications," to the 2023 Tennessee Valley Solar and Storage Conference (October 18, 2023)

"Electric Vehicles and Other Issues Affecting Road and Highway Funding," to the Nashville Chapter of the Association of Government Accountants (January 24, 2024)

"The Expansion of Broadband Coverage in Tennessee," to the Senate Finance, Ways and Means Committee (January 30, 2024)

"TACIR Study: Housing Affordability, Impact Fees, and Development Taxes," to the American Institute of Architects (March 26, 2024)

"Encouraging More Cooperation and Accountability in Payment in Lieu of Tax Agreements," January 2018 to the Shelby County Board of Commissioners (April 17, 2024)

"Affordable Housing and Development Tools for County Governments," to the Tennessee County Services Association Legislative Conference (May 22, 2024)

# Appendix E: Conference and Meeting Attendance

## *Fiscal Year 2022-23 through Fiscal Year 2023-24*

American Society for Public Administration Conference

Tennessee Administrative Professionals Conference

Tennessee Municipal League Annual Conference

Tennessee County Services Association Annual Fall Conference

Tennessee Department of Human Resources Human Capital Management Conference

Southeast Rail Forum Bi-annual Conference

Power of 10 Summit

# 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, Section 4-10-101). TACIR's enabling act established what has remained the commission's enduring mission (Tennessee Code Annotated, Section 4-10-104), to

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

## *Goals*

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

1. advance discussion and deliberation of critical and sensitive intergovernmental policy matters;
2. promote action to resolve intergovernmental problems and improve the quality of government;
3. forge common ground between competing but equally legitimate values, goals, and interests; and
4. provide members of the General Assembly and other policymakers with accurate and timely information and analysis to facilitate reasoned decision-making.

# Appendix G: What Does TACIR Do?

## *Objectives*

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

- engage in activities, studies, and investigations necessary for the accomplishment of the commission's mission and goals;
- consider, on its own initiative, ways of fostering better relations among local governments and state government;
- draft and disseminate legislative bills, constitutional amendments, and model ordinances necessary to implement the commission's recommendations;
- encourage and, where appropriate, coordinate studies relating to intergovernmental relations conducted by universities, state, local, and federal agencies, and research and consulting organizations;
- review the recommendations of national commissions studying federal, state, and local governmental relations and problems and assess their possible application to Tennessee;
- study the fiscal relationships between the federal government and Tennessee's state and local governments;
- study tax equivalent payments by municipally-owned electric operations to the various taxing jurisdictions within the state;
- study laws relating to the assessment and taxation of property
- conduct an annual study of the fiscal capacity of local governments to fund education; and
- conduct an annual infrastructure study (summarized from Tennessee Code Annotated Section 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 2022-23 and Fiscal Year 2023-24*

### Fiscal Year 2022-23

- Public Chapter 341, Acts of 2023 passed during the 113th General Assembly and taking effect July 1, 2024, added additional certification tiers that would allow smaller businesses to file and pay their personal property tax without the need for a time-consuming itemization of all of their property. The Act also requires the commission to monitor and periodically report on the effect of the Act to the General Assembly. The first report will be provided in 2025.
- House Joint Resolution 139 by Representative Sparks directs the commission to review impact fee policies and how they might affect home affordability. After discussion with the sponsor, legislative leadership, and stakeholders, the scope of the study was broadened to explore factors affecting housing affordability beyond impact fees. The resolution was adopted by the House, but a companion resolution was not filed in the Senate. The commission voted to take up the study at its June 28, 2023, meeting.
- The commission completed a final report of the measures necessary to accommodate the evolving recreational use of the state's waterways, as requested by Public Chapter 497, Acts of 2021.
- The commission completed a final report of the socioeconomic impact childhood obesity has in Tennessee and its short and long-term effects, as requested by Public Chapter 503, Acts of 2021.
- The commission completed a final report of the effects of reference-based pricing on health insurance prices that was prepared in response to Senate Bill 2330 by Senator Hensley and House Bill 2456 by Representative Sparks.
- The commission completed a final report regarding the potential for passenger rail service or other suitable alternatives for linking the major cities in each of the grand divisions of the state and beyond, as requested by Public Chapter 1114 and Public Chapter 1124, Acts of 2022.
- Pursuant to Public Chapter 475, Acts of 2009 and Public Chapter 1035, Acts of 2010, the commission continued to monitor and report on changes in the wholesale distribution of electric power by the Tennessee Valley Authority and its distributors for possible effects on the Authority's payments in lieu of taxes to the states in the Valley region.
- 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.
- Pursuant to Tennessee Code Annotated, Sections 49-3-104(13) and 4-10-104(10), the commission continued to prepare an annual fiscal capacity index for the Tennessee Department of Education, used in conjunction with the fiscal capacity model produced by the University of Tennessee's Boyd Center for Business and Economic Research to equalize the local contribution required to fund the base and weighted funding of Tennessee Investment in Student Achievement (TISA).
- As directed by Public Chapter 817, Acts of 1996, the commission completed the annual Public Infrastructure Needs Inventory and Report.

## Fiscal Year 2023-24

- Public Chapter 1013, Acts of 2024 directed the commission to study the collection and remittance of state and local taxes, including sales and use taxes, collected at the point of sale by businesses in Tennessee. The legislation specified that the study would include examinations of:
  - » the cost to businesses of collecting and remitting state and local taxes;
  - » the cost to the State of Tennessee for reasonable remuneration for sales tax collection, including vendor compensation, to businesses as compared to other states; and
  - » the cost to businesses of payment card fees on the tax portion of transactions, including interchange fees and other fees associated with payment processing, as well as the cost to businesses of handling cash.
- Public Chapter 937, Acts of 2024, directed the commission to study the effects of vaping and the use of all vapor products by persons under twenty-one years of age, including the initiation of vapor product usage, health outcomes, enforcement of underage sales, best practices to address usage on school grounds, taxation, and access to cessation products and services. The legislation specified that the study would identify the prevalence of vaping among such persons, including demographic information and usage trends.
- Public Chapter 938, Acts of 2024, directed the commission to study state and local laws, regulations, and rules that govern the start-up, operation, and expansion of child care businesses in Tennessee.
- Public Chapter 934, Acts of 2024, directed the commission to study the current landscape and demographics of child care workers in Tennessee and study the feasibility and effects of implementing a program to cover the cost of child care for child care workers, as well as other ways to expand financial supports for child care workers to incentivize them to remain employed in the early education industry.
- Public Chapter 941, Acts of 2024, directed the commission to study real estate fraud in the state, including its prevalence, schemes used to commit real estate fraud, methods used by other states to combat real estate fraud, and best practices for local government officials in registering documents related to real estate transactions. The Public Chapter directed the commission to report on suggested statutory revisions designed to reduce the risk of real estate fraud.
- Senate Bill 2877 by Senator Kyle and House Bill 2961 by Representative Hardaway. The bill passed in the Senate but not the House. If passed, the bill would have directed the commission to study the feasibility of a Shelby County crime lab and the impact the lab would have on public health, safety, education, housing, and the economy for citizens and visitors of Shelby County, the city of Memphis, and the tri-state region of Tennessee, Arkansas, and Mississippi. The commission opted to take up the study at its May 29, 2024, meeting.
- Senate Bill 2054 by Senator Jackson and House Bill 2205 by Representative Barrett. The bill passed the House but was referred to TACIR for study by the Senate Finance, Ways and Means Committee. The bill, if passed, would have allowed the district attorney general (DA) to only prosecute cases in municipal court where the municipality provides sufficient additional prosecutorial personnel and empowers the DA with the sole and exclusive discretion in determining the necessity and sufficiency of additional personnel. The bill also specified that the DA has absolute discretion to use in the performance of their duties and responsibilities. The commission chose to undertake the study at its May 29, 2024, meeting.

- Senate Bill 2487 by Senator Lundberg and House Bill 2616 by Representative Sherrell were introduced during the 113th General Assembly. While the bills did not advance, Senator Lundberg, Representative White, and Representative Sherrell sent a letter on April 3, 2024 to formally request that the commission review problems identified with the reimbursement of school-based services using TennCare and assist the parties involved in reaching a resolution. The commission took up the study at its May 29, 2024, meeting.
- The commission completed a final report of issues stemming from the development of utility scale solar facilities and the residential solar market in Tennessee, as directed by Public Chapter 1043, Acts of 2022.
- The commission completed a final report on the routing and storage of emergency communications on the campuses of colleges and universities in Tennessee, as directed by Senate Bill 2827 by Senator Hensley and House Bill 2729 by Representative Ogles.
- The commission completed a final report on the liquor-by-the-drink tax and restaurant regulations in Tennessee, as requested by Senate Bill 2262 by Senator Briggs and House Bill 2419 by Representative Mannis.
- The commission completed a final report on impact fees and housing affordability, as requested by House Joint Resolution 139 by Representative Sparks.
- Pursuant to Public Chapter 475, Acts of 2009 and Public Chapter 1035, Acts of 2010, the commission continued to monitor and report on changes in the wholesale distribution of electric power by the Tennessee Valley Authority and its distributors for possible effects on the Authority's payments in lieu of taxes to the states in the Valley region.
- 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.
- Pursuant to Tennessee Code Annotated, Sections 49-3-104(13) and 4-10-104(10), the commission continued to prepare an annual fiscal capacity index for the Tennessee Department of Education, used in conjunction with the fiscal capacity model produced by the University of Tennessee's Boyd Center for Business and Economic Research to equalize the local contribution required to fund the base and weighted funding of Tennessee Investment in Student Achievement (TISA).
- 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 2022-23 Scheduled Commission Meetings*

### September 28-29, 2022

#### *Post-Award and Implementation Process for State Grants —Draft Report for Review and Comment*

Research Associate Chris BELDEN presented the draft report on the post-award and implementation process for state grants for review and comment. The draft was prepared in response to a request from Chairman Ken YAGER, which directed staff to review the post-award and implementation phase for state-administered grants to local governments and identify any changes warranted to streamline these processes.

Mr. BELDEN said the draft report identifies several existing ways to improve the post-award phase of state-administered grant programs and includes the following draft recommendations: State agencies should regularly convene grant advisory boards, which are made up of local government officials and those who assist them with grant management, to solicit feedback for improving grant requirements and processes, and the state could consider establishing an interagency working group for sharing lessons learned from agencies' efforts to improve grant requirements and processes. State agencies should accept Title VI training provided by other agencies when verifying compliance with federal and state law—unless they can demonstrate other agencies' trainings are inadequate for their programs—to eliminate the need for grantees to take multiple trainings when they have grants with multiple agencies. The state should require agencies to use a single, statewide grant management system (GMS) to promote a more uniform, user-friendly experience across agencies for grantees, with exceptions provided for agencies that can demonstrate the system won't support functions necessary for their grant programs.

Senator Jeff YARBRO asked how many state agencies currently have their own systems, how long the duration of the contracts associated with those systems are, and whether the GMS procured by the Department of Finance and Administration has the capability to be customized for each state agencies' needs. Mr. BELDEN said that TACIR staff did not collect data on how many state agencies have their own GMS, but several do. Mr. BELDEN said the duration of those contracts would likely need to be taken into consideration when transitioning state agencies to a statewide GMS, and according to Department of Finance and Administration staff, the single GMS would have the customizable capabilities for most state agencies.

Senator YARBRO asked how willing state agencies would be to adopt a single GMS and whether there are chokepoints that exist for state agencies that aren't willing to participate. Senator Jon LUNDBERG said regardless of whether there's appetite for a single GMS among agencies, making a single GMS a requirement might well be warranted. Commissioner Deniece THOMAS noted that the Department of Labor and Workforce Development is the first agency to adopt the system, and it is helpful to solicit feedback from agencies throughout the implementation of the system.

In response to Representative Antonio PARKINSON's question about whether the report addresses disparities between grant funding received by large and small nonprofits, Mr. BELDEN said that the report looked at grants received by local governments but not nonprofits. Senator Heidi CAMPBELL asked whether the study included information about how federal funds are awarded to specific state agencies, and Mr. BELDEN responded that it does not.

Vice Chairman Kevin BROOKS asked for the report's recommendations to use stronger language. Mayor Jill HOLLAND agreed that the recommendations could be made stronger and said she would be interested in hearing from departments in the future about how they plan to address the recommendations made by the Commission. Executive Director Cliff LIPPARD said that at the will of the Commission, staff could add stronger language to the recommendations. Chairman YAGER said that the language of the recommendations could be amended by the Commission when the final report is presented for approval at the next meeting. He shared a letter from the city of Oak Ridge complimenting the report and its recommendations.

### *Childhood Obesity—Draft Report for Review and Comment*

Research Director David LEWIS presented the draft report on Public Chapter 503, Acts of 2021, for review and comment. He reviewed the negative outcomes associated with childhood obesity. He said the recognition of the upward trend in the rate of childhood obesity and its many root causes has led to a wide array of responses from federal, state, and local governments—and presented the steps Tennessee state government has taken to try and address the problem. But as the report documents, these efforts to both understand and confront the problem have not been enough to halt and reverse the overall increasing trend. He presented four draft recommendations.

Senator Jon LUNDBERG said the 58% of calories consumed in a day at schools in the report seemed high and asked about it. Mr. LEWIS said the report says up to 58%—setting a ceiling on the number of calories—and that many people would not consume nearly that high of a percentage in school in a day. Senator LUNDBERG asked whether staff was recommending that the state further regulate snacks in vending machines in schools. Mr. LEWIS said staff was not recommending that and such decisions should be left up to individual districts and communities.

Senator Heidi CAMPBELL said that access to healthy food was important to consider in addressing childhood obesity and asked whether that would be considered. Mr. LEWIS said that the Tennessee Livability Collaborative and Tennessee Department of Health are concerned about that issue and that he believed it would be considered.

Mayor Terry FRANK asked whether ways that other states have increased the participation rate in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) have been identified. Mr. LEWIS said it is difficult to determine exactly what causes the differing rates and explained how the COVID-19 pandemic made it even more difficult.

Senator Jeff YARBRO asked how the necessary data elements would be determined for addressing childhood obesity. Mr. LEWIS said that the departments participating in the Livability Collaborative—with input from the Office of Evidence and Impact—would need to agree on the data elements.

Representative Ryan WILLIAMS asked whether there is a way to target the underlying causes of the increasing trend more directly in childhood obesity rates. Mr. LEWIS said that the increase is occurring in almost all the world, and that it seems likely that greater access to food—not necessarily healthy food—is most likely a driving factor.

### *Electric Vehicles and Other Issues Affecting Road and Highway Funding—Draft Report for Review and Comment*

Research Manager Bob MOREO presented the draft report for review and comment, which was prepared in response to concerns raised by commission members about the growing market for electric vehicles (EVs) in Tennessee and what effect increased adoption of EVs might have on state and local road funding. Members also noted that increased adoption of EVs has brought with it demands from residents to improve the state's EV charging infrastructure. He said revenue from federal, state, and local sources contribute to fund road construction and maintenance at the state, county, and city levels noting that state fuel taxes provide most of the revenue used for roads.

Mr. MOREO said that because electric vehicle (EV) owners don't pay fuel taxes the state charges EV owners an extra $100 registration fee; however, unlike fuel taxes, revenue from registration fees aren't shared with local governments. He said that out-of-state drivers of gas-powered vehicles contribute fuel tax revenue when they buy gas in Tennessee, but the state's EV registration fee doesn't capture revenue from out-of-state owners of EVs traveling in Tennessee, and Tennessee does not apply the fee to plug-in hybrid vehicles (PHEVs).

Mr. MOREO said, assuming 10% of vehicles in Tennessee were electric in 2040, gas tax revenue could be reduced by an estimated $68 million. Some of that would be offset by the additional EV registration fee, but revenue from the fee would not be shared with local governments. He said increases in fuel efficiency of gas-powered vehicles and inflation for road construction costs will have far greater effects than EVs on the state's future road funding. Estimates in the draft report are that increased fuel economy could reduce gas tax revenue by $163 million in 2040 and construction cost inflation could reduce the purchasing power of the state's gas tax by $399 million in 2040.

Mr. MOREO said some states share revenue from their EV fees with local governments, some charge higher fees to register heavier passenger vehicles, and others index their fuel tax rates to inflation and increased fuel economy. Some states are also testing methods to tax all vehicles, whether electric or gas-powered, on a vehicle-miles-traveled (VMT) basis.

Mr. MOREO presented the recommendations from the report. Because the practical effect of the state's EV registration fee is to serve as a substitute for the gas tax by collecting revenue for road funding from vehicle owners who don't purchase gasoline—and therefore don't contribute to road funding through the gas tax—the state should consider sharing EV registration fees with local governments in the same proportion as the gas tax and the state could consider applying a reduced EV registration fee to plug-in-hybrid vehicles and share this revenue with local governments in the same proportion as the gas tax. Given the effect of inflation on the purchasing power of gas tax revenue—and to assist lawmakers in evaluating whether to adjust the state's fuel tax rates—the Department of Revenue or another entity such as the State Funding Board should inform the General Assembly of the effect of inflation on the purchasing power of the state's fuel taxes at least once every two years. As the state confronts the tradeoffs associated with any potential alternatives to its current fuel-tax-based road funding framework, it should balance the ability to raise adequate revenue with equity for all drivers—regardless of whether their vehicles are powered by gas, electricity, or some other method; ensure that revenue from any adopted alternatives is shared with local governments in an equivalent manner to the current sharing of fuel taxes; and ensure any alternatives intended to offset lost revenues are designed to do so without discouraging customers from purchasing electric vehicles.

Representative Ryan WILLIAMS asked how much the average driver in Tennessee contributes in gas taxes, to determine how much is offset by the EV fee. Mr. MOREO said the calculation depends on the fuel economy figure chosen—for the report staff used 30 miles per gallon as an example, resulting in an estimated $136 in gas tax. He said the report doesn't make any recommendations about calculating the EV fee, but only provides an example for reference. In response to Representative WILLIAMS' question as to whether Tennessee is unique in not charging an extra fee for hybrid vehicles, Mr. MOREO said 30 states have EV fees and 14 of those include PHEVs, which often require a lesser fee; a few states even require owners of non-plug-in hybrids to pay a fee.

Mayor Tom BICKERS said the report's projected rate of EV adoption is low and asked whether a faster rate of adoption would affect local governments' road funding sooner and more significantly. Mr. MOREO said the projections in the report are based on a combination of sources that consider those factors but agreed that they could potentially be too low if the industry moves faster than anticipated. He said staff will present a range of projections in the final version of the report.

In response to Mayor BICKER's comments that EVs have the same effect on roads as gas-powered vehicles and question about whether the legislature should consider ways for EV owners to pay an equitable amount towards road maintenance, Mr. MOREO said the General Assembly could always change the EV registration fee. Mayor BICKERS asked whether the state is discussing how it will dispose of used EV batteries at the end of their life. Mr. MOREO said he wasn't aware of specific discussions in Tennessee, but that battery recycling is an issue the industry is working to address.

Mayor BICKERS asked whether the report considered the effects of federal legislation passed in 2022 that provided funding for states to develop new EV charging stations. Mr. MOREO said the report does consider those effects and that report describes the federal program and its implementation in Tennessee. Mayor BICKERS asked whether EV drivers pay any tax or fee when they use a charging station in Tennessee. Mr. MOREO said they don't but information about three states where that type of tax has recently been introduced will be added to the final report. Representative WILLIAMS asked whether states planning to tax EV charging will use some of the revenue to improve the supply of electricity. Mr. MOREO didn't know if the revenue will be used to improve the supply of electricity but said some will direct revenue to road funds.

Mayor Terry FRANK asked whether the state has any taxes on utilities or electricity. Mr. MOREO said he didn't know but will research the issue. [Staff found that the state already generates some revenue from the sale and distribution of electric power, although not specifically to fund roads. Electric utilities pay a 3% gross receipts tax and are subject to franchise and excise tax laws. Energy "sold directly to the consumer for residential use" is exempt but sales of electricity to commercial customers are generally subject to Tennessee's 7% state sales tax. Cities and counties cannot apply local-option sales taxes to electricity. If the electricity is used for manufacturing/processing and the electricity is separately metered from normal office use, the Department of Revenue can issue a tax exemption if the customer applies for one.] Representative WILLIAMS asked what effect EV charging stations will have on power consumption. Mayor Larry WATERS said electricity providers in his area are concerned the power grid won't be able to handle the added demand from EV charging and said charging station owners are concerned about the cost of electricity. He said these constraints may limit the adoption rate of EVs. Mr. MOREO said that TVA has a separate electricity rate structure for charging stations that is intended to make operating costs more affordable.

Representative Patsy HAZLEWOOD asked Mr. MOREO to discuss any states that are testing VMT taxes and what those states have learned. Mr. MOREO said the draft report includes a map of states studying VMT issues or testing VMT pilot projects to explore different methods of mileage reporting and implementation. Representative HAZLEWOOD asked whether a national organization is looking at the results of these individual state projects and whether any nongovernmental organization is evaluating these pilots. Mr. MOREO said the draft report cites a US Government Accountability Office (GAO) report that said a national approach will eventually be necessary to coordinate VMT taxes across state lines and that he didn't know of any nongovernmental organization looking at the results of the pilots. Executive Director Cliff LIPPARD asked whether the National Conference of State Legislatures (NCSL) had looked at these pilot programs. Mr. MOREO said staff used NCSL to get information about the programs, but that there hasn't yet been a comparative review. Dr. LIPPARD said staff would reach out to NCSL.

Representative John CRAWFORD asked what the costs of converting public vehicle fleets, including school buses and fire trucks, to electric are, and wanted to know how fast EV charging stations can charge vehicles and how many might be needed. Mr. MOREO said he would follow up with Representative CRAWFORD after the meeting. [Following the meeting, staff emailed information about fleet conversion and charging stations to Chairman Crawford. This included that Level 2 stations using 240V current are the most common type of charging right now. They're good for overnight charging, taking up to eight hours to fully charge EV batteries. Each one needs its own dedicated circuit, but they aren't expensive. DC "Fast Charging" uses commercial, three-phase power, but gets charging times of less than an hour in most cases. Fleets may not need that capacity if vehicles are driven around during the day and charged overnight. But for larger fleets, it could make sense to install fast chargers at some facilities and have staff responsible for rotating multiple vehicles through the chargers overnight; you could get eight vehicles recharged with one station.]

### *Water Recreation Resources—Draft Report for Review and Comment*

Research Manager Jennifer BARRIE presented the draft report on water recreation resource management for review and comment. The report was prepared in response to Public Chapter 497, Acts of 2021, which includes ten points the commission was to study and report on to assist state agencies in identifying the best ways to manage the state's resources and handle challenges, given the evolving recreational use of the state's waterways. The final report will be presented for the commission's approval at the December meeting and must be sent to the General Assembly by December 31, 2022.

Ms. BARRIE said that Tennessee, like other states, is experiencing an increase in outdoor recreation as more people are enjoying the state's natural resources and participating in a variety of activities like fishing, hunting, and paddling in non-motorized vessels, resulting in both benefits and challenges for the state. To help meet the challenges, the draft report recommends that state agencies with jurisdiction over the state's waterways should continue to take a collaborative approach to strategic planning with multiple agencies, consider a statewide task force to look at water recreation issues and work through conflicts, and develop existing and new partnerships to improve access to waterways. It also recommends that the Tennessee Fish and Wildlife Commission, which regulates commercial non-motorized vessel outfitters, should consider including a member of the commercial non-motorized vessel outfitter community. Finally, the draft report recommends that state agencies gather more robust data on the recreational use of water resources across the state and use the data for strategic planning.

Representative Ryan WILLIAMS said that communication between entities on the waterways is needed and commercial paddlecraft outfitters need a voice on the Fish and Wildlife Commission. Senator Jeff YARBRO said he is interested in how other states have incorporated the role of their tourism development offices with outdoor and water recreation. Ms. BARRIE responded that staff didn't look specifically at tourism offices in other states but did speak with staff in the Tennessee Office of Rural Tourism, and the office is interested in being involved with a statewide outdoor recreation committee. In response to Mayor Jill HOLLAND's question about where the Tennessee Office of Rural Tourism is housed, Ms. BARRIE said the office is part of the Tennessee Department of Tourist Development. Mayor Kevin BROOKS requested that the final report include an estimate of how much commercial use is happening at private accesses as opposed to public launch sites. Ms. BARRIE said that staff will include that information in the final report.

### *Reference Based Pricing—Panel*

Research Associate Michael STRICKLAND said that Senate Bill 2330 by Senator Hensley and House Bill 2468 by Representative Sparks directed the commission to study the overall effect on health insurance prices when reference-based pricing is used. Reference-based pricing is a method for reducing the costs of healthcare that places a limit on the prices paid for healthcare services, with that limit indexed to a reference point. Most often, the reference point is some ratio of Medicare rates. Dr. STRICKLAND introduced panelists with knowledge of reference-based pricing. Panelists included

- Representative Mike Sparks;
- Laurie Lee, executive director, Benefits Administration, Tennessee Department of Finance and Administration;
- Randy Stamps, former executive director, Tennessee State Employees Association (TSEA); and
- Ralph Weber, president and chief executive officer, MediBid.

In addition, Dr. STRICKLAND introduced former Representative Martin DANIEL, owner and general manager of Elevation Outdoor Advertising, who had asked to make a statement regarding the Tennessee Attorney General's state employee healthcare plan claims audit.

Representative SPARKS said he is concerned about the rising costs of healthcare, so he called Ralph WEBER, whom he knew from Rutherford County, and asked what could be done about these rising costs. Representative SPARKS said Mr. WEBER suggested reference-based pricing. They requested records from the Tennessee state employee healthcare plan, and those records showed a lot of outliers with regard to what the state had paid in healthcare claims. He said that Montana's state employee healthcare plan saved $14 million dollars with reference-based pricing, and he believed that Tennessee, which is bigger than Montana, might save up to $100 million dollars by using reference-based pricing.

Executive Director LEE provided background on Tennessee's Benefits Administration, noting that it provides insurance through three separate self-funded risk pools for state and higher education employees as well as local government and local education employees, collectively referred to as the State Group Insurance Plan (SGIP). On the topic of reference-based pricing, she said there were many variations on the concept and emphasized the possibility of balance billing for patients when they are billed above the reference price. This means the patient would have to pay the difference between the reference price the insurer pays and the amount they are billed.

Executive Director LEE said that Benefits Administration is aware of rising healthcare costs, and they conduct ongoing research into best practices to deal with costs. She also noted that Benefits Administration is concerned with the total cost of care, which includes consideration of outcomes. According to their actuarial consultant, in 2021 the Benefits Administration's total payment rate was 157% of Medicare. She contrasted that with Montana, where, when reference-based pricing was instituted, the state was paying 191-322% of Medicare for hospital inpatient services and 239-611% for outpatient. The reference price was set to 220-225% of Medicare for inpatient and 230-250% of Medicare for outpatient. While this has resulted in savings for Montana, she observed that Tennessee's payment average is already lower at 157% of Medicare rates.

The SGIP currently uses two third-party administrators, Cigna and BlueCross BlueShield, whose services were obtained through competitive bidding. Each offers lower-cost network options. She suggested that some states that have instituted reference-based pricing do not have the same kind of competition among administrators to deliver efficiency.

She said that the SGIP prioritizes low-cost but high-quality services. She said they were also cognizant of price variation and outlier costs, and that reference-based pricing may be able to deal with these issues, but there could sometimes be a reason for price variation, like the complexity of a patient's case. Executive Director LEE said that Benefits Administration is not engaged in price negotiation with the providers; the third-party administrators, Cigna and BlueCross BlueShield negotiate prices with the providers. Their third-party administrators and the healthcare providers may be able to deal with that issue of price variation in negotiations.

She said reference-based pricing does not necessarily weigh the quality of providers or direct patients to better quality providers. It could encourage the use of a low-cost provider at the expense of quality, possibly resulting in poorer outcomes and more complications. It could also lead to network erosion in which some providers choose to leave the network. That would be of concern in geographic areas where there are already few providers available.

Executive Director LEE said that, based on a review of the literature seen by Benefits Administration, a bidding model for care might result in someone needing to travel across the country for standard care. She also suggested that the Affordable Care Act may impose some limitations on reference-based pricing based on access and quality standards, and she said there were several relevant lawsuits currently ongoing. But the effect of reference-based pricing, she said, depended on the model adopted. She noted that the approach used in Montana had not succeeded in North Carolina, and that healthcare markets vary widely.

She concluded by saying that as the SGIP was now averaging about 150% of Medicare, a reference price of 250% like in Montana would be a setback. She added that reference-based pricing risked network erosion, and Benefits Administration remains focused on balancing the total cost of care with health outcomes and protecting member access to quality providers.

Mr. STAMPS thanked the Governor and state legislature for their efforts in maintaining the state employee health system, noting that the state pays 80% of the insurance premium costs for active state employees. He observed that reference-based pricing is not the only means to contain healthcare costs. For employees hired since July 1, 2015, state insurance coverage has been eliminated when they retire before age 65, and he pointed to this as one example of how the state has saved money. They also increased the out-of-pocket spending limits to then lower premium costs.

He said that these measures demonstrate the consultation that has taken place with state employees and TSEA. He noted that TSEA does not currently hold a position on reference-based pricing, though it may adopt one after the final report in January. He said that in his experience the Benefits Administration had always provided TSEA with balanced and fair information, and that he expected TSEA would strongly consider any input from Benefits Administration.

Mr. STAMPS emphasized that reference-based pricing could limit opportunities for healthcare in some areas. He questioned whether reference-based pricing, should it be adopted, would include a cap on out-of-pocket spending, and suggested that when there are cost savings to be achieved by reference-based pricing, they should be shared with state employees. Reiterating that TSEA has no position on reference-based pricing, he said he did not foresee TSEA supporting an approach like that adopted in California, Montana, North Carolina, or Oregon.

Mr. WEBER said that Representative SPARKS had called him several years ago to discuss methods for saving taxpayer money. He said that he has served as an employee benefits consultant and works with over 150 employers, many of whom use reference-based pricing. He said that 100 million Americans currently have medical debt, and this medical debt is a factor in two-thirds of bankruptcies in the country.

He said that the data he had previously received from Executive Director LEE for 2018 indicated state spending at 150% of Medicare rates exactly, with in-network providers paid at 151% of Medicare, but out-of-network providers at 145%. He said there were different data points reported on total healthcare spending, but taking the lowest figure of $1.6 billion per year, the six percent difference between in- and out-of-network providers would suggest $96 million in savings. He said he had a memo from BlueCross BlueShield saying that they do not provide discounts to state employees through their providers.

Mr. WEBER cited price discrepancies in the data they had obtained earlier from Benefits Administration. One provider charged $19,800 for a computerized tomography (CT) scan when the average was $635. He acknowledged that there would be price variation, but he said that the CT scan price differential he mentioned amounted to a 3,100% difference. He recounted similar data for colonoscopies ($2,212 average, with an outlier of $17,341, at a difference of 1,600%). He said that Medicare rates the quality of providers on a five-star system, and that he had found most of the providers in the data charging less than $5,000 were rated four or five stars, while those charging $10,000 or more were rated two or three stars. He said that a negative correlation between cost and quality could be explained in part by the fact that a more experienced doctor might perform a procedure in less time, possibly also with faster recovery, resulting in lower cost.

He noted that TennCare pays perhaps 86% of Medicare and that it still retains many providers. He said that patients are the best people to control the cost of healthcare, which can be done by giving them incentives and transparency to choose quality providers. In reference to Executive Director LEE's example of traveling out of state for a colonoscopy, he said that there were many capable providers in Tennessee, and that going out of state might increase costs.

Mr. WEBER said that the No Surprises Act's controls on balance billing would make reference-based pricing more consumer-friendly, though quality measures would need to be shown in advance. He said reference-based pricing would also let patients make their own choice of providers. The state employee health plan's network is not efficient in his view, and he said providers should not be counted as low quality simply because they were not part of the network.

He said that from the data he had seen there were many providers charging from 200% to 3,000% more than the average, and it is these that reference-based pricing is meant to deal with. He suggested that even though the state's average reimbursement rate might be 150% of Medicare, there could still be expensive outliers. He concluded his remarks by saying that he was sure a reference-based pricing plan could be written to cap out-of-pocket maximums and help prevent medical debt.

Executive Director LEE said that when a patient receives an explanation of benefits (EOB) you can see the price the patient was charged for the service, and the network discount on the EOB is the amount the insurance company negotiated off the price. She noted that they sent information about the prices charged to the state legislators. She said they could not send them the network discount data because this is proprietary information of the insurance companies. Mr. STAMPS said it was the TSEA's position that if you are going to limit the availability of healthcare and the providers that are available to state employees, they should see some direct benefit by limiting out-of-pocket cost.

Representative SPARKS mentioned a state employee who was in his office one day and said that he had received a $2,400 health bill. The employee said that he found out he didn't owe the money after he did some digging. Representative SPARKS said that this example emphasizes the need for more dialogue on healthcare since we all know we have a problem.

Representative PARKINSON asked whether there was a law or policy that could force the healthcare providers to show the range of costs next to the amount that they are charging state employees. Executive Director LEE responded that the insurance companies that the state contracts with, Blue Cross Blue Shield and Cigna, have online transparency tools that allow state employees to go online to see what they would pay for a healthcare service, but she is not certain that they show the range of costs. Representative PARKINSON suggested that requiring providers to show the range of costs next to the amount charged to employees might create the kind of competition to get costs down.

In response to Senator CAMPBELL's question about North Carolina's experience with reference-based pricing, Executive Director LEE replied that North Carolina had trouble getting enough healthcare providers to agree to the reference price. She said this is an example of the network erosion she was talking about where the choices available to plan members would diminish.

Mayor HOLLAND asked who determines which providers are in network and out of network. Executive Director LEE responded that the state has a contract with Blue Cross Blue and Cigna. They ask them in the contracts to establish networks and the insurance companies negotiate with the providers to determine who is in and out of network.

In response to Councilman CARLISLE's question about how Benefits Administration measures outcomes, Executive Director LEE said that for substance use disorders, for example, outcomes would be measured by the early readmission rate; outcomes for medical and surgical procedures could be measured by the readmissions because of complications. She mentioned they also look at mortality and morbidity rates. Executive Director LEE noted that some providers that do the most patient volumes have the best outcomes because the process is well refined; open-heart surgery is a great example.

Representative WILLIAMS asked whether healthcare outcomes affect the prices the state pays for healthcare. Executive Director LEE responded that the state of Tennessee doesn't get involved in rate setting; the companies the state contracts with set the rates through negotiations with the providers. She said that one of the insurance companies they contract with looks at overall performance and outcomes in joint replacements and this factors into the rate negotiations for this service. Next Representative WILLIAMS asked whether the state had the ability to penalize a provider for a bad outcome. Executive Director LEE answered that there might be a way to penalize providers contractually for bad health outcome. For example, if a patient is readmitted after 30 days it may say in the contract that the insurer does not have to pay for the readmission.

In response to Representative HAZLEWOOD's question about what difficulties the state is having with providers in its network and what affect reference-based pricing would have on that, Executive Director LEE replied that they have concerns about erosion of networks and have providers who go in and out of network often. She said that the insurance companies that negotiate on the state's behalf take provider shortage in an area into consideration when negotiating the state's contracts, and the state might pay more in a rural area because of provider shortage in that area.

Mayor FRANK asked whether there were other ideas or things other than reference-based pricing that could be done to lower the high-priced healthcare bills the state has pay. Mr. WEBER answered that reference-based pricing encourages competition and drives down prices since the insurer will pay the reference price to any provider. He argued that narrow networks discourage competition and drive-up healthcare prices since it gives in network providers a monopoly; patients use in-network providers more since it costs them less out-of-pocket. Narrow networks penalize out of network providers since patients must pay more out-of-pocket to use them even when the prices charged by the providers are lower than in network providers.

Former Representative Martin DANIEL said that the healthcare market is far from being a purely competitive market and cannot function efficiently to provide services at the lowest possible price. He noted that there is no procedure in place whereby enrollees of Tennessee's state healthcare plan are encouraged to seek out the lowest healthcare provider. There is evidence that costs incurred by the Tennessee plan are excessive. As recently as 2018 widely varying amounts were paid by the state healthcare plan for similar uncomplicated procedures. For example, in 2018 the prices billed to the state of Tennessee for arthroscopic procedures ranged from $881 to $49,343. He said the state could see substantial cost savings by implementing reference-based pricing that limits healthcare payments by establishing benchmarks. These benchmarks could be the average of cost per procedure or a reasonable percentage above the Medicare rate. In 2018, if payments for endoscopy had been limited to the median billed amounts, the state would have realized savings of $540,000.

### *Tangible Personal Property Tax—Draft for Review and Comment*

Research Director Michael MOUNT presented the draft report on tangible personal property for review and comment. He said that it was prepared in response to Senator Lundberg's request at the January 2022 commission meeting that the commission study the personal property tax in Tennessee. Mr. MOUNT said that the commission has identified several alternatives to make compliance easier for taxpayers, tax preparers, and local governments without reducing local revenue.

Mr. MOUNT said that Tennessee currently gives about 13% of businesses an option to streamline the process of complying with the personal property tax by certifying that they have $1,000 or less in personal property. He said that to give more businesses a means to reduce the time and cost of filing personal property taxes without decreasing local tax revenue, the draft report recommends that the General Assembly consider adding one or more tiers at greater dollar amounts.

Senator Jon LUNDBERG asked whether a de minimus tax at a $10,000 threshold could be constitutional. Mr. MOUNT said that our sense is that, if an assessment is being made then it would be constitutional. He noted that others disagree, and it's a gray area. County Clerk Mary GAITHER said that businesses with less than $3,000 in annual sales do not need a business license, businesses that have between $3,000 and $10,000 in annual sales are required to get a minimal activity business license, and businesses with greater than $10,000 in annual sales are required to get a standard business license. She suggested that once businesses have more than $10,000 in annual sales and change to a standard business license that they could start paying personal property taxes at that point.

Moving on to the next recommendation, Mr. MOUNT said that about two-thirds of Tennessee's counties continue to rely on paper filings, while only a third offer e-filing. He said that to encourage increased compliance with the tax, streamline the reporting process for businesses, reduce labor and costs for assessors, encourage consistency in filing requirements across jurisdictions, and modernize the filing process, the draft report recommends that county assessors consider adopting e-filing and that they continue to be encouraged to do so. Senator Jeff YARBRO asked whether there are ways for counties to be part of the same system. Mr. MOUNT said that the Comptroller's Office has a system that's available to county assessors that choose to use it, but many have not.

Mr. MOUNT went on to say that some new businesses may incorrectly assume that the Department of Revenue administers all state and local taxes in Tennessee, and the information on state websites regarding personal property taxes could be easy to overlook. He said that to better inform taxpayers of their tax obligations and enhance compliance, the draft report recommends that new businesses receive an email upon registration of their business licenses that outlines all the taxes they might owe, including local taxes. Representative John CRAWFORD asked whether local governments would be responsible for that email. Mr. MOUNT said that it would not be a burden on local governments unless they wanted to provide some input.

Regarding the final recommendation in the draft report, Mr. MOUNT said that in 1997, the Standard Industrial Classification (SIC) system was replaced with the North American Industrial Classification System (NAICS); however, Tennessee's business tax continues to use SIC while personal property tax account data use NAICS. He said that to ensure that business tax records across different governmental databases are consistent and updated, the draft report recommends that the General Assembly amend state law to update the industry classifications used for the business tax from SIC to NAICS. Senator LUNDBERG asked about the difference between the SIC and NAICS and how that would affect the taxes paid. Mr. MOUNT said that the business tax rate is based on business classification, and that determines the amount of tax paid. He said that the SIC and NAICS do not match, making comparisons difficult, and SIC has not been updated since 1997.

Senator LUNDBERG asked, what is the cost to tax collectors to administer the tax? Mr. MOUNT pointed to a summary of a TACIR survey in the report, which says that the cost to administer the tax is less than 1%. Senator LUNDBERG said that the personal property tax is a double or triple tax. He said that, for some equipment, businesses end up paying more in personal property tax than in sales tax. He requested that the report include additional information regarding the cost to businesses to file and pay the tax [Note: added to pages 15 and 16 of report].

## December 15-16, 2022

### *Post-Award and Implementation Process for State Grants—Final Report for Approval*

Research Associate Chris BELDEN presented the final report on the post-award and implementation process for state grants for the commission's approval. The report was prepared in response to a request from Chairman Ken YAGER, who directed staff to review the post-award and implementation phase for state-administered grants to local governments and identify any changes warranted to streamline these processes.

Mr. BELDEN said that in response to concerns raised by commission members at the September meeting, staff included additional information in the report regarding issues that would need to be considered before transitioning to a single, statewide grant management system, or GMS. He also said that in response to a member request, staff contacted nonprofits to understand their experiences with state grants; these nonprofits reported experiences similar to those of local governments. Mr. BELDEN said that staff also strengthened the language of the report's four recommendations based on feedback from commission members.

Senator Jeff YARBRO proposed that the first recommendation be amended by adding the word software after grant management system to clarify that a GMS is a software system. He moved approval of the report with this amendment. The motion was seconded by Representative Ryan WILLIAMS, and the report was approved unanimously as amended.

### *Childhood Obesity—Final Report for Approval*

Research Director David LEWIS presented the final report on Public Chapter 503, Acts of 2021, for commission approval. Mr. LEWIS said the report's recommendations remain unchanged from the draft report.

Representative John CRAWFORD asked whether there was more recent data available from Coordinated School Health regarding BMIs and if not, whether COVID was the reason. Mr. LEWIS said he didn't know. [Subsequent to the meeting, this explanation was found on the Coordinated School Health website: "As a result of prolonged absences of students from public schools due to the COVID-19 pandemic during the 2020-21 school year, the number of health screening submissions by the schools was very low. After careful analysis of the data, the Tennessee Department of Health determined that due to the inadequate representation of students, it would not be possible to produce a school BMI status report for 2020-21 that would be truly representative of students in Tennessee. Therefore, none will be issued."] Representative CRAWFORD asked whether the recommendation regarding the Tennessee Livability Collaborative would lead to the creation of an additional office or layer of government. Mr. LEWIS said that the recommendation would not and that the Collaborative is a voluntary organization made up of state employees who want to work together in an interdisciplinary and interdepartmental fashion to solve difficult problems. Mayor Buddy BRADSHAW asked whether the indicators from the Tennessee Livability Collaborative could be shared with commission members. Mr. LEWIS said that they could. [The indicators were emailed to members on 12/21/2022.] Senator Bo WATSON made a motion to adopt the report. It was seconded by Senator LUNDBERG, and the report was unanimously approved.

### *Electric Vehicles and Other Issues Affecting Road and Highway Funding—Final Report for Approval*

Research Manager Bob MOREO presented for approval the final report on the effect of electric vehicles and other issues on road and highway funding. The report was prepared in response to concerns raised by commission members about the growing market for electric vehicles (EVs) in Tennessee.

Mr. MOREO said changes were made to the final report in response to feedback from members at the September commission meeting. In response to Mayor BICKERS saying that staff projections of EV adoption in Tennessee may be too low, staff added an additional projection based on the rate of EV adoption nationally. In response to Mayor FRANK asking about existing taxes on electricity, staff added information about taxation of electricity in Tennessee and information about the three states that have enacted taxes on EV charging. Given concerns expressed by multiple members about whether the electric grid can handle the projected increase in EVs, staff added information about TVA's plans to accommodate this and other growth.

In response to concerns expressed by multiple members about electrification of agricultural, industrial, and other types of equipment, staff added information on these types of vehicles and equipment. Mr. MOREO said that the report acknowledges that the Tennessee Department of Transportation and the Governor's Office have publicly stated that the state might consider increasing the EV registration fee to $300. Mr. MOREO presented the report's recommendations. Representative Ryan WILLIAMS made the motion to approve the report with the addition of an estimated range of what the EV fee should be set to, plus or minus 5%. Representative CRAWFORD seconded the motion, and the report was approved unanimously.

### *Water Recreation Resources—Final Report for Approval*

Research Manager Jennifer BARRIE presented the final report on water recreation resource management for the commission's approval. The report was prepared in response to Public Chapter 497, Acts of 2021, which directs the commission to study ten questions addressing the procedural and financial measures necessary to accommodate the evolving recreational use of the state's waterways. Ms. BARRIE said staff added information about private accesses used by commercial outfitters to the report at the request of Vice Chairman Kevin BROOKS. She also explained revisions to the recommendations that were made after considering input from several stakeholders.

At the request of the Tennessee Paddlesports Association, one recommendation was revised from saying the existing paddlecraft advisory committee could be transitioned to a statewide boating advisory board or office of outdoor recreation to say the committee could be augmented by one of these entities. The last recommendation was revised based on concerns expressed by the Tennessee Wildlife Resources Agency (TWRA). The recommendation originally said the Tennessee Fish and Wildlife Commission—the governing body of TWRA—should include a member of the commercial paddlecraft vessel outfitter community. It was revised to say "Additionally, the General Assembly should add motorized and non-motorized boating to the list of subjects of which a Tennessee Fish and Wildlife Commission member should be well informed." Finally, based on feedback from a coalition of several groups organized by the American Canoe Association, staff changed language in the recommendations that "state agencies with jurisdiction over public waterways in Tennessee" implement these changes to "the state" in order to include any state entity that could potentially be involved in the enactment of these changes.

Senator Heidi CAMPBELL asked whether a coalition representative could speak to the members about whether the changes to the recommendations captured the essence of what they were requesting. Ms. Andrea WHITE, Southeast Regional Chair of the American Canoe Association, spoke on behalf of the coalition. She explained that the coalition would like a state office of outdoor recreation to be housed in the Department of Tourist Development and that the office would be a hub for implementing the other recommendations in the report.

### *Tangible Personal Property Tax in Tennessee—Final Report for Approval*

Research Director Michael MOUNT presented the final report on tangible personal property for the commission's approval. He said the report was prepared in response to Senator Lundberg's request at the January 2022 commission meeting that the commission study the personal property tax in Tennessee.

Mr. MOUNT said that, since the draft report was presented at the last meeting, staff added information regarding the cost to administer and collect the tax and the cost of compliance for small businesses. He said that the changes are highlighted in yellow in the report, and that the report's recommendations remain unchanged.

Senator Jon LUNDBERG thanked the commission and staff and said that some recommendations regarding websites have already been implemented. Senator LUNDBERG moved approval of the report with County Executive Jeff HUFFMAN seconding the motion. The report was approved unanimously.

### *Biennial Report for Fiscal Years 2020-21and 2021-22—Final Report for Approval*

Research Associate Michael STRICKLAND presented the biennial report for fiscal years 2020-21 and 2021-22, making brief note of its contents, including an overview of topics studied by the commission in the last two fiscal years. Commissioner Deniece THOMAS moved for approval of the report with Mayor Buddy BRADSHAW seconding the motion. The report was approved unanimously.

### *Reference -Based Pricing—Draft Report for Review and Comment*

Research Associate Michael STRICKLAND presented the draft report on reference-based pricing in healthcare. The report was prepared in response to Senate Bill 2330 by Senator Hensley and House Bill 2456 by Representative Sparks, introduced in 2022, which directed the commission to study the effects of reference-based pricing on health insurance prices. Dr. STRICKLAND noted that the report contained no recommendations, only the staff's findings, and then he proceeded to give some background on healthcare costs and spending. He said the study had found that reference-based pricing would likely help insurers save on costs and might do the same for patients or consumers. However, healthcare providers had expressed opposition to reference-based pricing, and some stakeholders were concerned that this might lead to erosion of provider networks in health plans.

### *Comprehensive Litter Review—Draft Report for Review and Comment*

Research Manager Jennifer BARRIE presented the draft report addressing litter and illegal dumping in the state for review and comment. The report was prepared in response to members' concerns and direction at the June 2021 meeting, to conduct a comprehensive study to include research on the effects of littering and illegal waste dumping on the environment, economy, and overall quality of life in the state. The commission also clarified that the study would not focus on a bottle deposit or plastic bags because the General Assembly has already considered those issues.

Ms. BARRIE said litter and illegal dumping continue to be major concerns identified by Tennessee local officials. National experts agree on several best practices to address litter issues, and multiple approaches should be used at the same time. In Tennessee, the state, local governments, and communities have been using best practices and working together, and the three main components of the state's efforts are 1) the Tennessee Department of Transportation's (TDOT) data collection, litter prevention, pickup, and education programs including the litter grant program, adopt-a-highway, Nobody Trashes Tennessee, the litter hotline, and Keep Tennessee Beautiful; 2) enforcement of the state's criminal littering and covered load laws; and 3) the Solid Waste Management Act. Ms. BARRIE said that although these programs are considered best practices and key to addressing litter based on the literature, surveys of local officials, and interviews with stakeholders, the report makes five recommendations to improve and strengthen the state's efforts. She then presented the recommendations.

Senator Jon LUNDBERG said he has heard from municipalities that they would like to apply for the special litter grant, but the application process is difficult, especially for smaller municipalities that don't have as many resources as larger ones do. He asked whether staff had looked at the grant application process. Vice Chairman Kevin BROOKS mentioned that cities don't receive the litter grants and agreed that smaller municipalities need help. Ms. BARRIE responded that staff had reviewed the application process but will review again to determine whether it could be simplified and will include information about it in the final report.

Vice Chairman BROOKS asked about legislation that would have implemented the tire report recommendations and requested that the final report include what happened to those bills during the legislative process. Ms. BARRIE said that information will be added to the final report.

### *Passenger Rail and Mobility—Update*

Research Associate Chris BELDEN presented an update on the passenger rail and mobility study. The report is being prepared in response to Public Chapter 1114, Acts of 2022, and Public Chapter 1124, Acts of 2022, which directs the commission to study passenger rail and other alternatives to improve mobility in Tennessee. He explained that there are two different types of passenger rail, intercity, which provides regularly scheduled service with two or more distant stops, and transit, which provides more extensive service within a local area. Mr. BELDEN said that, unlike most modes of transportation, passenger rail is mostly operated on privately-owned tracks. He said that any state-supported Amtrak route established in Tennessee would most likely need to be subsidized by the state. He said that various transportation alternatives are being explored, including sleeper buses, regional airplanes, and autonomous vehicles.

Mr. BELDEN said that there will be a panel discussion at the January 2023 commission meeting, with representatives from Virginia, North Carolina, Tennessee, Amtrak, and freight railroads invited to participate. He said that a draft report will be presented at the June 2023 meeting.

## January 26-27, 2023

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

Research Manager Bob MOREO presented the commission's annual report on the Tennessee Valley Authority's (TVA) payments in lieu of taxes (PILOT) for the commission's approval and said there are no recommended actions to be taken by the General Assembly in this year's report. He said TVA estimates its payment to Tennessee in federal fiscal year 2022-23 will increase by $65 million to a total of $410 million primarily because TVA's fuel costs for generating electricity increased as a result of higher natural gas prices; TVA passes these fuel costs on to customers, thereby increasing TVA revenue and the PILOT. Mr. MOREO said the possibility that a major local utility might leave the TVA system has diminished for the time being because, following a multiyear study of other power supply options, Memphis Light, Gas and Water decided to remain with TVA in December 2022.

Mr. MOREO said provisions in TVA's wholesale power contracts give its distributors flexibility to obtain renewable energy from sources other than TVA, which could affect TVA's overall PILOT, including payments to Tennessee, by reducing TVA revenue. But power purchased at wholesale from entities other than TVA is subject to the equivalent payments required by Public Chapter 1035, Acts of 2010—codified in Tennessee Code Annotated, Section 67-4-3101—which are added to payments received by TVA and distributed through

Tennessee's TVA PILOT distribution formula. As of January 2023, there are only four utilities in Tennessee actively purchasing power from entities other than TVA, and no payments pursuant to that law have been made to the state. Mr. MOREO said Tennessee Department of Revenue staff are working to clarify aspects of the 2010 law's implementation related to the required payments.

In response to Chairman Ken YAGER's request for more information about power companies buying electricity from providers other than TVA and for further explanation of the payments required under the 2010 law, Mr. MOREO said TVA's flexibility agreements are relatively new, and the providers are required to make equivalent payments under the law. But the law also allows the companies selling this power to count other business taxes they pay as credits towards the payments required by the 2010 law, and TACIR staff don't know the extent to which those other taxes offset these payments as this is the first time power sales subject to the law have occurred. Chairman YAGER requested TACIR staff meet with him to discuss the matter in more detail. [Note: Staff met with Chairman YAGER on February 8, 2023. Pursuant to the meeting, staff will continue to monitor local power companies' purchases from entities other than TVA for their effect both on the PILOT and on distributions to local governments through the state's TVA PILOT distribution formula.]

In response to County Executive Jeff HUFFMAN's question about how newly built TVA power infrastructure affects TVA's payments to counties in which the new infrastructure is located, Mr. MOREO said Tennessee sets aside a portion of its allotted PILOT for areas affected by TVA construction projects, and TVA makes direct payments to counties for certain types of properties it acquires. Mr. MOREO also said that new infrastructure can affect each state's and county's allocated share of the PILOT based on each state's share of total TVA power property. County Executive HUFFMAN asked whether, as in the case of a 55-acre substation property being built to serve the West Tennessee Megasite and Ford's Blue Oval City, a county can project what revenue it should expect from TVA in lieu of taxes on that property and said it might be helpful for counties to know how much revenue to expect so that they can plan ahead for improvements to support large TVA projects. Director of Policy Matt OWEN responded that under federal law, TVA's direct payments to counties are equal to the two-year average of property taxes levied against a property for the final two years it was privately owned, and Mr. MOREO said TACIR staff did not look at the values of individual properties for this report.

In response to County Executive HUFFMAN's question about how direct payments would be determined in cases where the property was owned by the state when TVA purchased it, Dr. OWEN said staff would look into whether, in that case, TVA would base payments on taxes levied prior to the state acquiring the property. [Note: According to TVA staff, when TVA acquires property that was owned by another governmental entity, that property isn't included in the direct payments to counties tax calculation. The TVA Act specifies that the property must have been privately owned and operated.]

Chairman YAGER asked whether a property's value affects the impact payments local governments receive. Dr. OWEN responded that impact payments to areas with TVA construction are made through the state's distribution formula and are not determined by property values. In response to Representative Ryan WILLIAMS' question about whether local governments receive some payments in lieu of taxes from TVA based not only on previous property value but on improved property value after investments, Mr. MOREO said he was not aware of any payments based on improvements, and TVA's direct payments to counties are based on taxes levied before TVA's ownership. Representative WILLIAMS suggested the commission look further into the property ownership and tax implications of TVA's infrastructure projects at the Blue Oval Megasite.

Representative WILLIAMS moved approval of the report, which was seconded by Representative Antonio PARKINSON. The commission approved the report unanimously.

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

Research Manager Tyler CARPENTER presented the report for approval. Mr. CARPENTER said the report documents $62.9 billion of needed infrastructure improvement projects, which were in development during the five-year period of July 2021 through June 2026.

Senator Jon LUNDBERG asked about the year-to-year percentage growth of transportation needs per capita—specifically over the last 10 to 15 years. Mr. CARPENTER said the percentage has grown consistently over the years, but there was a 4% decrease in total needs from 2020 to 2021. Senator LUNDBERG requested that Mr. CARPENTER follow up with him with more details. (Note: Mr. CARPENTER provided the information to Senator LUNDBERG after the meeting).

Mr. Jeff PEACH suggested that some needs—such as solid waste infrastructure in Rutherford County—may not be accounted for in the inventory. Mr. CARPENTER explained that if a need was not reported to TACIR and was in some stage of development by July 1, 2021, then it would not be reflected in the inventory but could be accounted for in next year's inventory.

Senator Heidi CAMPBELL asked whether TACIR had completed any retrospective analyses to determine whether the state was meeting cost expectations. Mr. CARPENTER said that most completed projects match their projected costs.

Representative Ryan WILLIAMS asked for clarification regarding the inventory window and the projection of project costs. Mr. CARPENTER said the inventory window for the current report is July 2021 through June 2026 and that projects scheduled to be in some stage of development during this period are included along with the estimated project costs.

Representative WILLIAMS asked whether any new sources of federal funding for public infrastructure are reflected in the report. Mr. CARPENTER said that staff reviewed the new federal funding coming to Tennessee from the American Rescue Plan and the Infrastructure Investment and Jobs Act and determined that some projects in the current inventory show these funding sources, but projects funded with these dollars are most likely to be identified in next year's report or even the following year. Representative WILLIAMS said it would be beneficial to see the effect of federal funds on unfunded needs to inform budgeting decisions.

Executive Director Cliff LIPPARD said that staff reported on the effect of the pandemic on infrastructure costs, and it may be possible for TACIR to include a review of the net effect of federal funds in the follow-up report, which has been postponed while staff focuses on other reports.

Mayor Terry FRANK said the East Tennessee Development District (ETDD) recently had a meeting that was complimentary of the infrastructure report, and that they are working to identify ways to best apply the information from the report to the needs of local government. Mayor FRANK described the report as a good springboard for local governments to meet infrastructure needs and said ETDD may have recommendations for how to modify the county summary page so local governments can better identify their own needs.

County Executive Jeff HUFFMAN asked whether the survey would address the recent legal changes to class size requirements and recommended that schools account for that. Mr. CARPENTER said school systems are generally aware of legal requirements related to class size and changes to legal requirements would be reflected in the information schools provide to the surveyors.

Representative John CRAWFORD moved approval of the report. Senator LUNDBERG provided a second for the motion. The report was unanimously approved.

Upon approval of the infrastructure report, County Executive HUFFMAN made a motion for TACIR to study the condition and affordability of wastewater and sewer systems, particularly in west Tennessee around Blue Oval City. He requested an assessment of how many wastewater and sewer systems have enforcement letters pending as of a date certain. County Executive HUFFMAN asked, "Are there best practices that can be identified in other states? Are there new technologies available that haven't been available before? What systems have not worked that others should avoid? Lastly, are there ways to help offset the costs of these systems?" Senator Jeff YARBRO seconded the motion for the study and the motion was unanimously approved.

### *Reference-Based Pricing—Final Report for Approval*

Senior Research Associate Dr. Michael STRICKLAND presented the final report on reference-based pricing in healthcare, summarizing its findings. The report was prepared in response to Senate Bill 2330 by Senator Hensley and House Bill 2456 by Representative Sparks, which directed the commission to study the effects of reference-based pricing on health insurance prices. Councilman Chase CARLISLE offered a comment that the study should perhaps have been directed at a different question than what the original study request had posed, instead examining the state's position on the healthcare market and why it did not operate more freely. Representative Antonio PARKINSON made a motion to approve the report. It was seconded by Representative Ryan WILLIAMS, and the report was approved unanimously.

### *Comprehensive Litter Review—Final Report for Approval*

Research Manager Jennifer BARRIE presented the final report addressing litter and illegal dumping for the commission's approval. Ms. BARRIE said staff added language to the report to address commission members' questions at the December 2022 meeting. In response to Mayor Kevin BROOKS' question about the bills that would have implemented the commission's recommendations from the 2020 waste tire report, language was added clarifying that "The Senate bill was assigned to the General Subcommittee of the Senate Energy, Agriculture, and Natural Resources Committee, and the House bill failed in the House Agriculture and Natural Resources Subcommittee." In response to Senator Jon LUNDBERG's concern that the Tennessee Department of Transportation (TDOT) Highway Beautification Office's special litter grant application is burdensome for small municipalities, staff added the language "Beautification Office staff said they will review the special litter grant application process and look for ways to simplify and improve the process to help more cities apply." Ms. BARRIE said the report's recommendations have not changed.

Senator Heidi CAMPBELL asked about the process of creating a task force. Executive Director Cliff LIPPARD said the commission has experience with the broadband task force being implemented based on a recommendation in a commission report and explained that commission reports go to the General Assembly and are shared with committee chairs when a study is requested by a specific committee and with relevant departments. Representative Ryan WILLIAMS said the sponsor of the bill directing the study would usually be responsible to file a bill to implement a commission recommendation, and any member of the General Assembly can file a bill to start a task force.

Chairman Ken YAGER asked Ms. BARRIE to address his concern that a permanent task force would create another level of bureaucracy and divert funds from local communities. Ms. BARRIE said that a statewide group would coordinate efforts across the state, support local governments, improve efficiency, and hopefully reduce redundancy. Senator YAGER said that the Governor's Office of Faith-Based and Community Initiatives could be tasked with the coordination of groups. He said he is not seeking to amend the report, but this is something staff might want to look at. [Note: TACIR staff reviewed the duties and responsibilities of the office, which was created in 2019 as a self-funded, independent, nonprofit organization established to bring together faith communities, nonprofits, civic organizations, and state and local governments to recognize and implement best practices with the shared goal of making life better for every Tennessean. Litter pick-up is not currently one of the five issues they focus on.]

Chairman YAGER asked whether staff reviewed the text of the state's litter laws. Ms. BARRIE said staff did review the laws—there are levels of offenses laid out in the law with penalties. But catching people in the act of littering is a challenge, and the previous fine of $50 [currently $500] might not have provided much of an incentive to try to catch people. She said the recommendation for training and education is based on research, including interviews with stakeholders and experts—and deliberately includes prosecutors and judges to help lead to more prosecutions.

Chairman YAGER asked where unspent litter grant funds go and whether the litter grant fund balance is growing or is used on programs. Ms. BARRIE said that the unspent funds stay in the litter grant fund and are used for other litter prevention programs like the special litter grants and the Nobody Trashes Tennessee campaign. The Beautification Office allows the unspent funds to accumulate, and every couple of years that office allocates the funds for special litter grants.

In response to Representative WILLIAMS' question about how much the litter grant is annually, Ms. BARRIE said $5.5 million, and Representative WILLIAMS said the litter problem may be related to funding level.

Senator LUNDBERG moved approval of the final report with County Executive Jeff HUFFMAN seconding the motion. The report was approved unanimously.

### *Passenger Rail and Mobility—Panel*

Senior Research Associate Chris BELDEN introduced panelists from Virginia, North Carolina, Amtrak, and the Tennessee Department of Transportation (TDOT) who discussed their respective experiences and perspectives regarding the implementation, development, and funding of state-supported passenger rail projects. Rt45The panelists included:

- Julie White, chair, Southeast Corridor Commission, and deputy secretary for Multimodal Transportation, North Carolina Department of Transportation;
- Mike McLaughlin, chief operating officer, Virginia Passenger Rail Authority;
- Nicole Bucich, vice president of network development, Amtrak; and
- Daniel Pallme, assistant chief of environment and planning, and director of freight and logistics, Tennessee Department of Transportation.

Ms. WHITE said the Amtrak Carolinian service between Charlotte and New York City was introduced in 1990, which has one round trip per day; and the Piedmont service between Charlotte and Raleigh was introduced in 1995, which has four round trips per day. She said North Carolina's state-supported Amtrak services experienced a record-setting year in ridership during 2022, with 522,550 people riding. The Carolinian and Piedmont routes are subsidized with approximately $9 million per year in appropriations from North Carolina's legislature. To support future growth, North Carolina will be submitting several new corridors to the Federal Railroad Administration's (FRA) Corridor ID program, using any funds received from this program to conduct feasibility studies.

Ms. WHITE said it is important to collaborate with freight railroads, using North Carolina's S-Line project as an example. To minimize delays for both freight and passenger rail, the state purchased sections of the line from freight railroads to separate freight and passenger rail. She said working with local communities to maximize the benefits of passenger rail is another key to success, as well as having a well-staffed rail division to successfully acquire grant funding and deliver passenger rail projects on time.

Mr. MCLAUGHLIN said Virginia has four state-supported Amtrak routes which make a combined eight daily roundtrips, as well as two commuter routes operated by the Virginia Railway Express, with passenger rail receiving bipartisan support from stakeholders, partly as a means to reduce congestion on Virginia's roadways.

Mr. MCLAUGHLIN said the state negotiated with Class I freight railroads to acquire railroad tracks in some areas and to increase the frequency of passenger trains in others. He said negotiating agreements with the Class I railroads that benefit both passenger rail and freight rail is important. The Virginia Passenger Rail Authority (VPRA) was created in 2020 and was tasked with managing passenger rail in the state. He said that over $1 billion in funding from the state is coming to the VPRA in the next six years.

Mr. MCLAUGHLIN described infrastructure improvements that will be made in the future to enhance capacity for passenger rail, including the construction of a passenger rail bridge over the Potomac River into Washington D.C. He said ridership among the state-supported Amtrak routes is at an all-time high. Stressing the importance of leveraging federal funding opportunities to advance passenger rail, he said $87,455,829 in federal funds have been awarded to Virginia for passenger rail and the state is currently applying for a combined $634 million to be used for passenger rail.

Ms. BUCICH described Amtrak's Connects US plan to develop and expand the nation's passenger rail network, which was announced in March 2021. She said this plan, which included 39 new routes and 20 million new riders across the country, was developed before the passing of the Infrastructure Investment and Jobs Act (IIJA) and is a starting point for the future of passenger rail in the country. As federal funding from IIJA has become available, Ms. BUCICH said Amtrak's Network Development team was recently created to support the development of new passenger rail corridors.

Ms. BUCICH said the Federal Railroad Administration's Corridor ID program, a competitive grant program for the planning and development of passenger rail, will award $500,000 with no local match to grantees as part of its first phase, and that applications for the first round of funding are due March 20, 2023.

In any state-supported service, Ms. BUCICH said a state must provide funding when the revenue received does not cover all expenditures. She said Amtrak has financial models that can estimate ridership, revenue, operating costs, and state subsidies. Ticket prices, which are the main source of revenue, are largely driven by states. Also, the FRA's Rail Restoration and Enhancement program is a grant program that can help provide revenue for operating costs for the first six years that a service is in existence.

Mr. PALLME described the pros and cons of passenger rail from the perspective of the Tennessee Department of Transportation. He said passenger rail has the potential to improve mobility choices and reduce congestion but there are considerable costs to establishing passenger rail. TDOT is currently studying potential mobility options for the Blue Oval site in west Tennessee, including a potential passenger rail route from Jackson to Memphis with a stop at the Blue Oval site. He said the movement of freight in and out of the Blue Oval facility is a major consideration when studying mobility options. Sustainable funding is another consideration when establishing passenger rail.

Representative Antonio PARKINSON asked whether the numbers for the Virginia study were from ticket sales alone and whether the study included additional revenue numbers from increased tourism. Mr. MCLAUGHLIN said the study was preliminary and Virginia's other routes fare much better than the projections from that study on that particular route. He said he does not think the Virginia study has numbers on additional revenue from tourism. Representative PARKINSON suggested that it's important for TACIR staff to include the effect from areas outside of ticket sales when studying passenger rail.

Senator Heidi CAMPBELL asked whether Virginia and North Carolina's passenger rail divisions were set up under their respective departments of transportation. Mr. MCLAUGHLIN said VPRA is separate from the Virginia Department of Transportation (VDOT) and the state has a Commissioner of Transportation that oversees VDOT and VPRA along with the Department of Rail and Public Transportation. Ms. WHITE said North Carolina's rail division is under the state's department of transportation.

In response to Senator CAMPBELL'S question regarding how to identify the most feasible routes in the state, Ms. BUCICH said a service development plan is typically performed which looks at projected ridership and service levels. She said this used to be performed and financed by states but can now be done by states using funds from the FRA's Corridor ID program.

County Executive Jeff HUFFMAN asked how the increased freight associated with the Blue Oval site will affect nearby highways and the potential for passenger rail. Mr. PALLME said the Memphis Metropolitan Planning Organization recently completed a study that looked at freight volumes in the area and that CSX would likely need to complete a Rail Traffic Control study to determine the increased freight's effect on potential passenger rail in the area.

In response to Representative Ryan WILLIAMS'S question regarding whether ridership is based on the number of individual ticket riders or how many tickets are sold, Ms. BUCICH said there are ridership models that are very complex and are based on inputs like projected future populations and projected growth and usually measure ridership by one-way trips. She said there are examples of new services that have outpaced ridership projections from the first day. She said that Amtrak has occasionally done in-house ridership modeling for the state and modeled ridership for the potential routes in the Connects US plan, one of which being Nashville to Atlanta. Representative WILLIAMS asked what the ridership looked like for the Nashville to Atlanta route. Ms. BUCICH said that she would provide those numbers to TACIR staff. Mr. MCLAUGHLIN said the ridership projections for a potential route from Lynchburg, Virginia to Washington D.C. were 33,000 people in its first year and that the actual numbers were greater than 100,000 people. Representative WILLIAMS asked how many of those riders were tourists and how many were commuters. Mr. MCLAUGHLIN said surveys would be needed to assess what the exact distribution was, but that it is a mix between tourists, commuters, and college students.

Senator Jeff YARBRO asked whether TDOT was aware of any entities that are going to apply for the Corridor ID program. Mr. PALLME said TDOT is awaiting the results of the TACIR study to determine which routes to apply for.

In response to Senator YARBRO's question regarding how to balance freight rail with passenger rail when looking to establish passenger rail, Mr. MCLAUGHLIN said that positive relationships with freight railroads are important. He said that working with freight railroads to determine necessary infrastructure improvements to ensure that passenger rail does not interfere with freight rail is also important.

Mayor Terry FRANK asked Mr. MCLAUGHLIN to explain VPRA's funding model. Mr. MCLAUGHLIN said that VPRA receives $1 billion from state appropriations as well as other funding from other sources in the state and that VPRA receives more funding as its revenue increases.

Mayor FRANK asked whether data is available regarding the cost per passenger of passenger rail to compare with the cost per traveler of highway travel and whether there are metrics for a reduction in roadway congestion. Ms. BUCICH said that these sorts of statistics would have to be measured within a service development plan.

In response to Chairman Ken YAGER'S question regarding who would be responsible to ask for a service development plan, Ms. BUCICH said that within the Corridor ID process funds would be allocated for a service development plan.

Representative PARKINSON asked whether there is a correlation between the establishment of Amtrak passenger rail and economic growth. Ms. BUCICH said that local Metropolitan Planning Organizations have future projections for population and employment numbers and Amtrak uses this information to project how many people would use a potential passenger rail service.

Representative PARKINSON asked why there are no routes between Nashville and the western states. Ms. BUCICH said the development of the Corridor ID program opens the opportunity for any route to be studied. In response to Representative LOVE's question on how long it would take to get ridership projections from Amtrak, Ms. BUCICH said the Nashville to Atlanta route can be produced within two to three weeks as it was already studied by the Connects US plan but the other routes may take until later in the spring to be produced.

Mayor Buddy BRADSHAW suggested that TACIR staff evaluate the potential correlation between housing costs and passenger rail.

County Clerk Mary GAITHER asked how many states were currently partnering with Amtrak through state-supported services, to which Ms. BUCICH said 19 states are currently partnered with Amtrak.

Chairman YAGER asked why a route from Nashville to Chattanooga to Savannah, GA was identified by Amtrak but not on the map provided by the Southeast Corridor Commission. Ms. BUCICH said an expression of interest was submitted by the mayors of Nashville, Chattanooga, Atlanta, and Savannah. Ms. WHITE said that the map from the Southeast Corridor Commission was from last year and may not be up to date.

In response to Mr. Calvin CLIFTON'S question regarding how the rural nature of Tennessee would affect a state subsidy to Amtrak, Ms. BUCICH said that FRA uses criteria that give a preference to serving underserved and rural areas. Representative PARKINSON asked what the benefits are of having passenger rail stops in rural areas. Ms. BUCICH said that it is providing a service to people that did not previously exist.

Executive Director Cliff LIPPARD asked whether the state has applied to the Corridor ID program. Ms. BUCICH said TDOT submitted an expression of interest letter, which is different than an application, and that an application would need to be submitted before March 20th to officially apply.

## June 28-29, 2023

### *Legislative Update*

Senior Research Associate Michael STRICKLAND presented the legislative update for 2023, with a review of bills that were either considered or passed in the first part of the 113th General Assembly that related to the commission's work.

Dr. STRICKLAND recounted bills related to broadband internet, court fees and criminal law, land use and growth plans, liquor laws, local government conflicts of interest, personal property tax, precious metal depositories, the professional privilege tax, sales tax, transportation, water and outdoor recreation, and water and utility systems, highlighting in each case legislation that embodied recommendations from the commission's work. He presented two bills and two joint resolutions that had been put forward to the commission requesting a total of four possible new studies. One of the joint resolutions passed in the House, but a companion resolution was not filed in the Senate. The other three items did not pass in either chamber. The joint resolution adopted in the House directs the commission to conduct a study of impact fees and housing affordability. The other three study requests concerned possible criminal sentencing disparities, reliability of the electrical grid, and security of the state's water infrastructure.

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

Deputy Executive Director Melissa BROWN presented one amendment to the fiscal year work program for the commission's consideration, which was unanimously adopted by the commission. The study was requested by House Joint Resolution 139 by Sparks to review impact fee policies and how they might affect home affordability. The resolution was adopted by the House, but a companion resolution was not filed in the Senate. Ms. BROWN said that draft research plans were included in Tab 3, one for the proposed project and one for a wastewater study, which was added to the work program at the commission's January 2023 meeting.

Regarding the wastewater study research plan, Mayor Terry FRANK asked whether staff could gather information about the governance of utility boards (municipal, city council, independent, or appointed); whether board members are compensated; and whether the compensation includes benefits. Deputy Executive Director BROWN said staff would add those questions to the research plan.

Executive Director Cliff LIPPARD said he met with Speaker Sexton and Representative Sparks about the resolution requesting the impact fee study prior to the resolution passing. During that meeting it was agreed that, should the resolution pass and the commission vote to add the study to TACIR's work program, the study would include not just research on impact fees, but also other factors affecting housing affordability.

In response to Senator Heidi CAMPBELL's question as to what other affordability factors might be included, Director LIPPARD said that any number of variables were possible. Councilman Chase CARLISLE asked whether, after the research has been conducted and metrics of what is the need for affordable housing, what are the causes, and how to alleviate those—through zoning regulations, impact fees, sewer/storm tap fees—will TACIR be making recommendations, and will the research include a review of the benefits of having affordable housing? He also asked whether the study would look at housing other than focusing on single-family housing and include mixed-use and affordable rentals and rent-to-own homes. Director LIPPARD said staff would be reviewing studies of the issue but couldn't comment on what, if any recommendations, would be made until the research has been conducted and could review the benefits of affordable housing. He also said that supply and demand are issues with affordable housing and the study will include a review of all types of housing. Representative Harold LOVE requested that the report include an explanation and clarification of how and when local governments can impose impact fees. Chairman Ken YAGER requested that the study include the effect of these fees on local government revenues. Mr. Jeff PEACH asked that the report include how funds are used—for example impact fees being used to meet education needs of the community. Mayor Buddy BRADSHAW asked that boards of education be added to the list of stakeholders interviewed.

### *Fiscal Capacity for Fiscal Year 2023-24*

Senior 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 explained that the Basic Education Program was replaced by the Tennessee Investment in Student Achievement (TISA) beginning with fiscal year 2023-24 and that the TACIR model will continue to be used. She provided an update of Tennessee's 95 counties' 15-year fiscal capacity trends. Ms. POWERS reviewed potential recommendations and changes to the model including moving to Industrial Development Board assessment data from tax equivalent payments, monitoring the service responsibility factor, transitioning to a school-system-level model, and changing the way virtual school students are counted for the purpose of fiscal capacity. She also explained the effect of statewide virtual schools on fiscal capacity and provided examples of local revenue per student with and without statewide virtual school students.

Senator Heidi CAMPBELL asked whether the potential change regarding virtual school students is to exclude virtual students to not unfairly harm counties without statewide virtual schools, and Ms. POWERS said, yes, that is the purpose. Commissioner Jim BRYSON asked whether fiscal capacity calculations could only include virtual students that reside within the school system's area, and Ms. POWERS said they could.

Mayor Larry WATERS asked how effective virtual schools are compared to traditional schools. Ms. POWERS said there is an evaluation process conducted by the Department of Education (Note: According to the Tennessee Department of Education's Virtual Education Report, School Year 2020-2021, "Historically, Tennessee virtual schools have performed below expectations on state assessments."). Ms. POWERS said there is a threshold on enrollment for underperforming schools (Note: The threshold is codified in Tennessee Code Annotated, Section 49-16-211(b)).

Senator CAMPBELL said that using averages rather than medians in fiscal capacity calculations can be problematic for cities where there are large differences in the fiscal health of residents, noting that TISA does not include cost-of-living adjustments. Representative Harold LOVE asked whether the fiscal capacity model took the funding body's debt into consideration in its calculations. He said he is concerned that fiscal capacity continues to increase in his area but does not consider the debt of large cities. Research Director Michael MOUNT said the model does not currently consider debt. Ms. POWERS explained the model is behavioral because it is based on the amount of revenue actually raised for education by local governments in Tennessee.

Senator Jeff YARBRO asked how the pressure on property taxes should be addressed, particularly in counties like Davidson and Sevier that have greater fiscal capacity. Mr. MOUNT responded that some counties have a greater ability to export their tax burden than other counties. Senator YARBRO responded that even in cases where some of the burden is perceived to be exported, there is still a lot of cost associated with tourism in those areas, and Mayor WATERS agreed.

### *Passenger Rail and Mobility – Draft Report for Review and Tentative Approval*

Senior Research Associate Chris BELDEN presented the draft report on passenger rail and mobility for review and approval. The draft was prepared in response to Public Chapters 1114 and 1124, Acts of 2022, which directed the commission to study and make recommendations regarding passenger rail or other suitable alternatives linking the major cities in each of the grand divisions of the state, with a due date of July 1, 2023.

Mr. BELDEN said that intercity passenger rail could help increase connectivity and facilitate tourism and other economic development initiatives in Tennessee, supplementing the existing public- and private-sector efforts to address the state's transportation needs. He said the state would almost certainly have to subsidize any new passenger rail service through capital investment and ongoing operating cost support, but the cost to taxpayers of establishing and operating service on any given rail corridor cannot be known without more detailed engineering and technical analysis. Mr. BELDEN said that for these reasons, the report recommends the Tennessee Department of Transportation (TDOT) determine the cost, engineering, and any other requirements needed to implement passenger rail service on the following corridors, in order of priority according to the following tiers, with Tier 1 being the highest: Nashville to Chattanooga to Atlanta, GA (Tier 1); Memphis to Nashville (Tier 2); Chattanooga to Knoxville to Bristol (Tier 2); Memphis to Chicago via Carbondale, IL (Tier 3); and Nashville to Louisville, KY (Tier 3). He said that federal funding is available for these types of studies through the Federal Railroad Administration's (FRA) Corridor ID program, and the report recommends TDOT submit the required data and documentation to the FRA in support of the joint application to the program already made by local governments for the Nashville to Chattanooga to Atlanta and Memphis to Nashville routes. Additionally, the report recommends TDOT submit an application for the Chattanooga to Knoxville to Bristol route and consider submitting applications for the two tier 3 routes at the next funding opportunity. Further, the report recommends the state create an office of rail and public transportation within TDOT, collaborate with Virginia to identify opportunities to maximize the viability of rail corridors that might connect with that state and the wider Amtrak network, and evaluate intercity bus service options along certain key routes in coordination with the goals of the Transportation Modernization Act.

Representative Patsy HAZLEWOOD asked why the potential Nashville to Chattanooga route was not included in the intercity bus recommendations. Mr. BELDEN said that this route has already been applied for to the FRA's Corridor ID program.

Councilman Chase CARLISLE asked whether a potential Blue Oval passenger rail link was considered as part of the report. Mr. BELDEN said Blue Oval would be related to commuter travel, getting workers to and from jobs, whereas the report was focused on intercity travel, or travel between cities. Councilman CARLISLE said it's important to connect Nashville to the eastern seaboard, and a Nashville to Memphis route would be important for the economies of Nashville and Memphis.

Vice Chairman Kevin BROOKS asked whether there is any information regarding rail traffic control studies that would need to be completed by freight railroad companies to allow passenger rail on their tracks. Mr. BELDEN said there is a project timeline figure on page 58 of the report that mentions the need for host freight railroads to do their own feasibility studies. In response to Representative John CRAWFORD's question about the participation rate of intercity bus service in Tennessee, Mr. BELDEN said the report does not include data on the number of passengers using intercity bus services in Tennessee but does include the data for a similar state-sponsored intercity bus service in Virginia along the I-81 corridor.

### *Emergency Communications on College and University Campuses—Update*

Research Manager Bob MOREO updated the commission on staff's progress towards its study of emergency communications on college and university campuses in Tennessee, which was taken up by the commission in 2022 in response to Senate Bill 2827 by Senator Hensley and House Bill 2729 by Representative Ogles. The bill passed in the Senate with an amendment but was referred to summer study by the House Finance, Ways and Means Subcommittee. Mr. MOREO summarized staff's preliminary research into state and federal laws pertaining to campus crime reporting and explained how federal law—the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act")—and Tennessee's campus crime reporting law—the College and University Security Information Act—are similar but not identical in their reporting requirements. Mr. MOREO explained differences in which crimes each law requires to be reported and the geographic campus boundaries within which each law requires crime data to be reported. He also explained how the state and federal governments investigate colleges' compliance with the laws and consequences for noncompliant institutions. Mr. MOREO said there are no federal or state laws requiring postsecondary institutions to save recordings of calls made to campus police and security, and no federal or state laws that dictate how long the recordings should be kept if calls are recorded. Although Tennessee doesn't require local governments to save 9-1-1 recordings for a specified period of time, Mr. MOREO said that 26 other states do.

Mr. MOREO said commission staff have interviewed campus police at six postsecondary institutions in Tennessee to get a sense of how they are complying with the requirements of state and federal crime reporting laws. He shared some of these interviewees' suggestions for improvements at both the federal and state levels to make reporting of crimes easier. Mr. MOREO said a draft report will be presented to the commission at its next meeting.

County Executive Jeff HUFFMAN asked whether the study includes all institutions of higher learning (e.g. four-year colleges, community colleges, etc.). Mr. MOREO said yes, Tennessee's law requires that all postsecondary institutions report crimes to the Tennessee Bureau of Investigation. He also explained that the federal Clery Act only applies to institutions that participate in federal financial aid programs, so institutions in Tennessee that do not accept federal aid are not required to file Clery Act reports. Mayor HUFFMAN asked whether legislation passed by the General Assembly this year to fund school resource officers included any funding to address postsecondary institutions. Mr. MOREO said he didn't believe there was but said staff would look into that legislation to verify. Representative Patsy HAZLEWOOD responded to Mayor HUFFMAN's question to say that the bill applied only to K-12 schools. [Note: TACIR staff verified that the legislation, Public Chapter 367, Acts of 2023, only addressed safety in K-12 schools, not postsecondary institutions.]

Mayor Terry FRANK said that police departments and sheriff's offices are subject to Tennessee's open records laws and asked whether campus police departments are as well. Mr. MOREO said he wasn't sure, and that staff would look into how open records laws apply to campus police. Mayor FRANK suggested that, since campus police forces are authorized to operate in the same capacity as municipal police, they should be subject to the same open records laws if they aren't already covered.

Councilman Chase CARLISLE said that records retention is important for criminal investigations and may be needed at a much later date after a complaint has been filed. However, he cautioned that requiring expensive electronic records management systems could be a significant burden for smaller schools. He also advised staff to research best practices for an appropriate time period for records retention. Mr. MOREO said that staff had begun research on those topics and would consider such burdens when making any recommendations in the draft report.

### *Utility-Scale Solar Energy Development—Draft Report for Review and Comment*

Research Manager Jennifer BARRIE presented the draft report addressing solar development in the state for review and comment. The report was prepared in response to Public Chapter 1043, Acts of 2022, which directed the commission to study 14 specific points—13 of which relate to utility-scale solar and one related to consumer protection for residential solar. The final report will be presented for the commission's approval at the next meeting and must be sent to the General Assembly by September 30, 2023.

Ms. BARRIE said the development of solar power generation in Tennessee is happening at both the utility-scale and in the residential market, and stakeholders have expressed concerns about both. Through its investigation of the 14 points, staff found that many of the issues and concerns are not unique to the solar industry but more broadly apply to development in general. Because Tennessee already has tools to manage and regulate development, including solar development, and there is abundant information about it, the draft report recommends the Tennessee Department of Environment and Conservation's Office of Energy Programs continue to expand and maintain its existing website with additional guidance and resources on utility-scale and residential solar for local governments, landowners, developers, and the public, similar to Kentucky's and Georgia's websites. Representatives of the Office of Energy Programs say they are willing to do so. To address consumer protection, the report also recommends that the state consider raising the penalty for violations of the Consumer Protection Act if the good or service involved has a value greater than a monetary threshold set by the state.

Representative Patsy HAZLEWOOD asked whether there are projections for loss of farmland to all development over the next five to ten years. Ms. BARRIE said staff can add information to the final report about the loss of farmland through 2040 from the American Farmland Trust's *Farms Under Threat* report. Commissioner Jim BRYSON asked how many acres are required to make a utility-scale project economically viable. Ms. BARRIE said she does not have that information but will try to find it and include it in the final report. [Note: Staff found that many variables such as the interconnection cost, required studies, zoning, and whether the panels are roof or ground mounted or fixed or tracking affect the size of a facility and its economic viability.]

Mayor Rogers ANDERSON asked that the report explain the benefits to landowners and local governments of understanding and considering the long-term implications of leasing land to a solar developer. He asked whether power that is sold to the Tennessee Valley Authority (TVA) counts toward its payments in lieu of taxes (PILOT) to Tennessee. Ms. BARRIE said she doesn't know but will find the answer. [Note: TVA's overall PILOT is not based on TVA's own power purchases; instead, it is based on TVA's gross proceeds from power sales to municipal utilities, electric cooperatives, and industries, excluding sales to federal agencies. Electricity purchased by TVA from solar facilities and then sold by TVA to local power companies and the industries that TVA serves directly would contribute to TVA's gross proceeds and would therefore count toward TVA's overall PILOT and the portion of it distributed to Tennessee. TVA also makes direct payments in lieu of taxes to counties in which it owns power property. If TVA were to own a solar facility, it would count as power property and would be subject to these direct payments, which are based on the two-year average of property taxes paid for the facility for the two years prior to its purchase by TVA.] In response to questions from Councilman Chase CARLISLE about the plan for storage and disposing of lithium batteries and the use of eminent domain in the future, Ms. BARRIE said staff would find information to answer those questions to add to the report. County Executive Jeff HUFFMAN asked whether the tax credits utility scale solar projects receive would reduce the amount of revenue local governments receive. [Note: Staff determined that the credits do not reduce the amount of property tax revenue a local government would receive.]

### *Liquor-by-the-Drink Tax and Restaurant Regulations—Panel*

Research Associate Madison MOFFITT introduced panelists with knowledge of Tennessee's three-tier system for alcohol, alcohol-related laws and regulations, and the restaurant industry. Panelists included

- Shauna Billingsley, city attorney, City of Franklin;
- David Connor, executive director, Tennessee County Services Association;
- Rich Foge, president, Tennessee Malt Beverage Association;
- Ryan Haynes, executive director, Wine & Spirits Wholesalers of Tennessee;
- Brian Strutz, owner, A Dopo Pizza restaurant; and
- Russell Thomas, executive director, Tennessee Alcoholic Beverage Commission (TABC).

Ms. Shauna BILLINGSLEY said the liquor-by-the-drink tax is challenging and frustrating for the City of Franklin when it comes to limited-service restaurants. She said that Franklin is seeing businesses such as barber shops, axe throwing businesses, and spas receive liquor-by-the-drink licenses as a limited-service restaurant, and the city does not know how to tax them and make it fair. Currently, if your business does not sell very much food and you want to serve alcohol, the tax is approximately $5,000 a year, which is expensive for small businesses, and the city does not have any leeway on changing that amount—the TABC administers the tax. (Note: Limited-service restaurants pay an annual privilege tax to the TABC based on the gross sales of prepared food. The amount of the tax increases as the percentage of gross sales of prepared food decreases.)

Ms. BILLINGSLEY said she thinks more awareness should be brought to the Responsible Vendor Act for beer and wine vendors, where a business can complete additional alcohol training and have reduced permit fees and fines. In Franklin when they go to beer hearings, they find most businesses are not aware of this program. She said the only real option cities have to deal with a bad actor is to shut the business down, and the City of Franklin is interested in looking at other mechanisms of action to bring bad actors into compliance. She said Franklin supports new businesses being able to operate the type of business they want, but the city must ensure they have the regulation and regulatory authority in place to address bad actors.

Mayor Terry FRANK said servers are required to take a class to receive their permit and after five years must retake that class again. She asked whether safety would be harmed if the TABC went to a renewal process for server licenses. Mr. Russell THOMAS said that server education is important and TABC currently has a good system, but permit renewals are something the TABC could look into and discuss. Mr. Brian STRUTZ said the current system for server permitting is great and after his servers are retrained they are almost always more engaged in the law and in the responsibilities they share with the restaurant owner.

Mr. David CONNOR said local governments have the authority to regulate the sale of beer and the TABC regulates everything that contains over 8% alcohol by weight. Restaurant owners wanting to open and sell liquor and wine will need to go to the TABC for licensing, and to sell beer, the county or city board for their beer permit. He said the liquor-by-the-drink tax revenue is largely dedicated to education. Of the tax revenue, the first half goes into the state budget and is earmarked for educational purposes and the second half goes back to local governments, where it is divided half for local education while the remaining half is distributed to local governments on a situs basis. He said most of the tax revenue flows from the Department of Revenue to the municipalities because most locations that sell liquor-by-the-drink are within the city limits. Responding to Mayor FRANK, Mr. CONNOR clarified that three quarters of the liquor-by-the-drink tax goes to education at the state and local levels.

Representative LOVE asked whether the 15% liquor-by-the-drink tax helps enforce laws and regulations. Mr. THOMAS said that none of the 15% liquor-by-the-drink tax comes back to the TABC, and that the TABC gets their funding primarily from license fees and a small tax on cases of alcohol.

Mayor Rogers ANDERSON asked whether the liquor-by-the-drink tax is included in the maintenance of effort and whether Special School Districts (SSDs) that have taxing authority need to be concerned with the maintenance of effort. Mr. CONNOR said that the tax is included in the maintenance of effort and that he believes that SSDs have the same calculation for the maintenance of effort requirement as other districts. Mayor ANDERSON said that information about SSDs should be included in the report.

Mr. Rich FOGE said the Tennessee Malt Beverage Association is an organization of Tennessee's Beer Distributors, who have created 2,860 direct jobs across Tennessee. He said that these distributors are family-owned and that they value their role in Tennessee's three-tier system.

Mr. Ryan HAYNES said the wholesalers serve as the second tier in Tennessee's three-tiered system and help drive competition for better products and pricing, provide a controlled environment to monitor alcoholic products, and protect the public from consequences of irresponsible sales of alcoholic beverages. He said there is great responsibility with selling alcohol, and oftentimes a liberalization of alcohol laws can lead to great societal consequences. He said three things should be considered with each policy change: moderation, regulation, and control.

Mr. STRUTZ said that Tennessee's liquor-by-the-drink tax is the highest in the nation at 15% and that how the tax is implemented is confusing. He said the ability to profit from owning a restaurant has gradually been eroding over the last twenty years, especially over the last three years. Restaurants are having to rely on the profits from selling alcohol now more than ever, and the 15% tax they must charge on liquor and wine hurts their ability to do so.

Mr. Calvin CLIFTON asked for other states liquor-by-the-drink tax rates. In response, Mr. STRUTZ answered that nine states and Washington D.C. have a liquor-by-the-drink tax: Arkansas 14%, Kansas 10%, Maine 7%, North Dakota 2%, Oklahoma 13.5%, Tennessee 15%, Texas 14.5%, Vermont 10%, Washington 13.7%, and Washington D.C. 10.25%.

Ms. FRANK asked, if Tennessee were to lower the liquor-by-the-drink tax, would the state achieve greater compliance, and would restaurant owners avoid cheating the system? Mr. STRUTZ said he did not know what would happen if the state were to lower the tax, but there might be marginally better compliance. He said a lower tax rate would make restaurants that chose not to lower their drink prices more profitable.

Mr. STRUTZ said some restaurants will add the liquor-by-the-drink tax to the customer's bill at the end of their check, while others include it in their menu price—this causes confusion among customers and restaurant operators. Representative Harold LOVE asked whether larger businesses absorb the cost of the liquor-by-the-drink tax and smaller businesses pass it on to the customer. Mr. STRUTZ said he has anecdotal data from a coalition of independent restaurants that found an overwhelming majority of franchise and concept restaurants that are incorporated outside of the state of Tennessee immediately passed the tax on to the customer by adding it onto their menu prices, while the smaller, independent restaurants were reluctant to do so.

Mr. THOMAS said the TABC believes that good alcohol public policy can promote public health and safety and allows businesses to flourish. The health of the hospitality industry is vitally important to the success of the TABC, and it is of utmost concern that the industry is healthy and successful. The TABC devotes significant portions of our budget to recurring and non-recurring technology projects to make their customer experience as easy as possible. He said they most recently launched a feature in the My Tennessee Mobile application that is a convenience for servers and helps businesses verify the status of their server permits. He said that last year, the liquor-by-the-drink industry sold over $1.3 billion of alcoholic beverages in Tennessee and that Tennessee's alcohol industry members are some of the most successful in the country.

Mayor Buddy BRADSHAW said he would like to see some data on the percentage of new restaurants that succeed over a five-year period. Mr. STRUTZ replied that he was unsure, but he heard that 33% of restaurants fail in the first year. Mayor BRADSHAW requested that profit margins per bottle for liquor-by-the-drink sales be included in the report.

## *Fiscal Year 2023-24 Scheduled Commission Meetings*

### September 27-28, 2023

#### *Utility-Scale Solar Energy Development—Final Report for Approval*

Research Director Jennifer BARRIE presented the final report addressing utility-scale solar energy development in the state for the commission's approval. It was prepared in response to Public Chapter 1043, Acts of 2022, which directs the commission to study 14 points—13 of which address the development of utility-scale solar and one that addresses concerns related to consumer protection in the residential solar market. Ms. BARRIE said staff added information in response to questions and comments from members at the last meeting and made changes to reflect input received from stakeholders—including three nonprofit organizations and one solar developer in the state. Finally, staff updated the report based on new information received from the Tennessee Solar Energy Industries Association and Tennessee Valley Authority about solar facilities that are in some phase of development or in operation in Tennessee.

Mr. Jeff PEACH moved approval of the final report, and Mayor Rogers ANDERSON seconded the motion. The report was approved unanimously.

#### *Housing Affordability, Impact Fees, and Development Taxes—Panel, Day 1*

Executive Director Cliff LIPPARD discussed a handout prepared by TACIR staff for the commission, which displays the estimated number of housing units needed by each Tennessee county to equal Tennessee's overall housing availability rate, and the accompanying table, which shows the factors included to calculate the rate for each county. He said the map reflects housing availability, not housing affordability, although the two are correlated.

Senior Research Associate Michael STRICKLAND said that Joint House Resolution 139 by Representative Sparks directed the commission to study the factors influencing housing affordability in Tennessee. Many Tennesseans are unable to buy a home or afford the one they currently have. Dr. STRICKLAND introduced panelists to discuss housing issues that they and their communities are confronting. Panelists included

- Ben Bentley, Executive Director, Knoxville Community Development Corporation;
- Joe Carr, County Mayor, Rutherford County;
- Jens Christensen, Chief Executive Officer, Habitat for Humanity of Greater Chattanooga;
- Scott Conger, Mayor, City of Jackson, Tennessee;
- Angela Hubbard, Director, Housing Division, Nashville Planning Department; and
- John Zeanah, Director, Memphis and Shelby County Division of Planning and Development.

Mr. Ben BENTLEY provided background on the Knoxville Community Development Corporation, saying that they own and manage housing, build new housing, and administer the local industrial development board.

Mayor Joe CARR said the timing of the study couldn't be better, as Rutherford County just reached the minimum population threshold to create a county development board. He said that as the fastest growing county in Tennessee, it is important to equip them with tools to maintain affordability.

Mr. Jens CHRISTENSEN said there are several policy levers to utilize for affordable housing, including Low Income Housing Tax Credits (LIHTC), Payments in Lieu of Taxes (PILOTs), and subsidies. He said the issue is that most levers are focused only on rental housing and provided his reasoning as to why more levers should be focused on homeownership. Homeownership is cheaper on day one and is cheaper over time, he suggested, because mortgage payments are typically fixed from day one while rent compounds and increases as the cost-of-living increases. Additionally, he said it is substantially cheaper to put people into homeownership—it requires less money spent by the government and has the potential to end generational poverty.

Mayor Scott CONGER provided an overview of the housing situation and housing goals in Jackson, Tennessee, including the announcement of BlueOval and the associated predicted growth in neighboring municipalities. He said they prefer to refer to it as attainable housing, not affordable housing. Jackson is developing a housing commission and is working to update their Master Plan. The City of Jackson's housing goals include increasing and diversifying the housing supply, improving access to housing for low and moderate-income individuals, reducing the amount of people experiencing homelessness and protecting the quality of existing housing.

Ms. Angela HUBBARD said that when a community doesn't have the upper-level, more expensive segment of a housing market to meet demand, then higher-income buyers begin to compete for more affordable housing stock, and spots are taken from lower-income individuals who need them. She said the market never develops without a subsidy or incentive at these lower income levels. The city has the ability to increase density, but they need other incentives and tools to ensure housing for the minimum-wage service industry workers. She expressed concern that at some point the city will see a talent shortage with no one to fill job openings if the community does not provide them with an affordable place to live.

Mr. John ZEANAH said that their housing policy plan initiative has identified four key actions for them to take, including improving the housing quality, supporting homeownership, diversifying the housing stock, and increasing the quality of rentals for low-income residents. He said if one looks at the housing stock in Memphis or Shelby County, there won't appear to be much of a numerical need until one looks at other factors. One barrier is that the cost to build and rehabilitate often outweighs the value of the end product, contributing to the need.

In response to a question from Representative Ryan WILLIAMS on whether departments look at the growth rate of populations in relation to the housing shortage rates, Mr. ZEANAH said that the need for affordable housing is not just a factor of population, it is a factor of relative income, existing housing stock and quality, and the housing stock being continually built and demolished.

Mayor CARR said there are different challenges across the state. In Rutherford County, the boom in population is pricing out the existing affordable housing. He said the upward pressure on the market takes away from affordable housing and that counties will continue to price themselves out of the affordable market unless the General Assembly gives the counties the tools that they need to turn off the upward pressure. Mayor Bob RIAL asked how mobility factors in for people who are using affordable housing (e.g., young people and hospitality industry workers). Mr. CHRISTENSEN said the affordable housing landscape needs to have a mixture of ownership and renting to give people the ability to build equity and move into homeownership. He said there are triggers to build into restrictive covenants to sustain units as affordable housing over time.

Representative WILLIAMS said that 15 years ago, when he looked at the costs, tax increment financing (TIFS) and PILOTs represented a very small percentage of funding. Now, through partnerships with local governments, those percentages are higher, perhaps totaling $30 million per year. He said that traditionally, PILOT programs were used to take large industrial projects and defer taxes for at least 25 years, knowing at the end it would be offset. Now, they are doing PILOTs with commercial properties, therefore taking them off of the tax rolls, and so it seems like lost revenue to him. Mayor CARR said that Rutherford County has recently approved two TIFs in Smyrna and Murfreesboro for currently idled city-owned property, properties that were not on the tax roll before. The TIFs require three-to-one payback and can't go beyond 20 years, putting property on the tax roll that was not previously on it before. Mr. BENTLEY said that in Knoxville they are trying to shorten the terms of PILOTs and utilize them as incentives for affordable housing. Ms. HUBBARD said that Nashville recently completed a TIF study committee and a tax abatement study committee.

Mayor Larry WATERS said he is concerned that rents in affordable housing units are beginning to creep up past what original agreements stated and asked whether there are any mechanisms in place where, for developers participating in a PILOT, it would be possible to make sure that the rents don't increase past the original agreement prices. Mr. BENTLEY said there are legal ways to ensure that original rent prices are upheld, including restrictive covenants and language in PILOT agreements, as well as performing annual "check-ins." Mr. CHRISTENSEN added it is easier to enforce with ownership than with rental.

Ms. HUBBARD said that Nashville created a new tax abatement program for mixed income housing that does not abate the baseline taxes, so the property is not completely taken off of the tax roll. Mr. CHRISTENSEN said it would be good to expand local options for property tax abatement and zoning.

Councilman Chase CARLISLE asked Mr. CHRISTENSEN to explain how the legislative body can help, especially how to address the ownership to rental shift. In response, Mr. CHRISTENSEN said there are two incentives for affordable housing available, zoning incentives and subsidies. Zoning incentives are off the table in most localities in Tennessee and subsidies mean taxation. He suggested fully funding the Housing Trust Fund where the Tennessee Housing Development Agency can quickly invest capital into ownership. Mayor WATERS said he doesn't believe that government needs to be involved in the housing sector because it is a private sector responsibility, but there need to be ways to encourage the private sector. Mr. CHRISTENSEN said when you build to rent, investors are often risk tolerant because of the high back-end profit, which is not the case when building affordable housing to sell unless you include a heavy subsidy. With subsidies, questions arise regarding who is being taxed and how it is going to be funded. Mayor CARR said there is no cookie cutter solution, and that whatever tools are provided need to allow for flexibility, because if the counties aren't given the tools to address the issue, then they are going to have homeless people out on the streets.

Representative WILLIAMS said his concern is that the only options are to raise property taxes, implement impact fees, or take excess revenue to pay for the actual cost of development. Mayor CARR said some municipalities don't have the tools to require developers to pay for additional infrastructure, and property taxes are an extremely inefficient way to pay for growth because they were originally designed for the maintenance and upkeep of existing services. He added that he had to raise property taxes because Rutherford County had a record deficit, and they didn't have the tools to make sure that growth could pay for itself. He said that anyone wanting to build a huge development should pay for all the important infrastructure.

Councilman CARLISLE said people often don't talk about the upfront fees and building costs such as electrical services. He asked what locally owned power companies can do to help with affordable housing costs. Mr. ZEANAH said there are a lot of hidden costs in housing construction. He said that through their Housing Policy Plan they are looking at the inherent costs of working with utilities. A lot of small lots that are redeveloped have higher costs to connect to utilities than if you were to build on a greenfield. He said utility construction work bears a complex schedule of fees and a greater risk up front, which can make it more costly. Mayor CARR said it is important to remember that infrastructure also includes schools, fire services, emergency medical services, and police services in addition to traditional infrastructure (e.g., utilities).

Representative WILLIAMS said that impact fees may only be a short-term solution to help. Mayor Paige BROWN said it seems like impact fees would affect affordability and asked how they can keep impact fees from being an anti-growth tool used by local legislators who do not want change in their communities. At the local level, they do not have incentives to use for developers. She said pressure is put on existing residents because the new residents moving to the state come with enough money to handle the costs. In response to Mr. Jeff PEACH's question on whether impact fees impeded growth, Mayor CARR said impact fees have not stopped growth. In fact, he said, they have relieved pressure within municipalities on existing housing so that it can be maintained as affordable. Representative WILLIAMS expressed concern that should a government overtax people, they will stop moving to the area.

In response to Mayor WATERS's concerns that overnight rentals are driving up the prices of homes and reducing the number of workforce rentals, Ms. HUBBARD agreed that Nashville also sees it as a challenge. She said it is particularly an issue because of high land costs, as land can easily be bought up for rentals instead of affordable housing. Mayor WATERS said that regarding short-term rentals, the issue is finding balance between private property rights and what the state is trying to do with affordable housing.

### *Liquor-by-the-Drink Tax and Restaurant Regulations—Draft Report for Review and Comment*

Research Associate Madison MOFFITT presented the draft report addressing liquor-by-the-drink tax and restaurant regulations for review and comment. The report was prepared in response to Senate Bill 2262 by Senator Briggs and House Bill 2419 by Representative Mannis, in the 112th General Assembly, which directed the commission to study the liquor-by-the-drink and similar taxes for on-premise consumption of alcohol; licensing, permitting, and other fees under title 57, chapters 4 and 5 for the restaurant industry; staffing challenges with respect to server permits, wages, and applicable training necessary to operate such restaurants; and other barriers to entry for such restaurants that may be minimized or mitigated, as identified by the commission in conducting the study. In June, the commission heard from a panel of six experts.

Ms. MOFFITT said staff identified two alternatives to make opening and operating a restaurant in Tennessee easier for businesses, without reducing state and local revenue or compromising public health and safety. To address stakeholders concerns about delays in obtaining their liquor license, the draft report recommended that the TABC inform applicants that it accepts temporary occupancy and use permits and that Strategic Technology Solutions continue to explore ways to further automate the application process. Because changes in Tennessee's post-and-hold law are unlikely to lead to a spike in alcohol consumption and related harms, and because the law no longer serves its stated purpose related to tax avoidance, the draft report recommended that the General Assembly either repeal the post-and-hold requirement in state law or reduce the hold period from 360 days to 180 days or less.

Ms. MOFFITT said the General Assembly has already acted on one of the restaurants owners' concerns by reducing restrictions that keep some people from obtaining a server permit from the Tennessee Alcoholic Beverage Commission (TABC) because of previous convictions. While lowering the liquor-by-the-drink tax rate would benefit restaurants, it would raise public health concerns and reduce funds used by local governments and K-12 education. Therefore, the draft report did not make any recommendation regarding the state's liquor-by-the-drink tax.

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

Research Manager Tyler CARPENTER presented the second phase of a two-phase staff report that evaluated the effect of the COVID-19 recession on public infrastructure needs for review and comment. Because this is a staff report, the report does not require commission approval. As discussed in the first report, beginning in early 2020, the world was faced with unanticipated challenges prompted by the spread of COVID-19 and the resulting recession. Mr. CARPENTER said the first phase of the staff report—which was presented in 2021—analyzed the effect of the Great Recession on public infrastructure needs. Staff then used the findings from that report as a baseline for the second report for analyzing whether, or to what extent, the COVID-19 recession affected the public infrastructure needs reported in Tennessee as of July 1, 2021. Staff found that neither the Great Recession nor the COVID-19 recession had an overall effect on reported public infrastructure needs. However, technology, which is one type of education need, was affected by the COVID-19 pandemic itself. Technology needs increased by 82% per capita from 2019 to 2020—a total increase of $103.7 million, partly because of laptop purchases and Wi-Fi hotspots for remote learning.

### *Housing Affordability, Impact Fees, and Development Taxes—Panel, Day 2*

Senior Research Associate Michael STRICKLAND introduced panelists to discuss housing issues that they and their communities are confronting. Panelists included

- Ryan Egly, President and CEO, Lawrence County Chamber of Commerce;
- Julie Keel, Program Director, Mountain TOP (Tennessee Outreach Project);
- Hunter McDonald, realtor, Red Realty;

- Ken Moore, Mayor, City of Franklin;
- Ralph Perrey, Executive Director, Tennessee Housing Development Agency; and
- Maggie Riden, Vice President of Advocacy, Federation of Appalachian Housing Enterprises.

Mr. Ryan EGLY said the Lawrence County Chamber of Commerce promotes economic development, including industrial development, community development, tourism marketing, and workforce development. The Chamber believes housing is a workforce recruitment and retention issue and has been working on addressing this issue for a few years. In Lawrence County, utility districts, the lack of zoning and building codes, and the lack of infrastructure funding all pose a challenge for developers. Regarding affordability, he said the average price for a home has significantly increased in Lawrence County.

Ms. Julie KEEL said Mountain TOP has worked to address housing affordability through the repair and rehabilitation of single-family owner-occupied homes. Challenges faced by their organization include the increasing costs of building materials and land and the lack of affordable housing development in Appalachia. She said flexible funding and multi-year grants attract federal funding that is needed to build affordable housing in rural areas. Mayor Terry FRANK asked whether Tennessee has experienced an increase in investors purchasing housing and whether that is harmful to the local community. Ms. KEEL said that they are seeing this, especially in Grundy County, and it removes the ability for their organization to purchase property and develop it to address the community's housing needs.

Mr. Ralph PERREY said although some investors are less responsible, in Rutherford County, reputable investors are changing their approach by developing subdivisions for rent and offering a path to homeownership. Mr. Jeff PEACH asked whether there has been an increase in the corporate building of for-rent only homes and whether there would be support for legislation in Tennessee that could limit the ability of those types of subdivisions that discourage homeownership. Mr. Hunter MCDONALD said realtors are seeing an increase in those being built and that he is unsure because you wouldn't want to limit someone's ability to rent out their home.

Mr. MCDONALD said housing costs are rising in Rutherford County and it affects housing affordability. Rising prices cause many would-be homebuyers to rent rather than buy, and rental rates have increased. He shared data on the average cost of new construction homes, $465,000 in Rutherford County. He said governmental fees and regulations are approximately 25% of the cost of a new home. Representative Patsy HAZLEWOOD asked for further explanation of the components of the 25% of home costs that come from governmental fees. Mr. MCDONALD said this 25% includes various fees per square foot and provided examples, including permitting fees for remodeling, gas permitting fees, plumbing fees, HVAC fees, solar panel installation fees, and retaining wall fees. [Note: Based on comments from the commission, TACIR staff is following up with the specific costs that make up the 25% of governmental fees.]

Mr. MCDONALD said Tennessee needs more affordable housing options and there are many challenges faced by developers in the current market. Issues of affordable housing are of economic importance as statistics demonstrate that, when individual families have access to stable and affordable housing, they become contributors to the economy, fostering growth and prosperity. Representative Ryan WILLIAMS asked whether the housing market is flat because of a lack of housing units on the market or whether it's related to the availability of suitable housing options. Mr. MCDONALD said the state is seeing a flat market because the average person is buying a more expensive home. Representative WILLIAMS asked whether reducing the cost of a home by 25% would help or hurt the buyer. Mr. MCDONALD said that realtors are becoming more strategic and aggressive in pricing homes and are moving away from simply setting a target price and hoping for offers. He said that instead, they are using a more meticulous approach, involving detailed analysis and hard numbers; so, while there may be price reductions, they are not genuine reductions but rather a result of realtors putting in more effort and precision when setting prices. Mr. MCDONALD said the National Home Builders Association said each $1,000 increase in the median price of a home can result in 127,560 people no longer being able to afford that home.

Representative WILLIAMS said that an argument could be made that impact fees are exacerbating the problem right now, over-inflating the value of properties, and making it difficult for people to afford entry-level homes. Mr. PEACH asked whether the increase in the cost of building a home or impact fees are causing the housing market to be a little flat and whether the realtor fee is 6% on those home sales. Mr. MCDONALD said he thinks any fee added to the home price puts people out and that interest rates also have a role in causing the housing market to be flat. Regarding the realtor fee, he said it is a negotiated fee, but that it could be 6%.

Mayor Ken MOORE said Franklin's housing issue is primarily one of workforce housing, as 70% of the workforce commutes into the city. He said that a considerable effort has been made by the community and the Franklin Housing Authority to provide affordable and workforce housing. Mr. MOORE said the city has a housing commission that makes recommendations to the city; however, progress has been slow. Franklin faces challenges of increasing property costs and the need for more tools, such as inclusionary zoning, and resources to encourage workforce housing development. In response to Senator YARBRO's question as to how impact fees facilitate affordable housing development in Franklin's growing economy, Mayor MOORE said the fees shift the cost of adding additional services to the developer and doing so ensures that the burden does not fall on property owners through higher property taxes, which would be the case if impact fees were not in place.

Mr. Ralph PERREY said that there is a need for increased housing supply in Tennessee. He said that affordable housing is not built without support like tax credits, subsidies, and local incentives, and emphasized the importance of local governments creating a supportive regulatory environment and considering a wider range of housing styles. He also said that there needs to be collaboration and cross-sector impact in addressing housing affordability. Mayor FRANK asked whether it's possible that some of these housing issues are because Tennessee is rapidly growing post-pandemic, creating a gap. Mr. PERREY said there is a supply and demand issue, and it will take time to increase the supply.

Senator Jeff YARBRO asked whether the state can meet the demand for affordable and workforce housing by sticking to the traditional model of building single-family residences, or whether it is necessary to expand the variety of available housing types. Mr. PERREY said that a number of things would have to happen to expand the variety of available housing types. He said in places where the land is expensive, like Nashville, strategies like land banking and making state- or city-owned land available to developers with conditions attached could be beneficial. He also suggested that financing tools and tax advantages could complement these efforts. Mr. PERREY said it is important to consider local conditions when addressing housing issues as different areas face unique challenges, and what works in one place may not work in another. He also said that there is a need for maximum flexibility at the local level, allowing cities and counties to tailor their strategies to the specific needs and challenges of their communities. Senator YARBRO asked for elaboration on what giving local governments greater flexibility would mean for the state. Mayor MOORE said that, in Franklin, they used to have inclusionary zoning, which most of the developers paid a fee for. He said they were able to use those fees to help supplement affordable housing in our community and suggested being able to also use density bonuses would be helpful. Mayor FRANK asked whether there is a way to incentivize local governments to provide friendlier zoning. Mr. PERREY said that the federal government is proposing incentives for grants available to local governments who provide more zoning flexibility. Mayor MOORE said that, in Franklin, they try to achieve greater density through their use of zoning. Mr. EGLY said that since the dissolution of the State Department of Economic and Community Development, there is no one to bring awareness to these issues from the state level. He said that not all counties have a local economic development organization and emphasized the need for more awareness and education on these issues at a local level.

Mayor MOORE said the annexation law created challenges because of the way the city grows and that Franklin would like to be able to annex property as a city. Representative WILLIAMS asked whether the annexed property would be inside or outside the urban growth boundary (UGB). Mayor MOORE said that it would be inside the UGB.

Councilman Chase CARLISLE mentioned the idea of a program at the state level that could make low-interest loans or grants to local development agencies. He asked whether those are tools that could help both with affordable housing and the sources of funding, as well as workforce and middle housing. Mr. PERREY said Oklahoma recently started a program that is offering zero percent construction loans to developers, particularly for starter homes, to incentivize development. He suggested that, if his agency had a big enough revenue stream, they could revolve such loans with a one-time appropriation, potentially helping organizations like United Housing save money and encouraging smaller builders to participate in the market, especially in areas like Memphis and rural regions. Representative WILLIAMS asked how long Oklahoma has had these revolving funds. Mr. PERREY said that Oklahoma is just getting started. Representative WILLIAMS said he would like to know whether those in Oklahoma are tracking how the cost of single-family homes change with the use of the revolving funds. [Note: TACIR staff plan to speak with representatives from Oklahoma for more information about their program.]. Mayor Larry WATERS asked whether a tool like the revolving loans could be utilized by THDA to improve affordable housing and, if not, what would be a tool THDA doesn't have that would make a positive impact on providing housing in Tennessee. Mr. PERREY said he wants to learn more about what Oklahoma is doing and what results they are seeing. He said more flexibility to examine and change current tools would be beneficial.

Councilman CARLISLE asked whether any of the panelists are considering programs similar to Memphis's Edge, which can apply for tax credits and distribute them within the community. Mr. EGLY said that traditional economic development tools like PILOTs (Payments in Lieu of Taxes), TIFs (Tax Increment Financing), and land grants are typically used for manufacturers, commercial development, or apartments, but cannot be applied to incentivize single-family subdivision development. Mr. EGLY said that there is a structural problem related to incentives for rural areas, specifically the need for road infrastructure and utilities for subdivision developers. He said that there is difficulty in obtaining accurate data about their housing markets and that there is need for better data tools for rural communities to understand their markets. Mr. EGLY suggested that a comprehensive understanding of the market is necessary to determine the right incentives, such as TIFs or tax credits, as well as the number of units needed for development.

Ms. Maggie RIDEN shared the work of non-profit housing and community development agencies in Tennessee. She said they face challenges of high demand, slowed production, and increased competition in the housing market. Some of the issues she sees in her community are a significant barrier: land cost, rising material costs, supply chain challenges, and inflation on housing production costs. Ms. RIDEN said the role that non-profit housing developers play in filling the gaps and the need for housing resources is vital and suggested exploring options such as land banking and incentivizing the release of vacant or abandoned properties to non-profit developers at lower to no cost to support affordable housing production.

Representative WILLIAMS asked whether any place in Tennessee has affordable housing and whether it's possible to designate a part of the property tax so that the cost is spread over the whole constituency, and then generate a fund through that. Councilman CARLISLE replied that they created an affordable housing trust fund in Memphis. He said as PILOTs expired, revenue has been redirected to fund initiatives like childhood pre-K. They now allocate a small portion of that revenue to a dedicated fund through an ordinance, similar to an enterprise fund. He said this designation can be altered by ordinance as well. Representative WILLIAMS replied that it would be better to have a long-term solution like the affordable housing trust fund and combine it with a short-term capital injection, like Mr. PERREY mentioned.

Councilman CARLISLE asked whether anyone is tracking Community Reinvestment Act (CRA) dollars from banks and whether looking at how the state tracks those funds and partners with banks and the community would help ensure the banks are distributing CRA dollars in a timely fashion. Mr. PERREY said THDA does not track CRA dollars, but the federal government does. He also said the federal government is looking at revising the CRA.

Mayor FRANK asked about manufactured housing as an affordable housing option and how many people live in Tennessee and have remote jobs in other states. Mr. EGLY said manufactured housing is a viable option, especially for those displaced; however, the municipalities in his community are not friendly to that type of development. He said that he receives data on remote workers from TVA's Economic Development and that Lawrence County saw a 5% increase in remote workers from 2017 to 2020.

### *Emergency Communications on College and University Campuses—Draft Report for Review and Comment*

Research Manager Bob MOREO presented the draft report on emergency communications and crime reporting on college and university campuses for review and comment. It was prepared in response to Senate Bill 2827 by Senator Hensley and House Bill 2729 by Representative Ogles. Introduced in the 112th General Assembly, the legislation as amended directed the commission to perform a comprehensive evaluation of the routing and storage of emergency communications on the campuses of colleges and universities in Tennessee, with a review of institutions' ability to store data and recordings relating to emergency communications and retrieve complaints of criminal activity alleged to have occurred on campus, and to include best policies and procedures and consistency of messaging with respect to improving the ability of colleges and universities to store data and recordings relating to emergency communications.

Mr. MOREO said when these bills were introduced, the sponsors said that some schools direct students and staff to call campus police or security departments for emergencies instead of 911. Some of those campus police and security departments do not record incoming calls reporting crimes and other incidents on campus. He said there was some concern from the bills' sponsors that not recording and saving emergency calls could hinder investigations or lead to schools underreporting incidents on their campuses.

Mr. MOREO presented the report's three recommendations. The first is for the state to encourage colleges and universities to record and retain recordings of calls reporting crimes and conduct violations to campus police and security departments by providing additional funding to help schools obtain or improve emergency call recording systems. Secondly, the General Assembly should require colleges and universities in Tennessee to publish to their websites annual statistics for complaints of sexual misconduct and assault reported to their campus Title IX authorities. The third recommendation is for the Tennessee Bureau of Investigation (TBI) to include statistics for crimes reported within one half mile of each college or university campus in its annual

*Crime on Campus* reports. The third recommendation would also require colleges and universities to publish to their websites the statistics for their institutions from the TBI report, which they are currently only required to make available upon request.

### *Wastewater Systems Operations and Finances Report—Panel*

Senior Research Consultant Bill TERRY introduced panelists with knowledge of Tennessee's wastewater systems operations, infrastructure, and financing. Panelists included

- Roger Goodson, General Manager, Consolidated Utility District (CUD); and
- John Strickland, Murfreesboro Water Resource Recovery Facility (MWRRF) Plan Manager, Water Resources, City of Murfreesboro.

Mr. Roger GOODSON provided a brief history of the CUD. The district maintains a decentralized wastewater system that serves about 9,000 residents. One of the issues they are experiencing is that their filters are starting to fail.

Mr. John STRICKLAND explained how Murfreesboro's wastewater utility runs a centralized wastewater system. He said Murfreesboro has grown but the utility has stayed on top of their financial issues. He emphasized that the US Environmental Protection Agency (EPA) regulations do work, and they dictate what local governments or utilities must do to comply with the regulations. However, the regulations that work best are the ones that offer some form of flexibility while still maintaining the system's integrity. Mr. STRICKLAND added that the biggest opportunity for improvement is in how we regulate wastewater.

County Executive Jeff HUFFMAN mentioned the issues West Tennessee is experiencing because of BlueOval City—there is not enough infrastructure to handle the growth they will be experiencing. Local governments have been contacted by landowners asking how they can get access to sewer. The wastewater systems in many rural areas are quite dilapidated.

In response to County Executive HUFFMAN's question about what the CUD does when a developer wants to build a development in an unincorporated area in Rutherford County, Mr. GOODSON listed the steps that must be taken to set up a decentralized wastewater system. Developers have to submit plans for the wastewater system, and the soil must be examined to ensure that it is suitable for a step system or dual water tank. There must be enough spare land in case there's a problem with the drip fields. The system must be constructed according to specifications provided by CUD and it will be inspected by the district after being built. After the system is active, it is transferred by deed from the developer to the CUD.

County Executive HUFFMAN asked whether they received revenue from impact fees. Mr. GOODSON said they do not receive impact fee revenue and are funded through user rates and bonds. They did get some American Rescue Plan (ARP) funds from the county. Mr. STRICKLAND said that requiring new developments to buy into the city's wastewater system has worked in Murfreesboro. New developments pay tap fees to connect to the system. He also recommended that the local governments look into the feasibility of tapping into the sewer line that is being built by the state exclusively for use by BlueOval City.

County Executive HUFFMAN asked whether the panelists know of any technology that would help small wastewater systems that are struggling. Mr. STRICKLAND said they should look into the state's plant optimization program, which may be able to help them improve their efficiency through low- or no-cost measures. He also suggested that they look at the specific technology at the plant and at expanding one aspect of it, like a basin for example, that could give them greater flexibility in how things operate.

In response to County Executive HUFFMAN's question about the feasibility of creating a regional wastewater authority, Mr. GOODSON said that a lot of concessions need to be made and how to best do that is a very political question. Mr. STRICKLAND added that with regionalization there would be economies of scale. He said you could also have a wider watershed and might be subject to more favorable regulations that determine the type of equipment and technology you use that might be half the cost.

Mr. Jeff PEACH asked whether they had noticed a significant cost difference using water from an Army Corps of Engineers lake versus those in East Tennessee that use water from Tennessee Valley Authority (TVA) lakes. Mr. GOODSON said he had talked to people from wastewater systems across the state and those systems that can draw directly from the Cumberland and Tennessee rivers don't have the costs that the CUD does.

In response to Mr. Calvin CLIFTON's question labor costs and whether there is a labor shortage particularly with regards to licensed wastewater operators, Mr. GOODSON said there is a labor shortage, and the industry is hurting because baby boomers are leaving the workforce. He said that it's not a field the younger workforce wants to get into. The Tennessee Association of Utility Districts (TAUD) offers an apprenticeship program that trains people to be licensed operators. Mr. CLIFTON said the study could investigate these issues. Mr. STRICKLAND said they are also seeing a lack of licensed operators and are having difficulty hiring people in general, but the number of staff they require has gone down because of automation. The cost of automation continues to drop and will eventually trickle down to all municipalities. The regulatory environment affects how much staffing is required, so regulatory relief could be a help overall. Plants that need to be staffed 24 hours a day are going to increase the labor costs.

### *Fiscal Capacity User Guide—Update*

Senior Research Associate Presley POWERS presented the updates to TACIR's *A User's Guide to Fiscal Capacity in the Tennessee Investment in Student Achievement Funding Formula*, which was completed to explain how fiscal capacity is used in the state's new funding formula—Tennessee Investment in Student Achievement (TISA). She explained the change from the state's previous K-12 funding formula, the Basic Education Program, to the TISA formula and the purpose of the guide, and said that, although there has been a change in K-12 funding formulas in Tennessee, the TACIR model for calculating fiscal capacity remains unchanged. Mayor Bob RIAL of Dickson County asked who he can contact to obtain school system funding information under TISA. Ms. POWERS said she would place him in contact with staff at the Tennessee Department of Education. [Note: Ms. POWERS has provided Mayor RIAL with the information.]

## November 15, 2023

### *Liquor-by-the-Drink Tax and Restaurant Regulations—Final Report for Approval*

Research Associate Madison MOFFITT presented the final report addressing liquor-by-the-drink tax and restaurant regulations for approval. The report was prepared in response to Senate Bill 2262 by Senator Briggs and House Bill 2419 by Representative Mannis, in the 112th General Assembly, which directed the commission to study the liquor-by-the-drink and similar taxes for on-premise consumption of alcohol; licensing, permitting, and other fees under title 57, chapters 4 and 5 for the restaurant industry; staffing challenges with respect to server permits, wages, and applicable training necessary to operate such restaurants; and other barriers to entry for such restaurants that may be minimized or mitigated, as identified by the commission in conducting the study.

Ms. MOFFITT said since presenting the draft report at the September meeting, and after an internal review and discussion with members and stakeholders, staff were concerned that evidence does not warrant making changes to Tennessee's post-and-hold laws, and this draft recommendation has been removed from the final report. The corresponding changes are reflected on pages 2 and 21 of the report. The other recommendation remains unchanged.

County Clerk Mary GAITHER moved to approve the report, seconded by Mr. Jeff PEACH. The report was unanimously approved.

### *Emergency Communications on College & University Campuses—Final Report for Approval.*

Research Manager Bob MOREO presented the final report regarding emergency communications on college and university campuses in Tennessee for approval. The report was prepared in response to Senate Bill 2827 by Senator Hensley and House Bill 2729 by Representative Ogles, which were introduced in the 112th General Assembly. Mr. MOREO said since presenting the draft report at the September meeting the team has added some information and made minor revisions to the report.

Mr. MOREO said that, after consulting with the Tennessee Bureau of Investigation (TBI), staff revised the report's third recommendation, which now says that the Tennessee Bureau of Investigation should develop a process to include statistics for crimes reported within one half mile of each college or university campus—a generally accepted walking distance—in its annual *Crime on Campus* reports and that colleges and universities should publish to their websites the statistics for their institutions from this report, which they are already required to make available upon request. Mr. MOREO also said staff has provided more information regarding costs and features of call-recording software and records management systems, and new sections were added about campus climate surveys and the potential for crime reports to increase when schools implement programs designed to educate students and support victims. He said the report's other two recommendations remain unchanged.

Mayor Paige BROWN asked for clarification about how colleges and universities report crimes and when they are required to notify local law enforcement. Mr. MOREO said jurisdiction to arrest and enforce laws depends on whether the school has a commissioned police force or not, but regardless, all schools are required to enter incidents into the TBI reporting system. He said all schools have the same requirement to enter crimes reported into a daily crime log.

In response to Mayor Rogers ANDERSON question as to whether the report had any information about emergency communications procedures or mass notifications during large-scale events, Mr. MOREO said those types of communications were not what the bills asked the commission to study, so that information is not in this report.

In response to County Clerk Mary GAITHER's question about what information schools are required to publish on their websites, Mr. MOREO said that the federal Clery Act requires schools that accept federal financial aid to post their annual security reports, which include three years of crime statistics. He said that Tennessee's state law only requires crime reports to be available upon request, and that the commission's report recommends making it a requirement for schools to post their TBI *Crime on Campus* reports online.

Mr. Calvin CLIFTON asked whether the recent fatal shooting of a Belmont student—which happened outside the campus grounds—would be an example of the off-campus crimes the commission's report recommends reporting. Mr. MOREO said it would and that incidents like this that occur outside defined campus boundaries are not included in campus crime statistics under existing state or federal law, and the report recommends that TBI develop a process to gather statistics for crimes within one-half mile of campus.

Vice Chairman Kevin BROOKS asked whether the report makes any recommendations about requiring "blue box" emergency phones on campuses. Mr. MOREO said it does not and said that staff's research found that, with the nearly universal presence of cell phones, there isn't evidence to support a requirement for call boxes on all campuses. He said each school can make that determination based on their campus needs. However, Mr. MOREO added that the report's recommendation to record calls made to campus security and police would include calls placed from emergency call boxes.

Representative John CRAWFORD moved to approve the report, seconded by Mayor BROWN. The report was unanimously approved.

### *Housing Affordability, Impact Fees, and Developments Taxes—Update*

Senior Research Associate Michael STRICKLAND presented an update on the study into housing affordability requested by Joint House Resolution 139 by Representative Sparks. He said that, based on quantitative analysis of county-level data from Tennessee, the accounts of stakeholders, and a review of the literature that staff had identified a variety of contributing factors to housing costs, but that the central issue was one of an undersupply of housing to meet existing and growing demand. This undersupply, he said, was attributable in large part to population growth and land use regulations. He also described some of the actions that both those in Tennessee and in other states were taking to address housing affordability.

Ms. Stamatia XIXIS asked whether the strong population growth seen by some rural counties may have been driven by neighboring urban counties and whether the staff had identified any specific factors regarding housing affordability or availability in West Tennessee counties. Dr. STRICKLAND said that some stakeholders had reported a spillover effect of population relocating from some urban centers to nearby suburban or rural areas, but staff had not yet been able to determine whether there were any factors that were distinct to West Tennessee.

Senator Heidi CAMPBELL asked whether there was any information available on state policies for conducting inventories of public land that could be used for public housing, possibly predicated on population levels. Dr. STRICKLAND said that a number of stakeholders had raised public land inventories as an option, and that TACIR had previously published a report that made related recommendations on land inventories and land banking—*Improving Management of Government-Owned Real Property in Tennessee* (2019). Executive Director Cliff LIPPARD said that the thinking at the time was that public land might be made more widely available for economic development, but a similar argument could be made to make it available for housing. He said staff would review the recommendations in that past report and how they might have been implemented. [Note: In addition to recommending that the authority to create land banks be extended to all local governments, the past report made recommendations for how the Department of General Services might incorporate listings of local government-owned property as well as communicate with local governments about vacant state-owned land in their jurisdictions] Dr. STRICKLAND said, however, that there was currently no one source that combined all state and local government land. He said there was a new trend in some jurisdictions outside of Tennessee, however, to inventory land that was already in use but that could be developed further to include housing. He added that, while those measures had not been tied to population thresholds, some states had targeted other of their reforms to support housing to cities based on their size. Dr. LIPPARD said that the Urban Land Institute recently recommended that local governments in Tennessee partner with nonprofits and faith institutions to make more land available for housing.

Mayor Kevin BROOKS said that, as to land banks, his city of Cleveland, Tennessee, had been trying for years to activate their land bank, which existing statute grants them the authority to do, but that there had been a ruling that they could not use the term "bank" in its name.

Senator Jeff YARBRO asked whether the staff had examined the effects of impact fees on housing prices and been able to analyze what those might be. Dr. STRICKLAND said that, because there was only a relatively small sample of cities and counties in Tennessee with impact fees, it was difficult to generalize from them, but that research in some other states had suggested each dollar of impact fees levied might result in slightly more than a dollar increase in home prices. He said, however, that it was not possible to say what might account for that marginal increase just from the statistical data alone. Related to the question of impact fees, Mayor Paige BROWN said she had heard from a builder at a recent meeting that each linear foot of road frontage for a house added $1,000 to $1,500 to the cost of the development because of the additional infrastructure required. She said that developers are often still making investments in local infrastructure, even if it's not in the form of an impact fee. Dr. LIPPARD said that, as TACIR had found in some earlier work, local governments do have to make sure that the required infrastructure improvements are sufficiently related to the new development that they do not amount to an illegal taking from the property owners.

Mr. Jeff PEACH said he understood that the study had originated from a question over how impact fees relate to housing affordability, but he said that there were often differences between counties, and what might work for one might not work for another. He said that he was generally not supportive of state preemption of local zoning authority, but the state might consider incentivizing affordable housing development, such as through grants to builders.

Mayor Rogers ANDERSON said that he had been in office in Williamson County since the first impact fees there were levied, and that over the years there had been continuing discussions around impact fees, how they are earmarked, how they are shared with cities, and so forth, and that homebuilders had previously tried to question the county's impact fees for funding school improvements that were not closely enough connected to growth. He said that it may be helpful for TACIR to investigate growth—or loss—in schools and student populations from 2000 to 2020, as some parts of the state might be seeing fewer students enrolled in public schools, although others, including certain counties in Middle Tennessee like Rutherford and Maury Counties, were still seeing strong growth. Williamson County, he said, had only this year seen student population growth plateau after years of high growth. He said the issue was still larger, though, and related to overall growth, job availability, and where people might be moving in the state. Mayor BROWN said she had seen some similar trends with more students going to either private school or homeschooling, which might explain part of the reduction in public school enrollment numbers.

Mayor ANDERSON said that, on the question of funding needed infrastructure and improvements, his county had run into difficulties buying new school buses, and he would be open to the state procuring school buses to supply to local governments.

Senator CAMPBELL said that Nashville had been recently ranked as the worst city in the country for commuting, in part because of its lack of public transit. Mayor BROWN said that that too is connected to housing.

Mayor Terry FRANK asked whether staff had spoken with any housing developers to understand their perspective on affordability issues. Dr. STRICKLAND said that staff had spoken with a number of developers, and they had cited a variety of things they felt to be affecting affordability, including labor shortages, construction material supply shortages, impact fees, and permitting delays. Mayor BROWN said that she had heard concerns from some in the development industry that it takes too long to receive permit approvals, and that some communities were facing anti-growth sentiment from some of their constituents. As a result, she said, they were seeing housing become unaffordable for many workers.

### *Other Business*

Mayor Bob RIAL said that he would like the commission to consider studying difficulties faced by local governments in acquiring large rolling stock vehicles, such as fire trucks and buses. Executive Director Cliff LIPPARD described the process for adopting member-requested studies onto the work program and suggested that Mayor Rial formally request a study at the next meeting.

## January 25-26, 2024

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

Research Associate Jennifer ARZATE presented the commission's annual report on the Tennessee Valley Authority's (TVA) payments in lieu of taxes for the commission's approval. The report finds that for purposes of monitoring compliance with Public Chapter 1035, Acts of 2010, it would be beneficial for Tennessee Department of Revenue staff to request that TVA provide the department with a list of distributors that are purchasing power from non-TVA sources. There are no recommended actions to be taken by the General Assembly.

Chairman Ken YAGER moved approval of the report, which was seconded by Commissioner Jim BRYSON. The commission approved the report unanimously.

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

Research Manager Tyler CARPENTER presented the commission's annual report for approval. Mr. CARPENTER said the report documents $68 billion of needed infrastructure improvement projects, which were in development during the five-year period of July 2022 through June 2027.

Representative Ryan WILLIAMS asked whether reported transportation needs are flat year-over-year because there is more revenue budgeted for the current fiscal year or because the state is not growing. Mr. CARPENTER said the completion of existing projects is the biggest driver of the decrease in reported transportation needs and the report is based on needs reported as of July 1, 2022, and does not take into consideration the current fiscal year. In response to a question from Senator Heidi CAMPBELL about whether inflation is the main reason for the cost increase in the inventory, Mr. CARPENTER said that, while he cannot pinpoint the exact reason for the cost increase, the biggest drivers are increases in health, safety, and welfare and education needs, and figure 1 adjusts previously reported needs for inflation back to 2007.

Mayor Terry FRANK moved approval of the report and Representative WILLIAMS seconded the motion, which passed unanimously.

### *Water/Wastewater—Panel*

Research Associate Madison MOFFITT introduced panelists with knowledge of Tennessee's wastewater systems, their operation, and financing. Panelists included

- Brooxie Carlton, assistant commissioner of community and rural development, Tennessee Department of Economic and Community Development;
- John Greer, program director, Tennessee Association of Utility Districts;
- April Grippo, deputy director, Technical and Permitting Programs, Division of Water Resources, Tennessee Department of Environment and Conservation;
- Vena Jones, state water infrastructure grants manager, Division of Water Resources, Tennessee Department of Environment and Conservation; and
- Steve Wyatt, utility operations consultant, Municipal Technical Advisory Service.

Assistant Commissioner Brooxie CARLTON said the Tennessee Department of Economic and Community Development (ECD) provides various funding opportunities for water and wastewater systems, which include both state and federal sources of revenue. Their Infrastructure Planning Grant is ECD's newest program. It has received 90 applications and there is $10 million to distribute. Site Development Grant programs are state funded, which is focused on providing water and sewer to industrial sites.

They also offer federal grants as well. Appalachian Regional Commission (ARC) and Delta Regional Authority (DRC) grants—federally funded programs administered by ECD for Tennessee—are used to fund water and sewer projects. ECD also provides funding though the federal Community Development Block Grant (CDBG) program. This program provides approximately $30 million a year to communities—with historically most of the money going to water and sewer. A lot of repair and replacement is done with that funding. ECD partners with the Tennessee Association of Utility Districts (TAUD), the Tennessee Comptroller's Office, and the Tennessee Department of Environment and Conservation (TDEC) to ensure that ECD's work is aligned with their priorities.

Mr. John GREER said that TAUD works to support their utility members in the state and provides technical assistance to utilities. There are two main types of water and wastewater utilities in Tennessee: public and private. Publicly owned utilities include utilities operated by cities, counties, authorities, and utility districts. Most of the city or county owned utilities are run by the local governing body. A few local governments have appointed boards. Utility district and utility authority boards are appointed by county mayors in almost every district and authority in the state. Appointments are made every three to four years. Privately owned utilities include utilities operated by organizations like investor-owned associations, homeowners' associations (HOAs), and property owners' associations. Mr. GREER said that public utilities are regulated by the Tennessee Board of Utility Regulation (TBOUR). They ensure that utilities are self-sufficient financially and are not losing too much water. Private utilities are regulated by the Tennessee Public Utility Commission (TPUC).

Ms. April GRIPPO said that TDEC regulates municipal and industrial wastewater systems. They require permits for anyone discharging pollutants from pipes or man-made ditches into the state's surface waters. The permits limit the amount of pollutants that may be discharged. A new wastewater system's permitting process can take 6 to 12 months. TDEC works closely with any new wastewater system on design requirements of the treatment facility as well as the permit limits that will be required.

There are several challenges faced by wastewater utilities in the state, which include accommodating growth and maintaining existing systems. She said that infiltration and inflow, caused by stormwater and groundwater entering broken sewer pipes, is increasing because of more intense storms and aging systems. This leads to overloaded systems, causing backups into buildings and overflows into streets. The state's rapid development is increasing demand on these systems, exacerbating the overflow problem. Maintenance issues and a lack of funds are significant problems. Another challenge is the shortage of qualified wastewater operators. Wastewater utilities are having trouble recruiting, hiring, and retaining staff. Regionalization may be a solution for some cities. With regionalization, they will be able to share technical staff and the costs of running the systems.

Ms. Vena JONES said there are different infrastructure funding assistance programs at TDEC in the Division of Water Resources, which includes American Rescue Plan (ARP) funds to address critical needs. In 2021, the Governor awarded $1.35 billion in ARP funds received by the state to TDEC for water and wastewater infrastructure projects. She said that they wanted to make good use of the funds. They used the existing Tennessee infrastructure scorecard to help identify where the most critical needs were. The scorecard allows utilities to identify what their most critical needs are. Over $477 million in ARP funds and $254 million in state revolving funds have been awarded over the past three fiscal years. They created a grant program to help utilities create an adequate asset management plan. The state revolving fund program intends to direct the funding they have to critical needs over the next three to five years, and plan on investing close to $250 million a year.

Mr. Steve WYATT said that Tennessee has an aging wastewater system and a disparity in the wastewater treatment techniques used by the utilities. He said the more advanced technological processes are seen in the larger systems that have the economic base to fund it. The smaller systems don't have the economic base and that is an issue. There are quite a few systems that don't have centralized sewer collection and treatment and may not be able to get it because of cost. Some utilities are prevented from adding new sewer connections to their systems because of chronic sewer overflows. Every five years a wastewater treatment plant gets a new permit and the conditions of how they operate can change based on what changed at the Environmental Protection Agency (EPA). These changes can force a utility to add more wastewater treatment processes at the plant that can cost them money. It can also be difficult for wastewater utilities to hire licensed wastewater operators. Tennessee only has around 3,000 licensed wastewater operators.

Chairman Ken YAGER asked for ideas on how to handle situations where a solvent utility district that has merged with a financially insecure district must list the financially insecure district's assets on its financial statement. This can potentially cause financial difficulties unless the district increases its rates to cover the depreciation. Mr. GREER said that depreciation is an accounting standard that the state of Tennessee follows because it has a perfect bond rating. The state doesn't want to hurt its bond ratings by doing something that hurts the accounting procedures and policies at the local level. The TBOUR in the Comptroller's Office has a fund designed to financially assist utilities when they merge. The fund can provide cash to help fix the utilities. TBOUR can examine the depreciation issue when a utility merges and uses TBOUR funds. Even when utilities are referred for financial distress, the board may not increase their rates until the merger process is evaluated. Following the response to his question, Chairman Yager turned the gavel over to Acting Chairman Mayor Terry Frank.

In response to Councilman Chase CARLISLE's question about what percentage of wastewater utilities have enterprise funds that are specifically set up to deal with future capital improvements and maintenance, Mr. GREER said that they are all enterprise funds under the law. For most utilities there is not a standard percentage that they have to set aside but most have some type of reserve fund for infrastructure or they will now that TDEC is working with utilities to help them develop adequate asset management plans.

Councilman CARLISLE asked for the panel's thoughts on a regional compact between Arkansas, Mississippi, and Tennessee, which would allow for more federal funding to flow in. Ms. JONES said she would think about how they are going to make sure they don't ignore or forget the most vulnerable communities like the rural communities in the shadow of BlueOval. They have seen issues with shared services across state lines and she knows that some of Tennessee's rural communities in those areas struggle with equitable services. Ms. GRIPPO said TDEC's focus on regionalization has been amongst Tennessee communities and offered to ask the Association of Clean Water Administrators—of which she is a part of—about their interstate organizations. Councilman CARLISLE said it is more about seeking more federal funding because you are lobbying together. If you combine utilities into regional units, you have to think about how you lobby for more resources for them and not simply place that burden on the back of Tennessee bond holders.

County Executive Jeff HUFFMAN asked what it means when a system has an enforcement order against them and how many systems currently have enforcement orders. Ms. GRIPPO said that she did not have information about the number of enforcement orders with her, and said that TDEC usually works through notices of violation and works with the systems to bring them into compliance. When a system gets an enforcement order, it's usually because the system wasn't able to address its problems in a timely fashion. TDEC sometimes issues orders because of threats of a lawsuit from a third party. The enforcement orders typically have time frames and goals and can help a system prioritize. Systems have mentioned that it is helpful to have an order to get action from their board. Enforcement orders are a last resort. County Executive HUFFMAN said that programs like ARP are helpful. However they are not enough to alleviate the struggles of small municipalities in the long run.

In response to Senator Jeff YARBRO's questions about the state's long-term strategic plans regarding wastewater systems and what could be done to strengthen their authority and capacity, Ms. JONES said that no one state agency is responsible for statewide infrastructure planning. TDEC is primarily a regulatory agency and the funding they receive is used to support regulatory requirements to ensure a minimum level of service. There are discussions about statewide infrastructure planning among various agencies and she said the commission should consider helping create a statewide strategic infrastructure plan. Senator YARBRO said that he would value hearing about other states that have implemented statewide strategic infrastructure plans. Mr. GREER said that they are in the process of creating the first countywide utility plan in the state in Lawrence County.

Representative Harold LOVE asked Ms. Jones to consider, in future planning, how much more of the ARP funds TDEC could access. Ms. JONES said that TDEC has obligated 90% of the ARP funding. She said that $996 million was obligated for non-competitive grants, and $200 million has been awarded in competitive grants and special state strategic projects like wastewater regionalization in West Tennessee. Some of the money was used to develop transparent data dashboards to help citizens understand where the infrastructure needs are and where the money is going. They give entities 20% to 50% loan forgiveness, especially in disadvantaged communities.

Senator Heidi CAMPBELL asked about the conditions of the state's water because the Tennessee Attorney General recently filed a lawsuit against companies for PFAS [per- and polyfluoroalkyl substances] contamination in the water in northeast Tennessee. She also asked what actions are being taken to address these concerns and improve water quality. Mr. GREER said the Tennessee Attorney General and the National

Rural Water Association have filed lawsuits and this has resulted in a settlement for utilities to receive funds to treat PFAS. Tennessee has been fortunate not to have levels as high as other states. The technology to remove these chemicals can be simple and implemented at smaller plants. TDEC, TAUD, and the Municipal Technical Advisory Service (MTAS) have been teaching classes on how to test for all the variants. Tennessee is ahead of the curve compared to most places. Senator CAMPBELL said the state should ban PFAS and she is running a bill to do that.

Mayor Larry WATERS asked how package systems, small pre-manufactured wastewater treatment systems, fit into the broad discussion on wastewater, especially when there is system failure. Ms. GRIPPO said that TDEC struggles with compliance of package plants. They have significant difficulties with these systems, particularly with regards to operation and enforcement. There are issues with operators who may not conduct the required inspections. TDEC is under pressure to potentially relax regulations regarding package systems to facilitate developments in rural areas. Ms. JONES said that consolidation and regionalization are some answers to solve capacity and cost issues; making more, smaller systems is going in the opposite direction. Forty percent of the municipal systems are aging and failing with a 25% non-compliance rate. They struggle to maintain technical, managerial, and financial capacity. It's right to be concerned about the small systems. Mr. GREER said that some wastewater systems are able to effectively manage package systems. The Consolidated Utility District in Rutherford County has been able to manage 73 package systems and they don't have issues. If a wastewater utility has a significant level of technical ability, they can add a small package system to their system. Mayor WATERS said that there have been locally adopted regulations to address some of these concerns, and that package plants may be part of the solution if there is a targeted approach to avoid future issues.

In response to Mayor Rogers ANDERSON question about how package systems are bonded, Mr. GREER said that bonding would be up to the owners unless there is a mechanism that allows county governments to permit and bond those. Mayor ANDERSON said they tried that and the state did not like it. Mr. GREER said then it would be whether there is any type of bonding tied to their permit. Ms. GRIPPO said there is a minimal financial security requirement.

County Executive HUFFMAN asked whether there is one type of package system that works better than others. Mr. GREER said the Consolidated Utility District (CUD) has their own preferred system and model that has been proven to work, but he does not know of any one standard system that utilities use. Local government utilities have the authority to dictate to developers the type of system they want them to use and adhere to certain specifications. Developers go into an area and say this is what we're doing and local governments don't realize they can say no. The local governments should be involved from the beginning to make sure what is then dedicated over is what is needed for their system. Mayor WATERS said the state should look into what the best technology is and how to best assure that these systems continue to operate.

Acting Chairman Mayor Terry FRANK asked whether the money in the TBOUR fund could be used for voluntary mergers. Mr. GREER said he was unsure whether the money in the fund could be used for voluntary mergers because the fund is new and has not been used yet. Acting Chairman FRANK said if the state were to offer more incentives, they might see more mergers. Ms. JONES said that TDEC has awarded $100 million in regionalization grants and provides infrastructure planning and design grants for regionalization, consolidation, and loan forgiveness. They only go up to 50% loan forgiveness but with a high emphasis on regionalization and consolidation through the state revolving fund program.

In response to Acting Chairman FRANK's question about what the gold standard for governance is for wastewater systems, Ms. JONES said municipalities commonly struggle more often than utility districts who operate more like a business. TAUD does a good job ensuring all utility board members receive updated training and education routinely. Mr. GREER said that governing board members of utility districts and municipal wastewater systems are required by law to have continued training—12 hours of training their first year followed by 12 hours every three years. TAUD provides manuals to utility district board commissioners. MTAS does the same for governing board members of municipal wastewater systems.

Acting Chairman FRANK asked what their plans were in regard to the infrastructure scorecard. Ms. JONES said they intend to make a new version of the scorecard from what they've learned with the ARP program. They have talked with ECD and other groups about making the scorecard more universal and help their systems through meeting all their critical needs. TDEC intends to use the scorecard for the state revolving fund program. Ms. CARLTON said that ECD is looking at how they can make the scorecards a requirement on some of their grant applications to ensure it continues to be up-to-date and is useful for communities.

### *Fiscal Federalism Website—Update*

Research Associate Carly VAN SYCKLE presented an update on the TACIR Fiscal Federalism web pages. She said staff are updating the web pages to present the most recently available federal fiscal years and organizing the data into a new format with more categories and subcategories. Acting Chairman Mayor Terry FRANK said the amount of money from the Department of Energy coming into Roane County is not all necessarily going to Roane County or municipal governments and asked if a citizen saw a large amount, would there be a way to indicate that the money isn't all going to local governments. Ms. VAN SYCKLE said that as part of the website revision, staff are adding notes that will explain what is exactly meant by obligations. Commissioner Jim BRYSON asked why TACIR was working with 2015 data. Ms. VAN SYCKLE said that the 2015 data was from the current Fiscal Federalism website and that the update will have data up to 2022. She said the revision of the web pages will make it easier to consistently update the website with the most recently available data.

### *Broadband Internet—Update*

Director of Policy Matt OWEN presented an update on the expansion of broadband coverage in Tennessee and the effect of state tax incentives on coverage expansion in response to a request from Representative Hazlewood. He said approximately 94% of residential locations in Tennessee have access to broadband at speeds of at least 25 megabits per second download and 3 megabits per second upload, according to the latest Federal Communications Commission (FCC) data; moreover, according to data from the state's broadband grant programs, the state continues to make progress toward expanding coverage in unserved areas. The effect of sales tax exemptions on coverage expansion is not being tracked by the state because the exemptions are not conditioned on broadband providers expanding coverage, but Dr. OWEN said it is anticipated that at least some of the savings to providers resulting from these exemptions is being reinvested in coverage expansions in Tennessee.

Mayor Larry WATERS said his community continues to have difficulty expanding coverage to its remaining unserved areas. One problem is that some areas are reported as having broadband despite that not always being the case, and in other cases, service is unreliable. Because these areas are reported as being served, it can affect eligibility for grants that could be used to expand coverage. He asked whether it is still the case that if one home in a census block has access to broadband the entire census block is reported as being served. Dr. OWEN said that the FCC no longer uses the census-block approach to determine broadband access, in part because this approach had the tendency to overstate coverage.  The FCC's new approach is a two step process in which the FCC, through a vendor, creates a map of all residential and business locations followed by providers reporting for each location whether they offer Internet service, the speed of the service they provide, and the technology used to provide it.

In response to Mayor WATERS' question about whether communities could do anything to obtain more grant funding to help expand broadband to unserved and underserved areas, Dr. OWEN said local governments can challenge the accuracy of data used to determine whether communities are unserved or underserved and, therefore, eligible for broadband grant funding and recommended that local officials contact grant staff at the Tennessee Department of Economic and Community Development's (ECD) broadband office for additional information on grants and the process for challenging coverage data.

Senator Jeff YARBRO asked whether staff had completed any follow-up research on efforts to facilitate broadband adoption in addition to its research on coverage expansion.  Dr. OWEN said staff did not prepare an update on broadband adoption, but there are a variety of efforts to improve broadband adoption in communities around the state, and commission staff participate on ECD's digital opportunity taskforce, which has worked to identify barriers to broadband adoption and solutions to overcome those barriers that either are or could be implemented in Tennessee.  In response to Senator YARBRO's question about whether lack of broadband adoption follows lack of access, Dr. OWEN said he would check whether data on broadband adoption allows for that comparison.  [Note:  According to the latest five-year estimate from the American Community Survey, 86% of households in Tennessee have a broadband subscription (this includes wired service, satellite service, and cellular data plans); but if one looks only at wired broadband service, only 69% of Tennessee households have a subscription.]  Senator YARBRO said efforts to improve broadband adoption along with access can be cost-effective compared to approaches that focus on access alone, and Dr. OWEN said that federal broadband programs, including the Broadband Equity Access and Deployment program, contain funding to support adoption.

In response to Senator Heidi CAMPBELL's question about whether grants from ECD's broadband programs have been awarded to for-profit providers, non-profit cooperatives, or municipal utilities, Dr. OWEN said all three types of providers have been awarded grants, and that staff would follow up with ECD to clarify the number of awards by provider type.  [Note:  Based on commission staff analysis of the 188 grants awarded from 2018 through 2023, electric cooperatives received 62 grants, for-profit providers received 58 grants, telephone cooperatives received 41 grants, and municipal utilities received 27 grants.  This excludes one project that was awarded funding but had its grant contract canceled prior to any work being completed.]

County Executive Jeff HUFFMAN asked how Tennessee compares to other states based on access to broadband that would be considered affordable to households earning a median income.  Dr. OWEN said staff had not collected data comparing the affordability of broadband across states but that he hadn't seen anything to suggest affordability issues would be different in Tennessee than in other states.  [Note:  A 2023 analysis of Census data conducted by researchers at the Pew Charitable Trusts shows that rates of home broadband adoption in Tennessee are similar to other southeastern states.  Within Tennessee, adoption rates vary by county and are generally higher in counties with higher median incomes.  This pattern is similar to patterns in other states both in the southeast and nationally.]

In response to Acting Chairman Mayor Terry FRANK's question about whether local government funding is included in the matching funds reported for grantees in ECD's grant data, Dr. OWEN said that local government funding could count toward grantee matching requirements for some of the federally funded grant rounds. Acting Chairman FRANK said it would be good for the General Assembly to know what local governments are doing to help fund broadband expansion. [Note: Commission staff followed up with ECD to determine whether it tracks the amount of local government funding included in the matching funds reported by grantees. ECD staff said the department doesn't track this information.]

Acting Chairman FRANK asked whether staff are recommending that the state begin tracking whether its sales tax exemptions related to broadband are resulting in coverage expansions. Dr. OWEN said that staff are not making a recommendation specific to the sales tax exemptions, and the lack of data was noted only to highlight why staff could not be more responsive to Representative Hazlewood's request. In response to Acting Chairman FRANK's question about whether the state's sales tax exemptions apply to equipment purchased in Tennessee but used in other states, Dr. OWEN said he would defer to the Tennessee Department of Revenue for specifics about the exemptions' limitations. [Note: Tennessee Department of Revenue staff clarified that nothing in statute requires the equipment subject to the exemptions to be used in Tennessee.]

### *Judicial Redistricting – Background and Scenarios*

Senior Research Director Leah ELDRIDGE presented a summary of reports on judicial redistricting in Tennessee and other states' efforts at judicial redistricting. She also talked briefly about the Tennessee law that requires the Comptroller of the Treasury to annually update a judicial weighted caseload study that is to be used in determining the need for creation or reallocation of judicial positions before turning to Research Manager Bob Moreo for a description of the scenario analysis.

Mr. MOREO said staff analyzed the last three years of weighted caseload data published by the Comptroller's office to determine whether there were statistical relationships that could be applied to more recent unweighted caseload and population data available at the county level. He said staff used that analysis to estimate how weighted caseload and judges might be distributed under redistricting options proposed by the Tennessee Trial Judges Association. To illustrate how weighted caseload methodology can be used to allocate judicial resources without redrawing district boundaries, Mr. MOREO also showed how staff applied the same analysis to estimate workload in the state's current judicial districts.

Representative John CRAWFORD asked why staff chose to limit the data it used to make its analysis. Mr. MOREO said that three years was a manageable amount of data for staff to make reasonable estimates within the given amount of time for the project. Executive Director Cliff LIPPARD added that they were the most current data available, which was relevant for estimating current caseloads for the redistricting proposals. Representative CRAWFORD asked whether the staff recommended the judicial redistricting proposals. Ms. ELDRIDGE said that the staff did not feel qualified to make a recommendation because they had only studied the issue for three weeks. She said they might want to consider updating the case weights that are to be used in the weighted caseload reports for judges, district attorneys, and public defenders.

Senator Heidi CAMPBELL asked for clarification on the comments Ms. Eldridge made earlier about the 21st Judicial District. Ms. ELDRIDGE said that, in their 2019 report, the Advisory Task Force on the Composition of Judicial Districts found that because of demographic changes the 21st Judicial District should be realigned. People from Hickman, Lewis, and Perry counties in the 21st District stated that they wanted to be separated from the 21st Judicial District. These three counties separated from the 21st Judicial District and formed the 32nd Judicial District in 2022. Senator CAMPBELL asked whether the rules regarding redistricting were discretionary. Ms. ELDRIDGE said that she couldn't answer the question because they had been studying the topic for a short period of time. [NOTE: As a follow-up response to Senator Campbell's last question, Article VI, Section 1 of the Tennessee Constitution states that "The judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior Courts as the Legislature shall from time to time, ordain and establish." Tennessee courts have held that the state constitution gives the General Assembly the authority to determine the number of courts and their jurisdiction. Tennessee's judicial districts are established in Tennessee Code Annotated Section 16-2-506.]

### *Housing Affordability, Impact Fees, and Developments Taxes—Draft Report*

Senior Research Associate Michael STRICKLAND presented the draft report for review and comment. The report was prepared in response to House Joint Resolution 139 by Representative Sparks, which requested a study on housing affordability and the factors affecting it. Dr. STRICKLAND outlined the report's six recommendations and one additional finding. Reiterating two recommendations from previous commission reports, the draft report recommends authorizing all local governments to establish land banks and having the Department of General Services include links to local governments websites listing surplus real property on its own website. Additionally, the draft report recommends that the state incentivize local governments to adopt zoning reforms by sharing a portion of realty transfer and mortgage tax revenues with those that met a minimum number of specified zoning criteria, and that, to protect existing property owners from possible property tax increases, property in areas that see rezoning could continue to be assessed under its original zoning. Furthermore, a portion of the revenue from the realty transfer and mortgage taxes could also be allocated to a housing trust operated by the Tennessee Housing Development Agency to make low- or zero-interest construction loans for affordable housing development, and a separate portion could be reserved by the state to use for infrastructure projects in the event of economic downturns to guard against lost construction employment. The report also found that the city of Charlotte, North Carolina, is currently engaged in a new program to rehabilitate existing affordable housing, but that because of differences in state laws on local government financing and bonds, it is unclear how best to adapt such a program to Tennessee.

Commissioner Deniece THOMAS asked whether other states have programs like North Carolina's. Dr. STRICKLAND said that the program is still quite new, and staff has not identified any comparable programs, but that it is an issue that the commission and staff could continue to monitor.

Mr. Jeff PEACH said that the program in Charlotte appears interesting and worth further consideration. He also said that zoning tools such as planned unit developments and, among those, planned residential developments, are already in place to help with building additional housing and that incentives may be better suited for those engaged in homebuilding.

Mayor Larry WATERS said that Sevier County has a task force examining zoning reforms that might be used for increasing housing supply, but he asked for clarification on the vacancy rate in Sevier County, as the data shown in an appendix of the report appeared different from what a recent study by the county had found. Dr. STRICKLAND said that there are multiple measures of vacancy, with the report showing only the overall vacancy rate; a more specific measure of homeowner vacancy, however, is consistent with the vacancy rate that Sevier County found in its own study, and Dr. STRICKLAND said that the appendix would be expanded for the final report with additional data.

Senator Jeff YARBRO asked whether there are any restrictions on the two recordation taxes referred to in the report's recommendations and whether any other states have adopted an incentivization approach such as was outlined in the report. Dr. STRICKLAND said that a portion of the realty transfer tax is earmarked, but the majority of the revenue from it and the mortgage tax are not earmarked. As to incentive-based programs for zoning reform in other states, he said that legislative action on housing has only ramped up within the past several years, and most other states have pursued some type of preemption, so examples of incentive-based programs are few. Senator YARBRO said he appreciated a non-preemptive approach. Executive Director Cliff LIPPARD added that the menu of zoning reforms provided in the report was based in part on the example of Montana, but that state has still chosen to apply them through a form of limited mandate.

Senator Heidi CAMPBELL asked whether staff had looked at the effect on housing inventory of those moving into Tennessee from out-of-state. Dr. STRICKLAND said that it was a concern raised by a number of stakeholders in discussions with staff, but that it is difficult to determine what effect it might have.

Mayor Paige BROWN said that one growing issue is investors who own multiple properties but may be paying property taxes at the residential assessment rate, rather than the commercial rate as required by law, and that identifying those properties so they could be assessed correctly is a challenge for property assessors. She asked whether there might be any means to better control that. Dr. STRICKLAND said that staff had spoken to property assessors, and that they had reported that this is an issue, but there did not appear to be a particular method for resolving it. Senator CAMPBELL said that the ability of investors to outcompete individual homebuyers for what property is available is a problem, and that solutions are needed to address the effects of institutional investors on the housing market.

Commissioner THOMAS asked whether staff has looked into the loss of farmland in the face of housing demand. Dr. STRICKLAND said staff has considered the issue, and some researchers elsewhere have been studying the loss of farmland in Tennessee, with some stakeholders also advocating for zoning reform partly as a way of directing housing towards infill development and away from the use of farmland.

Acting Chairman Terry FRANK asked regarding an earlier reported estimate that approximately 25% of the cost of housing can be attributed to some form of regulation, and she asked whether that might include right-of-way dedications. Dr. STRICKLAND said that the study from which that figure derives did consider right-of-way dedications as a cost. She next asked whether the state has any legal limits on what local governments might charge for permits, noting that Florida has limits of that type. Dr. STRICKLAND said he was not aware of any such limitations in statute. Acting Chairman FRANK suggested that it might be worth considering something along those lines, noting that planning review delays might be detrimental to affordability. She then suggested looking further into manufactured housing and what lessons it might provide for affordability. She also requested the inclusion of some additional data on homelessness, as she said that many counties are wrestling with the problem.

Mr. PEACH asked whether staff has looked at how much impact fees contribute to the overall percentage of housing cost, saying that in his observations it usually amounts to no more than 1% of the cost of a home. Dr. STRICKLAND said that based on the median price for new homes in Tennessee, typical impact fees might equal about 1% of the total cost, though it could vary depending on the exact jurisdiction.

## May 29-30, 2024

### *Legislative Update*

Research Associate Hannah NEWCOMB presented the legislative update for 2024 with a review of bills that were either considered or passed in the second session of the 113th General Assembly that relate to the commission's work and requests the commission received for new studies.

Ms. NEWCOMB recounted bills related to annexation and land use, broadband internet, community resilience, criminal statutes of limitations, Global Positioning System (GPS) monitoring, housing affordability, littering, passenger rail, precious metal depositories, the professional privilege tax, lodging taxes, utilities, and water and outdoor recreation, highlighting in each case legislation that embodied recommendations from the commission's past work. She presented five public chapters requesting new studies, two of which would combine for a single study on the topic of the demographic landscape and regulations of the child care industry, while the other three request studies on vendor compensation, real estate fraud, and youth vaping, respectively. Ms. NEWCOMB also presented two bills and one letter that had been put forward to the commission, totaling seven possible new studies. One of the bills presented, which passed in the Senate but was taken off notice in the House, requested a study of the feasibility of a crime lab in Shelby County. The other bill was referred to the commission by the Senate Finance, Ways and Means committee and requested a study of the subject of Senate Bill 2054 by Senator Jackson and House Bill 2205 by Representative Barrett, which focuses on district attorney staffing for concurrent jurisdiction municipal courts, including what roles municipalities and district attorney offices may play in funding and hiring staff for such courts. The request received by letter was brought by Senator Lundberg, Representative White, and Representative Sherrell, which asked the commission to study TennCare reimbursements for school-based services.

Following the presentation of the legislative update, Senator Heidi CAMPBELL asked how staff determines which legislation and study requests to include in the legislative update. Ms. NEWCOMB said that some pieces of legislation that were not included in the presentation are in the written memo, and the legislative update includes legislation that relates to past commission reports or recommendations. Ms. NEWCOMB said all study requests made to the commission were included, but there are times when a request comes through in the form of an amendment or other way that staff may not catch. Ms. NEWCOMB said that, if the Senator is aware of a study request or piece of legislation that did not make it in the update, staff could look into it and update the memo to add those items if needed. Senator CAMPBELL said she thought legislation passed on the franchise and excise tax this session, among other things like littering and passenger rail, would have been included because of their importance.

Executive Director Cliff LIPPARD said the process for determining which legislation is included in the legislative update as requests for new studies is tiered so that anything that passes or is public chaptered receives priority, followed by anything that has been referred by both chambers, and rounded out by any requests that have been referred by just one chamber. He said there are exceptions such as letters sent to the commission requesting a study, or a request from one of the Speakers. In response to Senator CAMPBELL's comment about the franchise and excise tax, Senator Jon LUNDBERG said he did not recall a study from the commission on the tax, and asked Dr. LIPPARD whether staff would arbitrarily include something that they had not studied in the legislative update. Dr. LIPPARD said he did not believe staff have studied the franchise and excise tax in 15 to 20 years and in the past staff have completed staff reports on subjects not requested directly to the commission, but staff notifies the commission about these reports.

Commissioner Deniece THOMAS asked whether the child care study would include the component of workforce development efforts to expand early child care workers. Ms. NEWCOMB said that a portion of the study will include discussion of the benefits cliff and programs like WAGE$ that provide incentives for childcare workers to join and stay in the industry. Commissioner THOMAS said she would like to see the state's early childhood apprenticeship programs for childcare workers included as well. [Note: The child care study team will include information about the programs.]

County Executive Jeff HUFFMAN asked, in regard to GPS monitoring, who pays for the monitoring and maintenance agreements. Ms. NEWCOMB said she was unsure and would get back to him with that information. [Note: Public Chapter 1033, Acts of 2024, which is listed in the legislative update memo as Senate Bill 1972 by Senator Rose and House Bill 2692 by Representative Doggett, requires a defendant, if able, to pay the costs associated with operating the GPS system pursuant to Tennessee Code Annotated, Section 55-10-419(h)(1), unless the court finds the person to be indigent. In the case that a defendant is found to be indigent, pursuant to Tennessee Code Annotated, Section 40-11-152(h), the defendant will be ordered to pay any portion of the costs they have the ability to pay. The remaining cost will be covered by the Electronic Monitoring Indigency Fund. Ms. NEWCOMB emailed this information to County Executive Huffman on June 7, 2024.] Representative Ryan WILLIAMS, in response to the GPS legislation question, said the state has an indigent fund that pays for a portion of the GPS monitoring systems, and that this fund runs short. County Executive HUFFMAN asked for clarification on what constitutes a qualified residential development in reference to Public Chapter 956, Acts of 2024, to which Ms. NEWCOMB said she would defer to Dr. Michael Strickland's presentation of the housing affordability report. [Note: County Executive HUFFMAN did not revisit the question during Dr. Strickland's presentation.] Representative WILLLIAMS provided clarification on the subject of Senate Bill 2877 by Senator Kyle and House Bill 2961 by Representative Hardaway not passing as it was originally written, saying that it is the will of the House that the study request be expanded to look at the need for forensic and crime labs throughout the state rather than just in Shelby County.

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

Deputy Executive Director Melissa BROWN presented three amendments to the fiscal year work program for the commission's consideration, which were all unanimously adopted. Amendment one covered four studies that were directed by legislation passed by the 113th General Assembly. The first study is requested by Senate Bill 1140 by Lundberg and House Bill 886 by Hawk [Note: Now Public Chapter 1013, Acts of 2024] to study the collection and remittance of state and local taxes, including sales and use taxes, collected at the point of sale by businesses in Tennessee. Public Chapter 937, Acts of 2024, the second study, will focus on the effects of vaping and the use of all vapor products by persons under twenty-one years of age. A comprehensive study of child care is requested by Public Chapters 938 and 937, Acts of 2024. The fourth study, which relates to real estate fraud, is requested by Public Chapter 941, Acts of 2024. The second amendment added two studies, with each having passed only one chamber. A study of the Shelby County crime lab was requested by Senate Bill 2877 by Kyle and House Bill 2961 by Hardaway. The bill passed the House but not the Senate. Senate Bill 2054 by Jackson and House Bill 2205 by Barrett requests a study of district attorney generals' office staffing. The third amendment is a study requested via letter to Chairman Yager and is related to Senate Bill 2487 by Lundberg and House Bill 2616 by Sherrell, which asks for a study of school-based services for TennCare. Ms. BROWN said that draft research plans were included in Tab 3 for all projects and one for the rolling stock study, which was added to the work program at the commission's January 2024 meeting.

Representative Ryan WILLIAMS said he appreciated Ms. Brown explaining that the study of crimes labs in the state would be a broader view statewide and not just focused on Shelby County. He asked, for studies without an assigned due date, whether there is an end date for the project because his hope is that there will be a report on crime labs before the General Assembly dismisses in May 2025. In response, Executive Director Cliff LIPPARD said the plan is to have a draft in May 2025, which means staff would have some form of update or panel discussion on the topic and other information for the commission at the January 2025 meeting. He also said that, for projects without due dates, it allows staff to work on the study around other research and possibly have a draft sooner, if the other studies aren't as extensive as originally expected.

In reference to the research plan for the study of crime labs, Mayor Terry FRANK requested that staff interview medical examiners, and specifically mentioned the Knox Regional Medical Examiner as a good resource and that they have an interest in the study. Ms. BROWN said that the research team would add that step to the research plan. Dr. LIPPARD asked the commission to always let staff know whether there are stakeholders that should be interviewed for any of the projects assigned to the commission, or whether there are other changes needed to research plans. Mr. Jeff PEACH asked that staff include interviews with representatives of forensics with pathology. He said he understands that a crime lab is different from pathology, but Tennessee is at a critical place with a lot of counties using the same places.

### *Fiscal Capacity for Fiscal Year 2024-25*

Senior 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, including an overview of the Tennessee Investment in Student Achievement (TISA) funding formula and how the TACIR fiscal capacity model is used with it. She provided an update of Tennessee's 95 counties' 15-year fiscal capacity trends, and reviewed recommendations and other considerations for changes to the model including moving to Industrial Development Board assessment data from tax equivalent payments, monitoring the service responsibility factor, and transitioning to a school-system-level model. She also explained the effect of statewide virtual schools on fiscal capacity and provided examples of local revenue per student with and without statewide virtual school students.

Representative Ryan WILLIAMS and Commissioner Deniece THOMAS asked whether state and local dollars follow virtual school students to other school systems. Ms. POWERS said that state funding does follow virtual school students. County Mayor Terry FRANK asked whether it is better for a system to have virtual students. Ms. POWERS said having virtual school students increases the service responsibility, decreasing fiscal capacity, and that in-county virtual school students and their families contribute not only to the service responsibility but also to the local sales and property tax bases while out-of-county students may not contribute to tax bases.

Senator Heidi CAMPBELL asked whether per pupil revenue in table 1 includes state revenue, and Ms. POWERS said it includes local, not state revenue, adding that average daily membership includes virtual school students and is reported on Table 7 of the Department of Education's annual statistical report. Senator CAMPBELL asked whether the number of virtual school students is verified, and Ms. POWERS said data from state and local contacts is consistent.

County Mayor FRANK asked whether out-of-county virtual school students are eligible for athletics. [Note: According to staff of the Tennessee Secondary Schools Athletic Association (TSSAA) a nontraditional school (i.e., a homeschool or a public virtual school) under the jurisdiction of the local Board of Education must make application and be approved for TSSAA membership in order for students enrolled in the school to participate in TSSAA athletics. Although TSSAA virtual school members may choose to have their own sports' teams, it's more likely that they would allow their students to participate in all sports at their zoned public schools as assigned by the local Board of Education.]

Representative WILLIAMS asked for a definition of fiscal capacity, and Ms. POWERS said it is how much each government can contribute. County Executive Jeff HUFFMAN added that fiscal capacity is the capacity to contribute, not what is actually contributed. [Note: According to TACIR's 2023 staff report, *A User's Guide to Fiscal Capacity in the Tennessee Investment in Student Achievement Funding Formula,* "Fiscal capacity is a measure of the potential ability of a particular government to generate revenue from their own sources relative to other similar governments."]

County Executive HUFFMAN asked what effect the Ford project will have on Haywood County's fiscal capacity. Research Director Michael MOUNT said that it would increase, though unlike the University of Tennessee's Center for Business and Economic Research fiscal capacity model, TACIR's model does not account for changes in payment-in-lieu-of-tax agreements (PILOTs). Executive Director Cliff LIPPARD added that TACIR has been raising the issue, and the commission has recommended in two reports that the TACIR model be modified to account for changes in PILOT agreements. He said we expect to bring this potential change back up once the TISA Review Committee stands up in the next year or so. Vice Chairman Kevin BROOKS said PILOT agreements are increasingly used across the state.

### *Housing Affordability, Impact Fees, and Development Taxes—Final Report*

Senior Research Associate Michael STRICKLAND presented the final report for approval. The report was prepared in response to House Joint Resolution 139 by Representative Sparks, which requested a study on housing affordability and the factors affecting it. Dr. STRICKLAND listed the additional material included in the final report to address questions raised by commission members during the presentation of the draft report, then reiterated the report's recommendations. He said that a finding from the draft report had been realized in the form of Senate Bill 1137 by Senator Oliver and House Bill 1229 by Representative Hemmer (Note: Now Public Chapter 1012, Acts of 2024), granting local governments the ability to make multiyear funding commitments to industrial development boards for housing development or rehabilitation, subject to some conditions. He also said that two recommendations from the draft report were slightly revised to clarify that other funding sources could be used for zoning reform incentives and to fund the Tennessee Housing Development Agency's trust fund. Another recommendation—to mitigate the effects of zoning reform on existing residents—evolved after consultation with property assessors to suggest allowing local governments to extend tax credits to existing residents who might see their property values increase under zoning reform. The other three recommendations from the draft report remain unchanged: to authorize all local governments to establish land banks; to allow local governments to post links to any surplus real property they may have on the state's website for surplus property; and, to prevent the loss of construction employment during economic downturns, to have the state reserve funding for infrastructure in ways that smooth out the ups and downs of the business cycle.

Mayor Rogers ANDERSON asked whether land placed within land banks could be used for purposes other than housing, and specifically whether land could be used for economic and community development. Dr. STRICKLAND said that the statute allowed it to be used for a broad range of purposes. Vice Chairman Kevin BROOKS added that his city had recently established their own land bank and had already seen positive results from it, and he therefore wished to affirm the recommendation to authorize all local governments to create land banks.

Senator Jon LUNDBERG moved approval of the report, seconded by County Executive Jeff HUFFMAN. The commission approved the report unanimously.

## *Rolling Stock—Panel*

Senior Research Associate Presley POWERS presented a brief overview of the rolling stock study and introduced panel participants with knowledge of the challenges related to the purchase and delivery of rolling stock. They included

- Bob Williams, Assistant Commissioner, Vehicle and Asset Management, Tennessee Department of General Services;
- Michael Neely, Category Specialist, Central Procurement Office, Tennessee Department of General Services;
- Donny Bear, Director, Dickson County Emergency Medical Service;
- Steve Emfinger, Administrative Services Manager, General Services Department, Metropolitan Government of Nashville and Davidson County; and
- Alex Spann, Student Transportation Manager, Office of School Safety and Transportation, Tennessee Department of Education.

Assistant Commissioner Bob WILLIAMS said he oversees the state's rolling stock—trailer, tractor trailer, fire trucks--and every other piece of equipment that is not part of the Tennessee Department of Transportation, which has its own equipment group. He said the challenges related to delivery delays started with COVID. Following the economic shut-down, the federal government flooded the market with a lot of money, leading to high demand and not enough supply. Prices increased quickly, and it was difficult to purchase vehicles. Since then, several sectors have improved, specifically the sectors with components that aren't as complex such as trailers and light-duty vehicles, which are doing better because higher interest rates are creating more availability. There were long lead times and order cancellations, but now it takes approximately six months to get a light-duty car or truck. However, there are still a lot of gaps with heavy-duty vehicles and the major components such as transmissions. Worker shortages have also added to the problem. He shared a few suggestions for addressing the challenge of delayed items, including remaining brand-neutral and flexible and communicating often with suppliers.

In response to Representative John CRAWFORD's question about the effect of the labor cost for maintenance on heavy-duty trucks, Assistant Commissioner WILLIAMS said the cost for labor is consistent, and the challenge is more about whether parts are available. In response to Senator Heidi CAMPBELL's question about how to prevent these issues in the future, Assistant Commissioner WILLIAMS said although he thinks Tennessee did a wonderful job responding to COVID, in the future, he would apply caution regarding an economic shut-down because it was a shock to the whole system.

Mr. Michael NEELY said he manages contracts related to vehicles for the state and local governments. One of the challenges is dealing with the effects of the 2027 Environmental Protection Agency (EPA) regulations on the heavy-duty vehicle industry. Because there is not currently an internal combustion engine that meets the 2027 standards, and they expect a $30,000 per vehicle increase, there are concerns that many of the large trucking companies are pre-ordering everything they can before that mandate goes into effect. He said recently, when they give a purchase order to a dealer for 20 trucks, for example, the manufacturer will only provide half the order and says to come back six months later to check whether there are additional units available. In the case of one large truck manufacturer, Mack Truck, 94% of its product already has a customer's name on it, leaving only 6% available for the open market. They are at capacity, which affects everything, from dump trucks to school buses to a cab chassis for a fire engine. The state has made contracts open to multiple dealers per brand the past few years, which has helped his team procure vehicles, and he has received calls from large fleet dealers that want to bid on the state bid that hadn't before, which hopefully will help the state and local agencies.

Vice Chairman Kevin BROOKS asked whether there is there a prohibition on buying smaller vehicles from local dealers. Mr. NEELY said currently the contracts are open to bids from dealers that meet the state contract requirements, such as having a fleet manager that has been in place at least five years. The state looks at bids from everyone, even from outside the state, and the three dealers with the lowest price are awarded that contract. Other dealers can sell vehicles at any price, but they are not part of the statewide contract.

Director Donny BEAR said it used to take months to get ambulances and fire trucks, and now it takes years. For example, he's been waiting on one truck for almost three years, and he was told last week that the wait for a ladder truck is four years. This is difficult for budgeting and planning and is becoming a big issue. Emergency medical services (EMS) directors in other states are facing the same challenges. Getting parts is also difficult—brakes for heavy-duty vehicles currently take about 12 weeks. The manufacturers are changing their production. For example, Ford produces about 80% of the heavy-duty emergency vehicles and says it is producing fewer heavy-duty and more light-duty vehicles for consumers because they are more profitable. The cost of EMS units has also increased—by close to $100,000—and there is no end in sight for the cost increases. Vice Chairman BROOKS asked whether it is still a three-year wait for an ambulance even with a cost increase of $100,000. Director BEAR said that is how much the cost has increased over the last four years, and it still takes that long to get a truck. That cost is not for expediting the order; in fact, it is getting slower.

In response to County Executive Jeff HUFFMAN's question about whether Director BEAR sees any light at the end of the tunnel, Director BEAR said no. County Executive HUFFMAN asked whether there is anything in statute that prevents local governments from buying out of state or buying off another state's contract, and Director BEAR said there isn't anything preventing it. Assistant Commissioner WILLIAMS agreed that there is no prohibition on a city or county government from buying as they see fit. The state contract is there to assist in getting better pricing whether they choose to participate, but they also can buy directly from a dealer. County Executive HUFFMAN asked whether counties can bid as a region and whether that would help. Director BEAR said as far as ambulances go, he doesn't see that helping the supply chain problem, and Assistant Commissioner WILLIAMS said regional bidding could amplify the problem. Local governments just don't have any leverage, and it is a nationwide problem. Mr. NEELY said during the pandemic General Motors cut their production on light-duty pickups for government fleets from 200,000 to 5,000, which increased the strain.

Mayor Terry FRANK said there is a clear problem without a market solution and asked whether there is a way to incentivize production of this critical response equipment. Assistant Commissioner WILLIAMS said in his opinion, light-duty is coming back because consumers are buying less. There used to be a government discount, and he expects incentives to return this fall for light-duty. However, for heavy-duty, it is more challenging and will get worse with the 2027 EPA standards—in the next year, the manufacturers will be sold out through 2027, and then the cost will jump.

In response to Mayor Rogers ANDERSON's question about whether response times are increasing in Dickson County because of lack of available equipment, Director BEAR said mileage is increasing on units, but because they rotate their equipment, the effect on response times has been minimal. Mayor ANDERSON asked whether Insurance Services Office (ISO) ratings are affected by fire equipment not being replenished. Director BEAR said yes because they are regulated by their years of service, and insurance companies look at the ISO ratings. In response to Mayor ANDERSON's question about what happens to money if orders can't be met by the deadline, Assistant Commissioner WILLIAMS said he doesn't know because the state doesn't buy ambulances. Mayor ANDERSON said the Comptroller has changed the law about leasing versus owning vehicles and asked about getting parts for repairs on leased cars. Assistant Commissioner WILLIAMS said there is a provision in the statewide contract that says the vehicle must be operable, and if the company can't keep it rolling, it must replace it.

Mr. Steve EMFINGER said his department procures all types of vehicles. He agrees with the other panelists' concerns—it is challenging to get new vehicles and to get parts to maintain the existing vehicles. When their vehicles are decommissioned, they strip them for parts to try to maintain their remaining vehicles. Everyone across the country is in the same situation and competing for what they need. Even when they are told it will take three years for a vehicle, it isn't ready in three years. Hiring and keeping mechanics is also difficult for Metro Nashville and for vendors, and Metro is trying to recruit more vendors to work with. In response to Senator CAMPBELL's question about where the trucks go that are being phased out and whether they can they be upcycled or modified, Mr. EMFINGER said Metro often does that. They try to maintain and use vehicles as long as possible and pull parts from vehicles that are no longer operable. Senator CAMPBELL asked whether there is a second-hand market for parts, and Mr. EMFINGER said there probably is, but they haven't used it. When they've had surplus equipment in the past, it is usually purchased and sent out of the country.

Mr. Alex SPANN said the Department of Education does not purchase school buses; this responsibility falls on local districts, charter schools, or individual contractors. These entities can procure buses through open bids or statewide contracts, often opting to stay with one manufacturer for simplicity. Delivery times for buses vary, with alternative fuel buses taking approximately six months and diesel buses over two years. Buses must meet state-specific safety standards that are above the federal minimum standards. There are three bus dealers in Tennessee, and the state mandates purchases from dealers with a physical presence in the state for liability reasons. Federal subsidies are encouraging—and manufacturers have shifted their focus—to alternative fuel buses, though these often have lower capacity, requiring more buses and drivers. It is a constant ripple effect. Buses are inspected annually by the Tennessee Highway Patrol; can remain in use for up to 15 years, with possible extensions to 18 years; and must retire after 200,000 miles. The upcoming EPA regulations will further increase bus costs—which have already increased approximately 30%—ranging from $140,000 to $180,000 for non-electric buses and $400,000 for electric buses. The EPA offers a $350,000 grant for electric buses.

In response to a question from Representative Harold LOVE, JR. about the difference between parts for electric and traditional gas school buses, Mr. SPANN said electric buses don't have many components, but it is a new industry, and he doesn't know what the timeline would be. There is a shift in staffing from a mechanic to an electrician. In response to Representative LOVE, JR.'s question about which school districts have purchased electric buses, Mr. SPANN estimated that 9 or 11 districts have applied and received funding from the latest round of EPA grants, and at most, 5% of districts have purchased electric buses.

Mayor FRANK asked whether the panelists have ideas for solutions or modifications that would help address the issues they discussed. Director BEAR said that because ambulances are so specific, they are at the mercy of the manufacturers. Mr. NEELY said everyone should plan further ahead and get orders in as quickly as possible. Mr. SPANN said there are things you can't prepare for, such as the 2021 flood in Humphreys County that wiped out all the school buses on the school district's lot. In response to a question from Mayor FRANK about whether Tennessee needs to remove the requirement for dealers to have a physical presence in the state, Mr. SPANN said he would refer that question to the Department of Safety because they are the inspecting agency. [Note: Staff will follow up with the Department of Safety on this issue.] Mr. EMFINGER said that Metro Nashville has 90 light-duty electric vehicles (EVs), and there are several challenges specific to EVs. Mayor Bob RIAL asked whether there is any chance the federal government will delay the new EPA requirements to offer some relief, and Assistant Commissioner WILLIAMS said he doesn't know, but the industry is already going in that direction.

### *School Based Services for TennCare Reimbursement—Panel*

Director of Policy Matt OWEN introduced panelists for a discussion of school-based health services and TennCare reimbursement. Panelists included

- Gary Dupler, Deputy Law Director, Knox County;
- Lori Paisley, Assistant Commissioner, Coordinated School Health Division, Tennessee Department of Education; and
- Drew Staniewski, Deputy Director, TennCare.

In lieu of participating in the panel, BlueCare of Tennessee—one of the state's managed care organizations (MCOs)—sent a letter outlining their thoughts on the study, which was distributed to commission members.

In response to Senator Jon LUNDBERG's request for an overview of staff's prior interview with BlueCare, Dr. OWEN said there are two contractual relationships to be aware of for the state's MCOs. First, each MCO has a contract with TennCare that includes requirements the MCOs must follow. Second, each MCO has contracts with healthcare providers that provide care to the patients enrolled with the MCO. These provider contracts, which include provisions that are required by the MCOs' primary contracts with TennCare, are what school systems must enter into to be reimbursed. BlueCare currently has provider contracts with approximately 50 school systems in Tennessee, which allows the school systems to be reimbursed directly by BlueCare for services provided to students enrolled with that MCO. Senator LUNDBERG asked whether BlueCare's contracts with these 50 school systems generally include the same terms and conditions. Dr. OWEN said there is a contract template BlueCare uses.

Deputy Law Director Gary DUPLER said the contract template BlueCare uses is for a typical medical provider, but the school system isn't a typical medical provider. Instead, school systems provide some healthcare services to their students to enable those students to further their education. The school system wants a provider contract that reflects their status as a public school-system. Examples of terms and conditions from the contract template the school system would want to change include provisions related to prescriptions, insurance, the population able to seek care—in particular, current language in the template might allow adults covered by TennCare to seek healthcare at schools—inclusion of the school in a public directory of healthcare providers, and pregnancy-related care. He said the school system had worked with BlueCare to resolve these issues in the past but the parties were unable to reach an agreement on all issues.

In response to Senator Heidi CAMPBELL's question about the school system's responsibility for helping children who have gotten pregnant, Mr. DUPLER said students can go to the nurse, but the school system isn't capable of providing obstetrical or gynecological services and would need to refer the student to a specialist or a family physician to treat pregnancy-related issues. He said the school system's objection to the language about pregnancy-related services is that it cannot provide that level of care.

Senator LUNDBERG said the school system appears to provide healthcare services, such as occupational therapy, and asked for clarification of the term "provider" as it applies to school systems in this setting. Mr. DUPLER said the school system is not there to holistically treat students as patients. Instead, it has children in its schools who need healthcare services for them to be able to learn and receive an education. The school system provides those services to meet its overarching goal, which is to educate students—it is not a medical provider.

Mr. DUPLER said Knox County could likely receive approximately $250,000 per year in Medicaid reimbursements if the contractual issues were resolved. In response to Senator LUNDBERG's question about whether the school system needs those reimbursements, Mr. DUPLER said it could certainly use the reimbursement, but it isn't going to misrepresent itself to claim that money. Senator LUNDBERG asked what is different about the other school systems that have signed the contracts. Mr. DUPLER said smaller school systems might need the Medicaid reimbursements to help them operate, so they are going to sign the contracts and hope for the best. Additionally, a lot of systems contract out for these school-based health services, whereas Knox County Schools employs its therapists and nurses directly. In response to Senator LUNDBERG's question about whether the two school systems that are larger than Knox County Schools have signed contracts with the MCOs, Mr. DUPLER said he did not know. Dr. OWEN said although commission staff have not interviewed all of the four largest systems in Tennessee, staff for Metro Nashville Public Schools said their attorneys have raised similar concerns to those described by Mr. Dupler, but at present, the school system is still receiving Medicaid reimbursements.

County Executive Jeff HUFFMAN asked whether Knox County Schools had previously contracted with MCOs, and if so, what has changed about the contracts. Mr. DUPLER said it has contracted with the MCOs in the past, but those contracts were not as long or as broad as the proposed contract from BlueCare. In response to County Executive HUFFMAN's question about whether any of the terms and conditions causing issues for Knox County Schools in this contract are mandated by state or federal requirements, Mr. DUPLER said BlueCare has said this is the case for at least some of the terms in the contract. He said the school system's goal is to find the minimum they could change to make the contract workable, and Knox County Schools offered to sign the contract if it included a disclaimer addressing the school system's issues. County Executive HUFFMAN asked whether that would solve the problem, and Mr. DUPLER said it would. In response to County Executive HUFFMAN's question about whether any state or federal requirements would prevent BlueCare from including that type of disclaimer in the contract, Mr. DUPLER said he wasn't sure. Deputy Director Drew STANIEWSKI later said he also does not know whether that could be a solution, but TennCare is interested in talking through that issue.

Assistant Commissioner Lori PAISLEY provided background on coordinated school health programs, which connect health with education through eight interrelated components that improve students' health and their capacity to learn through the support of families, communities, and schools working together. The eight components are

- health education;
- nutrition;
- physical education and physical activity;
- a healthy school environment;
- school counseling, psychological, and social services;
- student, family, and community involvement;

- staff wellness; and
- health services.

Assistant Commissioner PAISLEY said Medicaid reimbursement for school-based services can provide school systems with funding to reinvest into school health services, which could enable them to fund additional health providers. The staffing increase could benefit all students, not only students enrolled in Medicaid. Over the past eight years, the Tennessee Department of Education has provided school systems with information about the benefits of contracting with the MCOs to seek Medicaid reimbursement to increase access to and to sustain funding for meeting students' needs. But the administrative burden is one challenge school systems face in working with Medicaid. She said many school systems are interested in setting up billing infrastructure to reduce their reliance on billing vendors. The process to set up in-house billing includes acquiring a national provider identifier, working with a licensed practitioner, and handling the billing and reimbursement all of which are huge challenges for the districts.

Assistant Commissioner PAISLEY said 14 school systems reported billing for nursing services reimbursement in the 2022-23 school year, and she anticipates that the number will be higher this year because many school systems have a goal in their coordinated school health action plan to do this. She said that one school system is currently billing for nursing reimbursement internally without the use of a billing vendor, but it is a smaller system with approximately 2,100 students. This school system has reported it does take a lot of time and effort, and it could be more difficult for a larger system.

Assistant Commissioner PAISLEY said close collaboration between the department, TennCare, the MCOs, and school systems has facilitated progress, including creation of a billing manual and nursing services guidelines. The department also works with TennCare and MCOs to provide technical assistance, training, and professional development for school systems through its annual coordinated school health institute and regional meetings for coordinated school health staff and school nursing district supervisors. Mr. STANIEWSKI said MCOs are required, under their contracts with TennCare, to have stakeholder and education engagement plans, which the MCOs provide to TennCare annually and are shared with the Department of Education. He said the plan outlines each year what the MCOs are doing to engage with school systems and encourage participation in the program.

In response to Mayor Terry FRANK's question about whether different states have different reimbursement models for school-based services systems, Assistant Commissioner PAISLEY said Tennessee is a unique state in Medicaid, and she deferred to her colleagues in TennCare to discuss that further. She said not every school has a school nurse, but if there were a nurse in every school, they could build upon that to provide more services because students have more needs. Vice Chairman Kevin BROOKS said every school has funding for a student resource officer but not for a nurse.

Mayor FRANK asked whether there are any limitations on what services provided by nurses are reimbursable. Assistant Commissioner PAISLEY said the services must be medically necessary. When students are special education students, they will likely have those medically necessary services included in their individualized education programs (IEPs). Students that are not special education students might have these services included in an individual health plan (IHP). Mayor FRANK said that school systems are in the business of educating children, but to seek reimbursement under the TennCare model, they may have to call themselves providers.

Mr. STANIEWSKI gave a status update on where TennCare and the MCOs are with local education agencies (LEAs) and school-based services as well as discussing contracting and TennCare's perspective on the issues with Knox County Schools. There are 63 school systems that are contracted with at least one MCO, and 50 of those school systems are contracted with at least two MCOs. There has been a significant increase in spending on school-based services in the last four years. In calendar year 2020, TennCare's overall spending on school-based services was $15.6 million, and in calendar year 2023, that number was almost $40 million. He said the increase has been consistent and been around $7 million to $8 million per year, so he thinks it is encouraging to see they are on the right path in terms of expanding what they are able to cover in the school systems.

Mr. STANIEWSKI said that MCOs generally have the ability to manage their networks and do not necessarily have to contract with any provider that wants to as long as they can meet network adequacy. But for school-based services, TennCare has essentially eliminated that flexibility and has an "any willing LEA requirement," which means that if an LEA wants to contract with an MCO, TennCare's expectation is that the MCO is going to make an attempt to contract with the LEA using a standard fee schedule, eliminating the need to negotiate over prices.

Mr. STANIEWSKI described requirements related to reimbursement for school-based services. For services to be reimbursable, TennCare requires them to be medically necessary covered services. Services included in students' IEPs meet this requirement and generally include occupational therapy, speech therapy, physical therapy, and audiology. He said there have been changes in recent years to cover more services that would be included in students' IHPs like nursing services. TennCare is also working on expanding coverage for behavioral health services in schools.

Mr. STANIEWSKI described several other changes made to facilitate reimbursement for school-based services. He said TennCare and the Department of Education developed a billing manual targeted towards LEAs to help them navigate billing with the MCOs, and there are nursing services guidelines specific to LEAs. There is also a timely filing exception for LEAs, allowing them to file claims up to a year after a service was provided rather than the 120-day limit for most other types of providers. Additionally, there have been improvements to the process for reimbursing services included in students' IEPs, specifically TennCare now allows parents to consent to TennCare billing for these services once, whereas previously it was an annual requirement. And Public Chapter 695, Acts of 2022, authorized physical therapists, occupational therapists, speech language pathologists, and audiologists to provide orders documenting the medical necessity of services included in students' IEPs, whereas previously these orders could only be provided by physicians, physicians assistants, and nurse practitioners.

Regarding reimbursement and LEAs contracting with MCOs, Mr. STANIEWSKI said there are different options for LEAs. The first option is for the LEA to be directly contracted with the MCOs. A second option is for the LEA to contract through a third-party vendor, which could provide support for billing and, in some cases, also assist with staffing. A third option for some school systems that do not have a lot of students covered by TennCare is to arrange with local providers to come in and provide services with those providers, rather than the school system, contracting directly with the MCOs. He said there is a pilot program with Alcoa City Schools, which is intended to identify further areas to improve the process for seeking reimbursement for school-based services.

Regarding Knox County Schools' specific contracting issues, Mr. STANIEWSKI said a few years ago Public Consulting Group—a billing vendor working with the school system—reached out to discuss the issues, and TennCare met with the Knox County's legal department to hear their concerns. He said there are some terms and conditions within the MCO's provider contracts that the state could change, but for other terms and conditions there may be federal requirements that restrict what the state can do. He said speaking with Knox County Schools is a great first step in understanding the issues LEAs may be having, and TennCare is interested in working with Knox County Schools to find a solution. In response to Mayor FRANK's question about whether TennCare needs feedback from other school systems before making changes to the MCO's provider contracts, Mr. STANIEWSKI said TennCare wants to make sure that changes to the MCO's provider contracts make sense for all school systems. The challenge with creating a standalone agreement for Knox County Schools only is that it would be inefficient. If there are common issues LEAs are having, TennCare could make changes to its contract with MCOs to address those concerns and create a contract template for MCOs to use with LEAs. He said the Oversight Division for TennCare at the Tennessee Department of Commerce and Insurance oversees the MCOs and approves all contract templates.

Mr. Jeff PEACH asked whether the issue for Knox County Schools is that the contract offered by the MCO is essentially a contract of adhesion where the LEA must either take the contract how it is or not at all. Mr. DUPLER said he feels that is accurate, and he said he appreciates the comments from Mr. Staniewski and is encouraged that TennCare is willing work on potential changes to the contract. He said Knox County Schools is not asking for a standalone contract and would be amenable to something workable for any LEA.

### *Wastewater Systems Operations and Finances Report–Draft Report for Review and Comment*

Research Associate Madison MOFFITT presented the draft report for review and comment. The report was prepared in response to a request from County Executive Jeff Huffman that the commission study the operations and financing of Tennessee's wastewater systems. The scope of the study was expanded by request of commission members to include a look at the governance structures of wastewater systems; the compensation and benefits provided to the systems' governing bodies; and staffing issues at wastewater systems.

Ms. MOFFITT said Tennessee has invested heavily in upgrading its wastewater infrastructure, but some wastewater systems are struggling to maintain their aging equipment while meeting growing service demands. Wastewater systems in Tennessee will likely need to spend billions to pay for the repair, replacement, and expansion of their infrastructure. Staff found the best methods for financing sewer lines and wastewater treatment systems involve a combination of funding sources such as grants, loans, or bonds. The use of the Effective Utility Management framework developed by the United States Environmental Protection Agency and asset management plans can help systems manage their operations more efficiently. Efficient energy consumption can help cut operating costs. Eighty-two percent of the public wastewater systems in the state are operated by municipalities. Eighteen percent of public wastewater systems are operated by counties, metropolitan governments, utility districts, municipal energy authorities, water and wastewater authorities, or local governments working together jointly. There are 13 private, investor-owned wastewater systems. Sixty-five percent of public wastewater systems that responded to a staff survey reported that they compensate their governing body members $50 per month to $17,000 per year, and 32% reported they offered health insurance to them. Sixteen percent of survey respondents stated they have difficulty attracting and retaining certified wastewater operators because of an aging workforce and the difficulty in attracting younger workers. Operators also often left for better paying positions at other systems.