



Government Transparency Can One Size Fit All?

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Government Transparency: Can One Size Fit All?

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October 24, 2013

The Honorable Randy McNally
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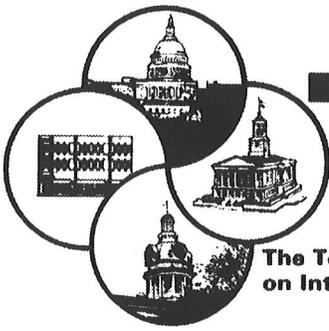
Dear Chairman McNally, Chairman Carr, and Chairman Sanderson:

Transmitted herewith is a Commission report on Senate Bill 2831 (Ketron) [House Bill 3327 (Carr)], referred by the Senate Finance, Ways and Means Committee, and House Bill 3328 (Carr) [Senate Bill 2832 (Ketron)], referred by the House State and Local Government Subcommittee for study in 2012. The report was approved by the Tennessee Advisory Commission on Intergovernmental Relations October 24, 2013, and is hereby submitted for your consideration.

Sincerely,

Senator Mark Norris
Chairman

Lynnise Roehrich-Patrick
Executive Director



TACIR

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MEMORANDUM

TO: Commission Members

FROM:  Wynnis Roehrich-Patrick
Executive Director

DATE: 24 October 2013

SUBJECT: State and Local Government Transparency—Final Report for Approval

The attached report is submitted for your approval. It was prepared in response to two bills concerning government transparency that were referred to the Commission for study by committees of the 107th General Assembly.

Senate Bill 2831 (Ketron) [House Bill 3327 (Carr)] known as the Taxpayer Transparency Act, was referred by the Senate Finance, Ways, and Means Committee. The bill would have required the state Department of Finance and Administration to create and maintain a searchable budget database website detailing where, for what purpose, and what results are achieved for all taxpayer investments in state government.

House Bill 3328 (Carr) [Senate Bill 2832 (Ketron)] known as the Local Government Transparency Act, was referred by the House State and Local Government Subcommittee. This bill would have required each county, city, and school system to have a single, searchable expenditure and revenue database accessible from its main website.

Both bills require such features as searchability, historical data, and “checkbook level” information about expenditures and contracts.

In response to member feedback, the final version of the report incorporates improvements to the draft reviewed at the August 2013 Commission meeting:

- usage data for the state’s Open Government website, and
- information about local government costs and suggestions for reducing them.

The report also recognizes the Comptroller’s “Transparency and Accountability for Governments” website as a third transparency site hosted by state government.

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Government Transparency: Can One Size Fit All?

Improving citizens' access to government information has been an important issue since America's founding, but it has received particular emphasis recently, in part because advances in technology make it possible. The ability of governments to make more kinds of data available, however, depends on many factors—financial and staff resources, citizens' wants and needs, availability of broader connectivity, and underlying data systems, for example—all of which affect how much and what kinds of information can be presented. A one-size-fits-all solution probably isn't practical for all of Tennessee's governments, but establishing some parameters could help all governments become more transparent.

Committees of the 107th General Assembly referred two government transparency bills to the Commission for study, one addressing state government and the other addressing local governments. Senate Bill 2831 (Ketrone) [House Bill 3327 (Carr)], known as the Taxpayer Transparency Act, would have required the Tennessee Department of Finance and Administration to “create and maintain a searchable budget database website detailing where, what purpose, and what results are achieved for all taxpayer investments in state government.” House Bill 3328 (Carr) [Senate Bill 2832 (Ketrone)], known as the *Local Government Transparency Act*, would have required each county, city, and school district to post certain financial information online. Both bills can be found in appendix A and would require such features as searchability, historical data, and information about “checkbook level” expenditures and contracts. With their complex specifications and higher costs, the bills' requirements would be most appropriate for Tennessee's state government and its largest communities.

Based on the fiscal notes, these bills would be costly to implement. At the same time, their requirements do not cover the full range of public information people may wish to access. For instance, they do not include basic information about regulatory actions, such as state nursing home inspections and local property tax assessments. Instead, they focus almost entirely on government finances. Much of this information is already available online, especially at the state level and on websites of larger local governments. Larger local governments that provide a wide range of services and have highly skilled technical staff may be able to meet the requirements of House Bill 3328 with little effort. Shelby and Knox counties, for example, received A-minuses for their websites from the Sunshine Review, a national organization that advocates for transparency.¹ Many small cities, by contrast, have no website at all and would incur considerable expense in meeting the bill's requirements.

¹Note: As of July 1, 2013, Sunshine Review has merged with Ballotpedia.

Based on their fiscal notes, these bills would be costly to implement. At the same time, their requirements do not cover the full range of public information people may wish to access.

Any transparency efforts must comply with existing laws protecting certain types of information for reasons of security, safety, individual privacy, and corporate proprietary protections.

Given these differences in size and complexity, as well as the varied interest of local communities in transparency and their willingness to pay for it, a range of options may make more sense. Small communities could take advantage of reports already available online, for example, by linking to such information as audits and city charters. Legislation could establish guidelines for presenting this information, and agencies such as the University of Tennessee's County Technical Assistance Service (CTAS) and Municipal Technical Advisory Service (MTAS) could assist by creating website templates that meet the guidelines.

Mid-sized governments may be able to provide detailed information more easily and at less cost than smaller communities. The General Assembly could provide a list of basic information, such as contacts for administrative and elected officials; agendas and minutes from meetings; regulatory information such as building permits; and budgets, financial reports, and audits. Mid-sized governments may not have and should not be required to provide the same level of detail as larger communities.

Regardless of the approach taken, establishing a broadly representative, state-level task force to define standards and advocate for transparency would be beneficial. Even with voluntary standards, communities would have yardsticks for measuring the adequacy of local transparency efforts. The task force should represent various interests, such as citizens, businesses, educational institutions, and all levels of government, to ensure that any guidelines adopted will include the full range of information that people want. It should also include information technology professionals so that system capabilities and limitations are fully considered. Any transparency efforts must comply with existing laws protecting certain types of information for reasons of security, safety, individual privacy, and corporate proprietary protections.

What is transparency?

Access to public information is a key tenet of American governance. James Madison, writing in 1822, said

a popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance. And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.

But Madison could not have envisioned the quantity and complexity of present day governmental information nor the expectation for its speedy production and release. Moreover, transparency does not mean the same thing to everyone.

The *Merriam Webster Dictionary* defines “transparent” in several ways. The first definition, “having the property of transmitting light without appreciable scattering so that bodies lying beyond are seen clearly,” is the most literal. For addressing government transparency, though, another definition probably fits best: “characterized by visibility or accessibility of information especially concerning business practices.”

The federal government and the individual states have had public records legislation on the books since the mid-20th century—known in many places as Freedom of Information Acts (FOIAs). The emphasis on transparency is more recent and goes beyond these laws. Public records statutes require governments to release certain information when requested, but the responsibility falls to requestors to know what they seek and how to ask for it. Transparency laws, on the other hand, shift the responsibility to the government to post proactively certain kinds of information without being asked.

The past decade has seen widespread pressure to improve public access to government information, in part because of concerns about government performance but also because advances in technology make it possible. Proponents of improved transparency believe that making public information more available and understandable will

- make government officials more accessible and accountable,
- reduce government waste and abuse,
- provide useful information for people working within government,
- help identify trends, and
- free up government employees from responding to routine information requests from residents, media, and interest groups.

Improving government transparency, however, is not a simple task. Governments have many parts that may or may not work well together—constitutional structures, split partisan control, and disparate functions all contribute to silos within a single government. In addition, many standard reports that governments produce are unwieldy, difficult to understand, and not very timely. Although providing documents such as budgets and comprehensive annual financial reports (CAFRs) are first steps in meeting the public’s need for information, providing masses of data may frustrate citizens rather than satisfy their quest for information. Jonathan Walters, writing in *Governing*, notes, “for all their charts and graphs, CAFRs don’t tell public officials—or the public—anything about fiscal sustainability or whether a locality’s finances might be trending south.”

The past decade has seen widespread pressure to improve public access to government information, in part because of concerns about government performance but also because advances in technology make it possible.

Advocates believe government transparency makes public officials more accountable simply because the officials are aware that others could be checking on them.

A 2011 report by the Lyndon B. Johnson School of Public Affairs notes, “If the data cannot be used meaningfully, then it is not truly transparent. Additionally, data that is unreadable, unusable, unappealing, or unwanted by the public does little to contribute to improving government’s transparency.”²

People want more information from and about their government.

Taxpayers want to know that their money is spent wisely and well. Everyone has a legitimate interest in being able to access useful, public information held by government agencies. With the advent of the Internet, though, expectations about the speed of response, along with the kinds and amount of available information, have outpaced the ability and sometimes the willingness of businesses and government agencies to provide it. From the private sector, for example, people want to know how safe and effective products and services are, the source and content of their food, where waste is disposed of and what is in it, and the benefits and risks of everything from medications to hygiene products to alternative fuel sources. From the public sector, people want to know how their tax dollars are used but also may want to know about safety of nursing homes or professional license revocations. From both the public and private sectors, citizens want the ability to transact business, whether ordering products or services or applying for and receiving permits or licenses. Such raised expectations have led to a government transparency movement across our nation with a particular focus on availability of fiscal information.

Much of the focus on government transparency has come from organized groups that want greater access to government records for various reasons—media, taxpayer organizations, political parties, social justice advocates, public policy researchers, and business people. A survey conducted by researchers for the Pew Internet and American Life Project, in late 2009, found that 82% of Internet users or 61% of American adults had gone online in the year preceding the survey to look for information about government or to complete a transaction on a government website. Of those who specifically searched for information about the business of government, the most common items sought were information on stimulus spending and legislation.³

Advocates believe government transparency makes public officials more accountable simply because they are aware that others could be checking on them. External groups, however, are not the only ones who believe greater transparency is beneficial. Some government officials who have established greater transparency believe that it helps improve efficiency by freeing employees

²LBJ School of Public Affairs 2011, 11-12.

³Smith 2010, 2, 40.

from having to respond to requests for various kinds of information. A report by the Mercatus Center of George Mason University cites a statement by Texas Comptroller Susan Combs in which she estimates that her state's transparency initiative has saved the state over \$5 million by facilitating the discovery of wasteful duplicative contracts for express mail, printer toner, and other goods and services that were later consolidated and renegotiated.⁴

Making more information available may illuminate government workplace practices as well. For example, although providing access to employee salary information may be of interest to outside observers, it may also help combat discriminatory workplace practices.

The concept of transparency, though, is not without critics. Some question how widely citizens use the information once it becomes available and whether having the information available increases satisfaction with government. The Pew Center study mentioned above found that while greater access had improved citizen's attitudes toward the federal government's openness and accountability, it had not engendered greater trust in government overall. Increased accessibility to data did not tend to change a person's previous attitudes about government. Pam Greenberg, writing in *State Legislatures*, quoted Robert Horton, the Minnesota state archivist, who indicates that government officials are writing less down, perhaps an unintended consequence of greater transparency.⁵

Improving government transparency requires coordination, resources, and improvements in technology. Communities and their leaders must consider what information is needed most and how it can best be found and displayed for people who are unfamiliar with government organization, terminology, and processes.

Tennessee's State Open Government Website

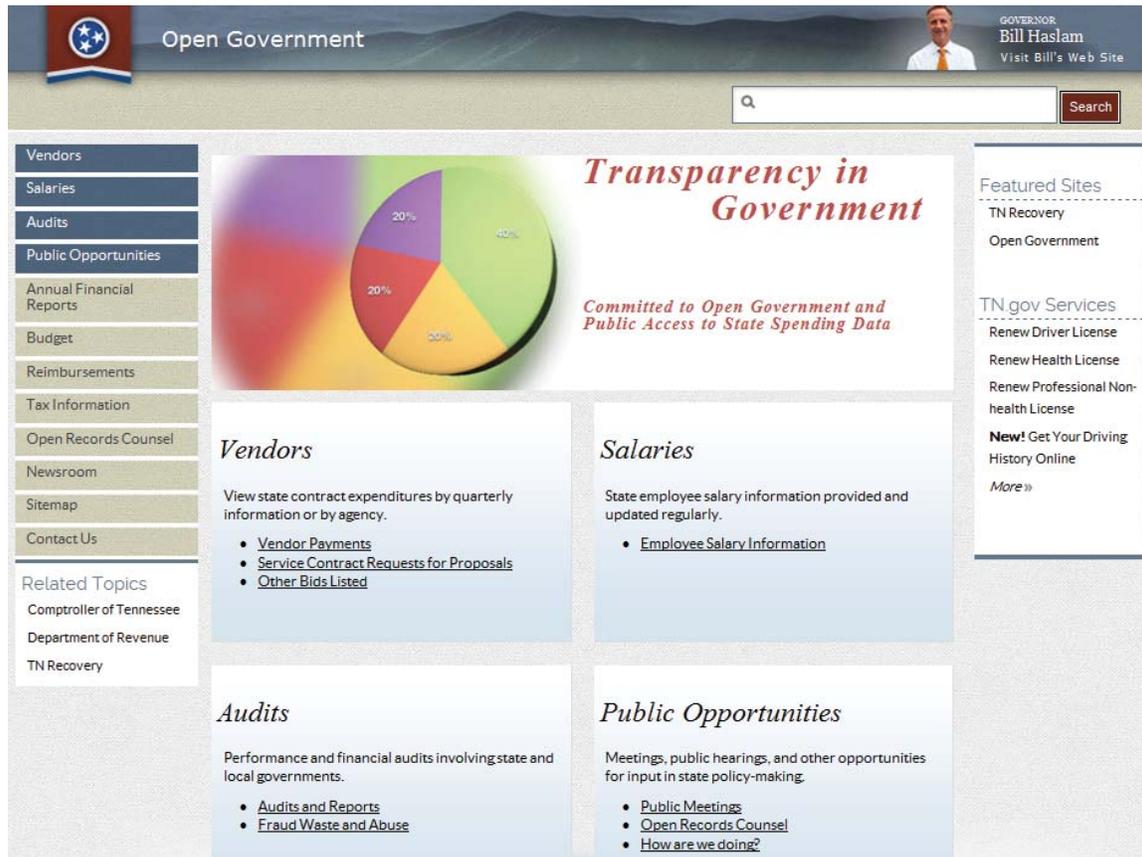
Tennessee launched its "Open Government" website during the administration of Governor Phil Bredesen (see figure 1). Additional information sought by transparency advocates can be found on the state's main page, *TN.gov*. Governor Bill Haslam's staff indicates plans to release a new version of the transparency portal in early 2014. According to John Chobanian, Director of Strategic Marketing and Innovation in the Governor's Office, they have been waiting for the release of business intelligence capabilities. These recently became available for the state's information system.

⁴ Brito 2009, 3.

⁵ Greenberg 2011. 52.

Improving government transparency requires coordination, resources, and improvements in technology.

Figure 1. Tennessee's Open Government Website



Source: <http://www.tn.gov/opengov>, accessed July 25, 2013.

As of July 2013, these features were available directly on Tennessee's Open Government site or indirectly through links from the site:

- Availability from state's homepage
- Vendor payments
- Current expenditures
- Comprehensive Annual Financial Report (CAFR)
- Budget (current and historical)
- Links to audits
- Accessibility statement
- Information on public records

- State employees' salaries
- Feedback method

In contrast to some other states' transparency sites, Tennessee's Open Government site lacks the following features:

- Links to higher education data
- Links to pre-k-12 education data
- Searchability of checkbook level expenditures
- Downloadability
- Explanatory visual aids such as graphs and charts
- Performance results—although some selected performance information can be found at the Tennessee Data Dashboard, it is accessible from the governor's page; not from the homepage or the Open Government page.⁶
- Local government links

Tennessee's Open Government site is administered by the Department of Finance and Administration. Most of the site's information is updated monthly or quarterly. In contrast, some comparison states' transactions are updated daily. During the first eight months of 2013, the number of individuals visiting the site ranged from 1,943 in February to 5,103 in June.

In addition to the Open Government site, the Department of Economic and Community Development has recently established its own transparency site called OPENECD, which includes information about tax credits and subsidies but is not linked to the main Open Government site.

The Comptroller of the Treasury also has a transparency webpage, entitled Transparency and Accountability for Governments in Tennessee (TAG).⁷ The site primarily focuses on county governments and pulls together various financial documents such as audits, financial reports, and debt comparisons. The site uses a state map to help users

⁶ See <https://www.tn.gov/governor/dashboard.shtml>.

⁷ See <http://www.comptroller.tn.gov/TAG/>.

TABLE 1
Visitors to Tennessee's Open Government Website

Month	Unique Visitors	Number of Visits
Jan 13	4,725	6,334
Feb 13	1,943	2,373
Mar 13	4,438	5,913
Apr 13	4,493	6,306
May 13	4,731	6,460
June 13	5,103	7,831
July 13	5,096	7,141
Aug 13	3,796	5,125

Source: Lola Potter, Public Information Officer, Department of Finance and Administration.

Figure 2. Tennessee’s OPENECD Website



Source: <http://www.openecd.tn.gov>, accessed July 25, 2013

Tennessee local governments’ ability to provide online information may be hindered by a lack of such basic resources as connectivity and trained staff.

find needed information. Jim Arnette, Director of Local Government Audit, indicates that the TAG home page received 13,478 visits between August 2012 and August 2013.⁸

Tennessee’s Local Government Websites

Tennessee’s local governments range from large sophisticated cities to small towns. The transparency of these local governments—and possibly even the need for it—varies as much. A few local governments, such as Knox, Shelby, and Wilson counties, garner high transparency ratings from national organizations. Others offer little or no information. Several local governments still don’t have websites. In contrast to the state government, Tennessee local governments’ ability to provide online information may be hindered by a lack of such basic resources as connectivity and trained staff. A recent report from the U.S. Census Bureau indicates that Tennessee ranks among the bottom five states for levels of connectivity.⁹ In some very small local governments, citizens and local

⁸ E-mail from Jim Arnette, September 5, 2013.

⁹ File 2011, 8.

Figure 3. Tennessee Comptroller of the Treasury's Transparency

Tennessee Comptroller of the Treasury

Transparency and Accountability for Governments in Tennessee

Divisions / Offices
Boards & Agencies
Investor Information
Publications
Calendar & Public Notices

Contact Us

Search This Website

Powered by Google Search Appliance

- TAG Archive
- TAG Home
- TAG County Selection Map
- TAG County Compare
- TAG County Compare Debt
- TAG County selection - Revenue
- TAG County selection - Expenditure
- TAG County selection - Debt
- TAG County selection - Debt Per Capita

- Local Government Audit Home
- Audit Reports
- Report Fraud Waste and Abuse
- Recovery.gov

TAG Tennessee

WELCOME

Welcome to the Transparency and Accountability for Governments (TAG) in Tennessee website.

This site provides a gateway for users to obtain selected revenue, expenditure, and debt information for county governments in Tennessee. The information available on this site has been taken from the "Miscellaneous Schedules - Detailed Schedules of Revenues and Expenditures - All Governmental Fund Types" and "Miscellaneous Schedules - Changes in Long-term Notes, Other Loans, Capital Lease and Bonds" found in the county annual financial reports prepared by the Office of the Comptroller of the Treasury, Division of Local Government Audit. TAG only presents the revenues and expenditures of the governmental funds of a county's primary government and the discretely presented School Department component unit. The data does not include: 1) a county's other fund types such as enterprise funds and agency funds, 2) various other component units, 3) and amounts classified as other financing sources and uses. TAG also presents the county debt information for the county's primary government and the discretely presented School Department component unit. The debt information does not include compensated absences, other post-employment benefits, or unfunded liabilities.

The Division of Local Government Audit is responsible for the annual financial and compliance audits of all 95 counties in Tennessee. The division presently performs the audits in 89 counties. Certified public accountants (CPA) perform the audits in the remaining six counties. The counties audited by CPA firms are Davidson, Hamilton, Knox, McMinn, Shelby, and Washington. The TAG website includes revenue and expenditure data in summary for those counties. The debt information from those six counties is compiled from their annual financial reports. The annual financial reports for all 95 counties can be viewed from the Local Government Audit reports page with the link provided below.

Because the TAG website only presents selected county government information, it is important users view the completed annual financial reports we have made available on the web to obtain a better understanding of the data presented. Here is a link to the Local Government Audit reports page: <http://www.comptroller.tn.gov/la/CountySelect.asp>

By continuing to use this site you understand this is not the complete annual financial report only a selected portion of that data.

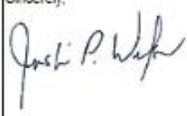


MESSAGE FROM THE COMPTROLLER

Thank you for visiting TAG Tennessee. I hope you will find the site to be a beneficial means of viewing county revenues and expenditures.

As Comptroller of the Treasury, one of my priorities is to improve transparency and accountability in state and local governments. This website will give you quick access to data related to how county governments receive and spend tax dollars.

Sincerely,




[Site Map](#) | [Web Policies](#) | [Disclaimer](#) | [Department of State](#) | [Department of Treasury](#) | [General Assembly](#) | [Tennessee.gov](#)
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Source: <http://www.comptroller.tn.gov/TAG>, accessed September 17, 2013.

TABLE 2
Summary of County Website Review (15 counties)*

Feature	Number of Counties Exhibiting
Had a Website	14
Meeting Notices	12
Agendas	10
Minutes	10 (1 non-working link)
Searchable Website	6
Downloadable Data	1
Expenditures-Current	7
Expenditures-Historical	6
Graphs and Charts	6
Check Register	1
Revenues	7
Contracts	3
General Contract Information	4
Bids/Procurement Information	6 (1 non-working link)
Tax Exemptions	0
Grants	1 partial
Subsidies/Tax Credits	0
Budget-Current	9
Budget-Historical	8
Method for Feedback	9
Audits (or link)	7
Annual Financial Reports (or link)	5
Building Permits	7
How to Request Public Records	4
Accessibility provisions	5

*The following counties were selected: Grainger, Polk, Sevier, Roane, Knox, Hickman, Williamson, Wilson, Davidson, Decatur, Lake, Tipton, Dyer, Madison, and Shelby.

officials might even question the need for more online transparency, since interaction between citizens and public officials often is still face-to-face.

To get a sense of Tennessee’s local government websites, TACIR staff selected a sample of cities, counties, and school systems. Staff reviewed the websites of 15 Tennessee counties, 5 from each grand division, including 1 urban, 2 medium-sized counties, and 2 small counties; 36 Tennessee cities of various sizes, 10 in East Tennessee, 13 in Middle Tennessee, and 13 in West Tennessee. Staff also reviewed the websites of 18 Tennessee school systems.

Of the 15 counties reviewed, 14 have a county website, although some are hosted by a local organization such as the chamber of commerce rather than the government. Several counties posted information about their county commission members and meetings. Some had links to documents such as budgets or audits. Knox County was the only one reviewed with an actual “open government” portal. In early September 2013, however, Knox County updated its website and removed the open government portal. The Knox County site had previously featured many types of information including “check-book level” expenditures for some purchases, an audit hotline, capital road projects, and contracts awarded. Some of these features are still available on the site but are more difficult to find.

In all, 11 of the 36 cities reviewed had no website. Although all of the cities without a website were smaller, population did not necessarily correlate to website availability. For example, Lynnville, with a population of 287, had a site, while Huntingdon, with a population of 3,895, did not.

The Tennessee Department of Education's general counsel indicates there are no specific laws or guidelines that affect the transparency of Tennessee's school systems, although all must comply with general requirements such as the Open Meetings Act and Public Records Act. Of the 18 school system websites reviewed, all had a website. Most provided information about school board members and administrative officials. About half of the systems provided information about school board meetings. Academic information was readily available on 12 school system websites.

TABLE 3
Summary of City Website Review (36 Cities)*

Feature	Number of Cities Exhibiting
Had a Website	25
City Charters (or link)	20
Minutes	14
Meeting Notices/Agendas	12
Budget-Current	9
Budget-Historical	5
Method to contact government service providers	8
Financial Reports/Audits-Current	7
Financial Reports/Audits-Historical	6
Bids/Procurement Information	6
Visual Aids such as Graphs and Charts	3
Check Register	1 (1 month only)
Contracts	0

*The following cities were selected: Chattanooga, Bartlett, Cleveland, Spring Hill, Springfield, Red Bank, Millington, Atoka, Savannah, Sweetwater, Jonesborough, Huntingdon, Lafayette, Jasper, Monterey, Louisville, Carthage, Pegram, Lakesite, Three Way, Celina, Dover, South Carthage, Red Boiling Springs, Gainesboro, Decaturville, Bethel Springs, Rossville, Saltillo, Minor Hill, Guys, Vanleer, Parker's Crossroads, Lynnville, Oakdale, and Cottage Grove.

TABLE 4
Summary of School System Website Review (18 Systems)*

Feature	Number of School Systems Exhibiting
Had a Website	18
System Administrators	17
School Board Members	17
Board Meeting Time/Place	13
Board Meeting Agendas	9
Board Meeting Minutes	9
Academic Performance	12
Budget or Financial Statements-Current	6
Budget or Financial Statements-Historical	3
Criminal Background Check Information	5
Audits	4 (3 were special audits)
Public Records Request Procedures	0
Teacher Contracts	0
Bids/ Procurement Information	3
Tax Burden	0

*The following school systems were selected: Grainger, Polk, Sevier, Roane, Knox, Hickman, Williamson, Wilson, Davidson, Decatur, Lake, Tipton, Dyer, Madison, and Shelby Counties; Franklin Special School District, Lebanon Special School District, and Dyersburg City Schools.

Current Law

Although Tennessee laws do not specifically address government transparency, various statutes address what must, may, and cannot be disclosed to the public. The most general of these, the Public Records Act, provides broad guidance, but many departments have specific statutes that determine what they must make available to the public. Federal laws also affect website content to some extent.

State Laws—Access to Government Information

Tennessee’s Public Records Act

Tennessee first passed open records legislation in 1957 (Public Chapter 285). Tennessee Code Annotated, Section 10-7-503(a)(2)(A) directs that

all state, county, and municipal records shall, at all times during business hours, . . . be open for personal inspection by any citizen of this state, and those in charge of records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

In addition, the law applies to all records, regardless of how they are stored. Tennessee Code Annotated, Section 10-7-301(6) defines public records as

all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

In the 2013 case *McBurney v. Young*, the United States Supreme Court ruled that certain states, including Tennessee, do not have to honor public records requests from non-residents.

Specific departmental statutes

Although the Public Records Act is the primary statute affecting disclosure of public information, throughout the code there are references to various departments’ laws that require disclosure of specific types of information. Some of these require certain types of information to be posted on the state’s website. Following are examples:

- Department of Finance and Administration: out-of-state travel and expense reimbursements to the governor, cabinet members, and staff (Section 4-3-1010)
- Department of Economic and Community Development: grants and loans to businesses (Section 4-3-717)
- Secretary of State: effective rules and regulations of all agencies (Section 4-5-220)
- Department of General Services: single public internet procurement website, including a database of established contracts (Section 4-56-105)

Restricted information

Some public records are not subject to disclosure. Tennessee Code Annotated, Section 10-7-504 specifically excludes items such as documents in active criminal cases, records sealed by protective orders, medical records of patients in government-run hospitals, and documents held by the Department of Military that could affect national security. Other confidential items are named in various parts of the code. Tennessee Code Annotated, Section 4-3-730, for example, protects proprietary information and trade secrets held by the Department of Economic and Community Development. Certain federal laws such as the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) further restrict the release of certain information.

Open Records Counsel

In 2008, the General Assembly passed Public Chapter 1179 creating the Office of Open Records Counsel in the Office of the Comptroller of the Treasury to answer questions and provide information to local government officials and the public regarding public records and open meetings.¹⁰ The State Attorney General provides open records counsel to the various state departments.

Federal Laws

Federal Funding Accountability and Transparency Act

In 2006, the US Congress passed the Federal Funding Accountability and Transparency Act.¹¹ Its purpose was to make federal expenditure data available to the public in a searchable database. The act resulted in the creation of a

¹⁰Tennessee Code Annotated Title 8, Chapter 44, Part 1.

¹¹ See <http://www.gpo.gov/fdsys/pkg/BILLS-109s2590enr/pdf/BILLS-109s2590enr.pdf>.

Some public records are not subject to disclosure.

The federal government passed the Freedom of Information Act (FOIA) in 1966 to enable any person to request without explanation or justification access to existing, identifiable, and unpublished executive branch agency records.

federal spending transparency website, USASpending.gov.¹² As a result, it has provided a model for states to follow in establishing their own transparency sites.

American Recovery and Reinvestment Act of 2009 (ARRA)13

The American Recovery and Reinvestment Act (ARRA) of 2009 prompted unprecedented reporting of financial information by recipients. In order to receive ARRA funds, states were required to report every January, April, July, and October. Tennessee's site can still be found on the state's website, although the spending reports have not been updated since May 2012.¹⁴

Ryan Holeywell, writing in *Governing*, notes that

many states launched or enhanced their open government initiatives around the same time as the stimulus, drawing on both the lessons learned and technical know-how they developed as they implemented the heightened federal reporting requirements that came with ARRA. It's an impact that seems to excite watchdogs and wonks more than the politicians who bicker over the economic impact of the spending.¹⁵

Freedom of Information Act (FOIA)

The federal government passed the Freedom of Information Act (FOIA) in 1966 to enable any person to request without explanation or justification access to existing, identifiable, and unpublished executive branch agency records. The FOIA itself, however, does not apply directly to state and local governments. The FOIA also exempts nine categories of records including certain information classified as secret for national defense or foreign policy purposes, certain trade secrets and commercial or financial information, and geological and geophysical information and data.¹⁶

¹² See <http://usaspending.gov/>.

¹³ See <http://www.gpo.gov/fdsys/pkg/BILLS-111hr1enr/pdf/BILLS-111hr1enr.pdf>.

¹⁴ See <http://www.tnrecovery.gov/>

¹⁵ Holeywell 2012.

¹⁶ 5 U.S.C. Section 552(b).

What are others doing?

National Organizations

At least six national organizations focus on various aspects of government transparency. Four of them rate state or local government websites according to features that match each organization's criteria for transparency: the US Public Interest Research Group (US PIRG), the Sunshine Review,¹⁷ the Center for Digital Government, and Good Jobs First. The other two, the Sunlight Foundation and the Association of Government Accountants (AGA), have promulgated useful transparency standards but do not rank states. In addition, the American Legislative Exchange Council (ALEC) has promoted model transparency legislation. Table 5 illustrates the similarities and differences among these organizations.

US PIRG addresses the website transparency of states and very large cities but not counties or school districts. US PIRG has developed a set of criteria for government websites referred to as "Transparency 2.0." Government websites score well when they provide a user-friendly portal to search detailed information about government contracts, spending, subsidies, and tax expenditures for all government entities. They must also allow users to track online how well public officials respond to requests about quality-of-life services. US PIRG strongly emphasizes "checkbook" level spending. Users must be able to search all government expenditures on a single website and sort government spending data by recipient, amount, granting agency, purpose, and keyword. Users must also be able to download data to conduct detailed offline analyses.¹⁸

US PIRG's 2013 publication, *Following the Money: How the 50 States Rate in Providing Online Access to Government Spending Data*, gives Tennessee a C and lists it among "emerging states, an improvement over its 2012 score." Only Texas received an A from this organization; Kentucky, Massachusetts, Florida, Illinois, Michigan, and Oklahoma received A-minuses. Comments for Tennessee indicate that its website received credit for "grants and economic development incentives" because incentives awarded to private entities are included. (These features can be found on the webpage of the Department of Economic and Community Development but are not clearly linked from the homepage.)¹⁹ The state's website received one point for "feedback" because visitors are invited to give feedback, but contact information is not provided. US PIRG's ratings for all states are shown in table 6.

¹⁷Note: As of July 1, 2013, Sunshine Review has merged with Ballotpedia.

¹⁸US PIRG Education Fund 2013 Transparency in City Spending, 5.

¹⁹See http://www.tn.gov/e cd/CD_grants_loans_division.html.

Tennessee received a C for transparency in 2013, an improvement over 2012, from the US Public Interest Research Group.

TABLE 5
Comparison of Transparency Criteria Among National Organizations

Feature of Website	Organizations that Rate Transparency				Organizations Promoting Transparency Models		
	US PIRG 2013	Sunshine Review	Center for Digital Gov't.	Good Jobs First	Sunlight Foundation	AGA	ALEC
General Items							
Single Transparency Website	X						
Searchable	X	X		X			X
Downloadable	X				X		X
Ease of access or use	X	X		X	X	X	X
Feedback Method	X						
Helpful Graphs and Charts				X		X	X
Public Records Request Directions		X					X
Prior Year Reports Maintained	X	X (3 yrs.)		X	X		X (3 years)
Timeliness	X				X		at least monthly
Demographics			X			X	
Non-discriminatory access					X		
Specific Items							
Elected and Appointed Officials		X					X
Public Meeting Documents		X					X
Ethics		X					X
Budget	X	X					X
Local Ordinances and Rules		X					X
Financial Reports	X					X	X
Checkbook-level spending data	X	X					X
Expenditures	X	X				X	X
Revenues		X					X
Taxes and Fees		X					X
Tax Expenditures/Subsidies	X			X			
Grants	X	X					X
Audits (financial, performance, special)		X				X	X
Employee Compensation							X
Contracts	X	X (>\$10,000)					X
Vendor Campaign Contributions							X
Service Requests	X						
Lobbying/advocacy		X					X
Outcome Measures			X	X		X	

TABLE 6
US Public Interest Research Group’s Leading, Advancing, Emerging, Lagging and Failing States 2013

Category	Transparency Grade	States
Leading states	A	Texas
	A-	Kentucky, Massachusetts, Florida, Illinois, Michigan, Oklahoma
Advancing states	B+	Oregon, Utah, Nebraska
	B	Arizona, Iowa, Pennsylvania
	B-	Washington, New Hampshire, Virginia
Emerging states	C+	Georgia, Vermont, Connecticut, Indiana
	C	Missouri, West Virginia, Maryland, Mississippi, New Mexico, New York, South Carolina, Tennessee, Idaho, Louisiana, Minnesota, New Jersey, South Dakota
	C-	Arkansas, Kansas, Alabama, Maine, Delaware
Lagging states	D+	Alaska, Nevada, Ohio, Colorado
	D	North Carolina, Montana
	D	Rhode Island
Failing states	F	Wyoming, Wisconsin, Hawaii, California, North Dakota

Source: US PIRG Education Fund 2013.

In 2012, US PIRG rated 30 of the nation’s largest cities using criteria similar to its state government study and praised websites that were “encompassing, one-stop, and one-click.” Unfortunately, because of the method by which the cities were selected, none of Tennessee’s cities were included. Nevertheless, some of the report’s findings are instructive for Tennessee cities. The report focuses on city government interactions with non-government entities: contracting, subsidies, financing, and service requests.

The Sunshine Review also rates all states on government transparency. In 2013, the review gave Tennessee’s state government a B, noting that information was available in the categories of budget, usability, elected officials, administrative officials, ethics, audits, contracts, lobbying, public records, and taxes. The Sunshine Review checklist for states includes

- current and archived budget information,
- graphs showing spending and revenue over time,
- check register availability,
- high website functionality,

Tennessee's five largest counties averaged a B-minus for transparency in 2013 according to the Sunshine Review.

- administrative and elected officials' contact information,
- audit reports,
- contract rules; bids over \$10,000,
- elected officials' terms, party affiliation, committee appointments and voting records,
- contact information for public records requests,
- grants to non-profit organizations, and
- information about state-paid lobbying activity and a database of registered lobbyists.

Tennessee received ratings of “incomplete” for information about contracts and lobbying. States earning the highest grades were California, Illinois, Maryland, Pennsylvania, Texas, Virginia, and Washington. California’s governor, however, has since removed its transparency website and refers visitors to various state departments for information.^{20 21}

In May 2013, the Sunshine Review evaluated the websites of the five largest counties in each of the 45 states that have active county governments. The Tennessee counties that follow averaged a B-minus, although individual county scores ranged from A-minus (Knox and Shelby) to D (Rutherford):

- Davidson B-
- Hamilton C-
- Knox A-
- Rutherford D
- Shelby A-

In 2009, the Sunshine Review evaluated all Tennessee counties and awarded grades ranging from A-minus to F. Only 14 Tennessee counties scored a C or better; the majority received Fs. Shelby County was the only county to receive an A-plus; Knox and Wilson each received an A-minus.²² The Sunshine Review checklist for counties and cities includes

²⁰ Sunshine Review 2013, 20-21. http://sunshinereview.org/images/0/06/2013_Transparency_Report_Card.pdf.

²¹ California Executive Order B-12-11. 2011.

²² Sunshine Review 2012 and 2009. Evaluation of Tennessee County Websites.

- current budget information,
- minutes of open meetings,
- elected officials' voting records,
- building permit and zoning information,
- audit reports,
- contracts for purchases over \$10,000,
- tax documents for all elected officials,
- agencies revenue sources,
- government expenditures,
- contracts, and
- grants and assistance.²³

The Sunshine Review's 2013 Transparency Report Card concludes that, nationwide, "school districts have the most dismal grades with just 20% of school districts scoring a B or above."²⁴ That organization's criteria for items included on a school district's website are similar to those identified for other types of governments:

- Taxes
- Budget
- Meetings
- Elected Officials
- Administrative Officials
- Contracts
- Audits
- Public Records
- Academics
- Background Checks²⁵

²³ Sunshine Review Report Card 2013, 21-22.

²⁴ Ibid. 4.

²⁵ Sunshine Review 2012. Evaluation of Tennessee School District Websites.

School districts have the most dismal grades for transparency with just 20% of school districts scoring a B or above according to the Sunshine Review's 2013 Transparency Report Card.

In May 2012, the Sunshine Review rated Tennessee's 11 largest school systems. Scores ranged from Bs (Hamilton, Knox, Montgomery, Shelby, and Sumner) to Fs (Jackson-Madison, Sevier and Memphis).²⁶ Metropolitan Nashville, Rutherford County, and Williamson County school systems received C-minuses.

The Sunlight Foundation, another organization that advocates for openness in government, has developed 10 principles to empower the public's use of government-held data:

- **Completeness**—Datasets should be as complete as possible including raw information (except if prohibited by law), formulas, and explanations for calculations.
- **Primacy**—Data should be the original data collected along with original source documents.
- **Timeliness**—Datasets should be released as quickly as data is gathered and collected with real-time updates.
- **Ease of physical and electronic access**—Data should be easy to obtain, whether physically or electronically, without specific requests or use of browser-oriented technologies.
- **Machine readability**—Information should be stored in widely used file formats that easily lend themselves to machine processing.
- **Non-discrimination**—Any person should be able to access data at any time without having to provide identification or justification.
- **Use of Commonly Owned Standards**—Using freely available formats that do not require a software license can make data available to a wider pool of potential users.
- **Licensing**—Public information should be clearly labeled as work of the government and available without restrictions.
- **Permanence**—Information released by the government should remain online, with appropriate version tracking and archiving over time.
- **Usage Costs**—Imposed fees for access should be avoided so as not to limit the pool of those willing or able to access information.²⁷

The Sunlight Foundation does not rate or rank states' transparency.

²⁶ Memphis City Schools merged with Shelby County Schools effective July 1, 2013.

²⁷ Sunlight Foundation 2010.

Good Jobs First focuses on disclosure of economic development incentives such as tax credits and subsidies awarded to corporations by governments. This group gave Memphis/Shelby County's non-profit Economic Development Growth Engine for Memphis and Shelby County (EDGE) a perfect score for disclosure of payments in lieu of taxes in 2012.²⁸

The Digital States Survey, administered annually by e.Republic's Center for Digital Government, evaluates states against criteria including, "implementations that support state priorities and policies to improve operations or services, quantifiable hard and soft-dollar savings or benefits, progress over the last two years, innovative solutions or approaches, and effective collaboration." Tennessee's website, TN.gov, was ranked first in the nation in the 2013 competition.²⁹ The Digital States Survey, however, emphasizes factors somewhat different from those of the US PIRG and the Sunshine Review.

The Association of Government Accountants (AGA) focuses primarily on presentation of financial data. AGA has promulgated 4 basic guidelines for government financial statements. They should be

- clear and understandable,
- updated regularly and often,
- delivered to all and easy to locate, and
- honest in breadth and technically accurate in detail.

AGA has also developed a "Citizen-Centric" report model for presentation of public financial information.³⁰ The Citizen-Centric reports are four pages arranged as follows:

Page 1: Strategic Objectives. This page addresses what a government is chartered to do and includes demographics about the government entity, such as per capita income, number of government workers, unemployment rates, and ingress and egress of people and firms.

Page 2: Performance Report on Key Missions and Service. This page addresses key responsibilities, services, and progress toward desired outcomes.

²⁸ See <http://growth-engine.org/archive/>.

²⁹ Grenslitt 2013.

³⁰ Association of Government Accountants 2013.

The Digital States Survey ranked Tennessee's website, TN.gov, first in the nation for 2013.

Tennessee has voluntarily moved toward greater transparency without a specific law or directive.

Page 3: Costs for Serving Citizens and How Paid For. This page includes revenue and cost information and combines this information with some of the measures from page 2 to get costs per capita for various services.

Page 4: Challenges Moving Forward. This page includes items specific to a particular community, such as tax cuts or increases, changes in major employers, infrastructure needs, etc.

In 2008 and 2010, AGA commissioned surveys on public attitudes about government accountability and transparency. Based on the results, AGA cites a need for improved interpretation of government financial reports for the public:

Identified problems with governments' desire to share information and their competence in actually doing so has resulted in a system at federal, state, and local levels that disappoints and breeds mistrust. The implication is clear—traditional forms of communicating financial information to taxpayers is not working . . . traditional government financial communications—reams of audited financial statements that, though essential, have little relevance to the taxpayer—must be supplemented by government financial reporting that expresses complex financial details in an understandable form.³¹

Other States

As of May 31, 2013, the National Conference of State Legislatures (NCSL) indicates that 35 states have passed legislation requiring a central, searchable website that provides public information about state expenditures or state contracts.³² The others, including Tennessee, have voluntarily moved toward greater transparency without a specific law or directive.

To identify common characteristics of highly rated transparency websites, TACIR staff reviewed the transparency legislation and websites of the seven states that had achieved an A or A-minus by US PIRG: Texas, Florida, Illinois, Kentucky, Massachusetts, Michigan, and Oklahoma. All had transparency legislation, but the actual website content exceeded the statutory requirements. Table 7 summarizes common characteristics.

³¹ Association of Government Accountants 2008 and 2010.

³² National Conference of State Legislatures. 2013.

TABLE 7 Transparency Features for Seven Comparison States and Tennessee		
Feature	Number of Comparison States Exhibiting Feature	Does Tennessee have this?
Single Transparency Site	4	no
Available on State's Homepage	6*	yes
Searchable	7	no
Downloadable	6	no
Expenditures-Current	7	yes
Expenditures-Historical	7	yes
Graphs and Charts	7	no
Check Register	7	yes
Revenues	6	yes (in CAFR)
Contracts	6	no
Tax Credits & Exemptions	6	yes (ECD page)
Grants	1	no
Budget-Current	7	yes
Budget-Historical	7	yes
Employee Salaries	6	yes
Links to City & County Spending	3 (1 more in progress)	partial
CAFR	7	yes
Higher Education Included	2 +3 partial	no
K-12 Education Included	2 + 3 partial	no
Feedback Method	7	yes
Public Records Request Info.	5	yes
Lobbyists	4	yes (Secretary of State)
Leases & Concessions	0	no

*Note that 3 are available only from the governor's page.

The review of these seven states and their sites revealed other characteristics that might inform Tennessee policy makers:

- Florida and Illinois had multiple transparency websites operated by different public officials. Illinois successfully linked their two sites (legislative and executive), while Florida's four sites were extremely confusing for those unfamiliar with how the state and its websites are organized. Oklahoma has two open government sites, both operated by the Office of Management and Enterprise Services. One (Oklahoma OpenBooks) has general, user-friendly information about the state government. The second (Data. Ok.Gov) has multiple datasets for more detailed research. Three sites could be found easily from the state's home page; three had to be accessed from the Governor's page, and one did not have a clear link on the home page.

Some states have specific transparency requirements for school systems.

- In five states, the sites were run by the executive branch. Kentucky’s is a joint effort of all three branches of government; Illinois links executive and legislative branches together.
- Two states, Florida and Texas, had advisory committees.

Some states have specific transparency requirements for school systems. For example, Texas specifies many disclosure requirements for its school systems through its Education Code. A manual published by the Texas School Boards Association spells these out. The manual’s introduction summarizes the requirements:

School boards must post all of their governance policies on line, regularly provide parents with information about their children’s and schools’ academic performance, and provide the public with a myriad of notices about the financial status of the district. Furthermore, districts must report hundreds of detailed academic, financial, demographic, and personnel data to the Texas Education Agency (TEA), which are posted for public scrutiny on TEA’s website.

Michigan’s Revised School Code Section 380.620 requires intermediate school districts³³ to post a long list of items on their websites, including budgets; numbers of students and employees; numbers of public school academies and nonpublic schools; travel expenses of administrators and board members; contracts; payments for lobbyists, legal services, and public relations; and administrative costs.³⁴

What does the proposed legislation require?

The 107th General Assembly referred two government transparency bills to TACIR for study. Senate Bill 2831 (Ketrone) [House Bill 3327 (Carr)], known as the Taxpayer Transparency Act, would require the state Department of Finance and Administration to “create and maintain a searchable budget database website detailing where the money is spent, for what purpose, and what results are achieved for all taxpayer investments in state government.” Specifically, the state would be required to post on its website

³³ In the early 1960s, Michigan encouraged small county districts to merge with larger ones. Today the state has 56 intermediate schools districts, many of which comprise two or more former county districts. See <http://wash.k12.mi.us/adminandcommdept/stateisdlist.php>.

³⁴ See [http://www.legislature.mi.gov/\(S\(n1uboj454brddsicrkloej55\)\)/mileg.aspx?page=getobject&objectname=mcl-380-620](http://www.legislature.mi.gov/(S(n1uboj454brddsicrkloej55))/mileg.aspx?page=getobject&objectname=mcl-380-620).

- all elective offices in the executive and legislative branches of government;
- higher education;
- state departments, offices, boards, commissions, bureaus etc. (including those that cross agency lines);
- identity of recipients of funds (excluding individual recipients of state assistance);
- amount expended, funding or expending agency;
- funding source of revenue;
- budget program or activity, purpose;
- expected performance outcome, past performance outcomes achieved for funding action or expenditure;
- any state audit or report relating to the entity or recipient of funds; and
- other relevant information specified by the Department of Finance and Administration.

This bill was referred to TACIR by the Senate Finance, Ways and Means Committee.

House Bill 3328 (Carr) [Senate Bill 2832 (Ketrone)], known as the Local Government Transparency Act, would require each county, city, and school system to have a single, searchable expenditure and revenue database accessible from the main website page that includes

- contact information for all elected and appointed officials;
- annual budget ordinances and appropriation ordinances;
- procedures for building permits and zoning variances;
- budgets, audits, CAFRs, performance audits, reports, including actual revenues and expenditures for previous fiscal year;
- sources of revenue (local, state, and federal);
- types of expenditures (current, operating, capital, and debt service);
- per-resident expenditures compared to other local governmental bodies;

The decentralized structure of Tennessee’s network of public higher education institutions would make incorporating higher education information into Tennessee’s Open Government site difficult.

- per-pupil calculation based on full-time equivalent enrollment for school districts;
- detailed list of taxes and fees;
- ordinances, resolutions, and rules governing award of bids and contracts of \$25,000 or more; and
- all bids and contracts in the amount of \$25,000 or more.

This bill was referred to TACIR by the House State and Local Government Subcommittee.

The sponsors indicate that both bills were based on model legislation by the American Legislative Exchange Council (ALEC). The ALEC bills, however, include requirements beyond those in the proposed legislation.

Higher Education

Tennessee’s proposed Taxpayer Transparency Act included higher education in its requirements. The decentralized structure of Tennessee’s network of public higher education institutions would make incorporating higher education information into Tennessee’s Open Government site difficult.

Dale Sims, vice president for business and finance for the Tennessee Board of Regents (TBR), indicates that each of the 6 TBR universities and 13 community colleges has its own information system, which includes modules for human resources, payroll, finance, students, and financial aid. These systems do not include contracts. In addition to the universities and community colleges, the 27 Tennessee Colleges for Applied Technology (TCATs) have various administrative affiliations with community colleges that act as their lead institutions for functions such as payroll, vendor payments, and budget preparation. Additionally, the TCATs have separate student information systems hosted by a software provider; the lead institutions play no role in this aspect of TCAT operations. Sims indicates that they hope to centralize the system at some point.

The University of Tennessee (UT) has fewer institutions and handles more financial information centrally than does TBR. Charles “Butch” Peccolo, the university’s chief financial officer, indicates that all of its campuses use the same enterprise system, although it does not include student or alumni donor information. Contracts also are not online.

What makes for a good open government website?

A good government website should reflect the overall functions, responsibilities, and performance of the government. In presenting that information, however, officials responsible for the website should strive to determine what information people want most and then present it in a way that facilitates access and understanding. Websites should be comprehensive, understandable, and usable but implemented with the least possible cost.

Comprehensiveness

Decisions about what and how much information to include on government websites should be based on community needs and the desire of others to know what their governments do and how they are funded. Ideally, information should be complete, accurate, timely, and should reflect the crucial functions of each particular government. Websites of large governments with many people and functions need to be more complex; those of smaller governments with fewer people and functions need to be simpler. Websites typically might include

- financial information, such as taxes, expenditures, and budgets;
- information about governing bodies (members, where and when they meet, agendas, and minutes);
- regulatory information if applicable, such as inspection reports and disciplinary actions; and
- permits and fees (requirements, costs, and instructions to obtain).

Understandability

Although posting complex government documents is a step in the right direction, officials should consider whether ordinary people can understand the content. More information does not necessarily create transparency. Explaining how to use these documents and providing illustrative aids such as maps, tables, and graphs can help users better understand the information that is presented. Using plain language, defining terms, and illustrating how to use the website and access information is essential to making it easy to understand.

Usability

Government websites need to be user-friendly and need to make sense to people who don't work within government and may be unfamiliar with the structure and responsibilities of all of the agencies and departments. Ideally,

Decisions about what and how much information to include in government websites should be based on community needs and the desire of others to know what their governments do and how they are funded.

Although some states have incurred large costs to make transparency a priority, others, including Tennessee, have increased government transparency incrementally without incurring large additional costs.

users should be able to see what is available easily and navigate to what they want with as few clicks as possible. Douglas County, Colorado’s site is an example of an A-plus local government website on the Sunshine Review scale. The county’s website has a tab on its home page called “Transparency” which leads to a page with a row of tabs clearly labeled “Financial, Land Use, Public Meetings, Community Connections, Lobbying, Elections, Open Records and Policies.”³⁵

It’s important to remember that usability is in the eye of the beholder. For example, if someone wants to know the number of traffic fatalities in a given year, it is more user-friendly to give them the total than to give them access to a list of individual accident reports that they would need to total themselves. On the other hand, if a researcher wants to analyze traffic fatality data for causes and location, a simple total is not sufficient.

Cost

The cost to improve government transparency in large part depends on what information is already collected, the sophistication of websites, and how much effort is needed to add and maintain information. According to a recent survey by Oracle and the National Association of State Auditors, Comptrollers, and Treasurers (NASACT), many state and local governments are still using old, siloed information technology systems and antiquated manual methods. To make matters worse, recent budget reductions have hampered their ability to modernize these systems.

Although some states have incurred large costs to make transparency a priority, others, including Tennessee, have increased government transparency incrementally without incurring large additional costs. The US PIRG 2013 survey found that 22 states had created transparency websites within their existing budgets. For those that incurred additional start-up costs, amounts ranged from \$1,600 to \$2.2 million, although some of these were part of larger technology upgrades. Annual operating costs ranged from “existing budget” to \$431,000. The Mercatus Center of George Mason University estimates the average actual cost for state transparency websites at \$140,000. Likewise, the cost for local governments varies widely. According to US PIRG, Baltimore and San Francisco—two cities rated as comprehensive and user-friendly—spent \$24,000 and \$30,000 respectively, while Sacramento and Seattle spent \$50,000 and \$45,000 respectively.³⁶

³⁵ See <http://www.douglas.co.us/transparency/>.

³⁶ US PIRG 2013.13-14.

States and their governments are not alike. Consequently, policy makers should use caution in comparing states without considering other factors. For example, Arizona has a state-level audit division devoted solely to annual school district audits and provides standard information about school spending.³⁷ States without that function cannot do that. Similarly, states have adopted and implemented various kinds of performance reporting processes that may generate outcome data that is not necessarily comparable.³⁸

Policy makers also may need to consider what other government services they must give up to provide increased public access to various public records. The director of Colorado's Statewide Internet Portal Authority, cited in *Governing*, puts it this way:

The average citizen would think these are fundamental services that governments already are supplying and funding. But if you're doing zero-sum budgeting, even small amounts of technology spending mean a city council may need to cut somewhere else.³⁹

The sophistication of a government's website may also be a factor. Although probably not an impediment for the state government, some of Tennessee's smallest counties and municipalities lack both website and trained staff. As a result, they could face greater challenges when implementing government transparency laws. The cost of transparency includes website development and staff to make it more generally understandable and keep it current.

Cost alone should not be the only consideration. Benefits, including cost savings, should be considered as well. Montgomery County, Maryland, an urban county located between Washington, DC and Baltimore, recently announced a comprehensive initiative to place several kinds of public information online, including employee salaries, annual budgets, and property tax data. Officials hope to spur commerce by providing companies with greater information and make it easier for residents to reach county agencies. Projected costs for the Montgomery County effort include \$1 million in start-up costs and \$700,000 annually to maintain.⁴⁰

Policy makers may need to consider what other government services they must give up to provide increased public access to various public records.

³⁷For more information, see Arizona Auditor General, Division of School Audits, <http://www.azauditor.gov/pastDSA.htm>.

³⁸Note that Public Chapter 243 of 2013 establishes new strategic planning and performance reporting for Tennessee agencies.

³⁹Towns, 2011, p. 1.

⁴⁰Zapana, 1.

Alternatives for improving government transparency can be seen as a continuum from modest, voluntary alterations to comprehensive, mandatory changes.

What are the options?

Alternatives for improving government transparency can be seen as a continuum from modest, voluntary alterations to comprehensive, mandatory changes. The appropriate choice for any given community will depend on the size and complexity of its government, the services it provides, the resources available to change the information reported, and the desires of its residents and citizens. It will also depend on the needs and wishes of the community. Different communities may want more or less transparency and therefore will be willing to spend more or less money. Those aspiring to meet standards set by national organizations such as US PIRG will want to go beyond the alternatives submitted here.

Allowing the state and local governments to continue making incremental changes as they can is an option. Many have improved transparency without being required to do so. Transparency can and has been adopted voluntarily as a goal in concert with other planning efforts to improve processes and information technology systems. It's reasonable to expect that many government agencies will continue to improve transparency, but these improvements will likely be inconsistent across the state. Tennessee's state government website may continue to fall in the mid-range of states for transparency and our local governments' transparency efforts may continue to run the gamut from well-developed transparency portals to no website at all. Functionality and usefulness will vary greatly. Taking this approach, however, would require no additional spending and would leave decisions about improving transparency to communities and their leaders.

Stakeholder Task Force

Since different users want and need different types of information from and about the government, it would be beneficial for the state to create a statewide stakeholder task force to define standards and advocate for transparency in Tennessee. While implementation of the standards would be voluntary, such standards would create a yardstick that allows communities to measure the adequacy of their transparency efforts. The task force should include representatives of various interests, such as citizens, businesses, educational institutions, interest groups, and all levels of government, to ensure that any guidelines adopted include the full range of information that people want. It should also include information technology professionals so that system capabilities and limitations are fully considered. This task force need not be permanent, but other states, including Utah, Florida, and Kansas, have permanent oversight boards or advisory committees to govern their transparency efforts. Such boards usually include the heads of agencies

responsible for the website and its content. The Kansas advisory committee also includes members of the public.

While most transparency advocates focus on financial information, the task force and the governments themselves should ask what other information people want or need. People concerned about growing rates of incarceration, for example, might seek data on sentencing and commitments to prisons. Environmentalists might seek pollution data. Business people dependent on tourist dollars might seek visitor data. For a variety of reasons, the public may seek many kinds of information maintained by the government. In short, all entities paid for with public funds and performing functions on behalf of the public have some obligation to be transparent.

Depending on both the effectiveness of the group and the inclination of governments to implement their recommendations, the task force's recommendations could improve the comprehensiveness of the information available to the public. Having the suggestions of end users would also likely lead to more usable features. The cost of the task force should be minimal, and the cost of implementing any recommendations would be determined by the governments and communities. Regardless of any other alternatives pursued, the creation of the stakeholder task force would be beneficial.

Making Better Use of Existing Information

Much useful government information is already available online; it's just not always easy to access. The state could improve its open government website by providing more links to information maintained by its various agencies. For example, several agencies, including the Department of Commerce and Insurance and the Department of Environment and Conservation, post information about licenses and permits granted and the regulatory actions of their boards and divisions. This information should be accessible through the state's Open Government website. Various state agencies also maintain databases with information about Tennessee's local governments. For example, many city charters are posted on the University of Tennessee's Municipal Technical Advisory Service (MTAS) website, county audits are posted on the Comptroller of the Treasury's website, and report cards for school systems are posted on the Department of Education's website. The Comptroller's Division of Property Assessment posts information from the property tax rolls of nearly every county and links to websites for the others. The State Board of Equalization's website reports certain payments-in-lieu-of taxes by county.⁴¹ Legislation could establish guidelines for how this information should be presented and either require or encourage every government to provide links

⁴¹See <http://www.comptroller.tn.gov/SBOE/idbsumm.asp>.

All entities paid for with public funds and performing functions on behalf of the public have some obligation to be transparent.

Much useful government information is already available online; it's just not always easy to access.

Legislation could establish a list of basic information that should be accessible by the public.

to such information. Local governments that already maintain websites could add these links to the required information. Those that do not may need assistance, or it may be necessary to create rudimentary websites for them that contain these links. Agencies such as the University of Tennessee’s County Technical Assistance Service (CTAS) and MTAS could assist by creating website templates that meet the guidelines.

This alternative would improve the consistency and comprehensiveness of information and would likely improve understandability and usability. Making this alternative mandatory would probably increase costs for governments without websites but not for those that already have them. Still, this relatively low-cost option could improve the explanation and interpretation of government information.

Establishing Minimum Transparency Requirements

Legislation could establish a list of basic information that should be accessible by the public and then either encourage or require every governmental entity to make that information available. Such a list should include information about elected and appointed officials; agendas and minutes from meetings of councils, commissions, and boards; and fiscal information such as budgets, financial reports, audits, and tax expenditures—as well as regulatory information, including licenses, permits, complaints, and other regulatory actions. School systems’ websites should include the report cards issued by the Department of Education. In addition, all government websites should include instructions for submitting open records requests.

Like the previous option, this alternative would improve the comprehensiveness and consistency of information posted on state and local government websites. Depending on how information is presented, it could be more understandable and usable. Cost would depend on the extent to which governments already provide this information.

Proposed Legislation

Senate Bill 2831 (Ketrone) [House Bill 3327 (Carr)] and House Bill 3328 (Carr) [Senate Bill 2832 (Ketrone)] would in some ways be more comprehensive than the previous option—digging deeper into financial data—but would be less comprehensive in other ways. For example, these bills do not include regulatory information, which may be of greater interest to many people. Both bills require such features as searchability, historical data and trends, “checkbook level” expenditures, contracts, and audit reports.

These bills could increase understandability and usability depending on how the information is presented, though the sheer amount of information required may overwhelm some users and make it more difficult to find and use the information they desire. Moreover, features such as searchability make this a costly alternative. Even so, possible cost savings through more efficient operations could result from transparency improvements.

Most Tennessee governments would need to upgrade their technology and hire additional information technology personnel to meet these requirements. Many governments do not have the databases needed to feed such a system or the staff needed to maintain those databases and create interfaces to them. The fiscal note for the state-level bill (Senate Bill 2831/House Bill 3327) estimated one-time expenditures exceeding \$250,000 and annual expenditures of more than \$150,000 thereafter. These estimates do not include costs that would be incurred by the state's higher education systems. Chief of Accounts Jan Sylvis indicates that the Department of Finance and Administration has tried to improve transparency without incurring additional costs and intends to make their data searchable by 2014.

Local government costs are more difficult to estimate because both the governments and their websites vary widely in scope and sophistication. The fiscal note for the local government bill (House Bill 3328/SB 2832) estimated total one-time expenditures of \$7,075,500 and annual expenditures of \$3,476,400 thereafter. Estimates included the cost of developing and maintaining a website for those local governments that did not have one as of January 2012. All of these estimates assumed that all local governments were starting at the same point, though several already have some of the required features. Comptroller staff, who prepared the estimates for the Fiscal Review Committee, noted that costs could be considerably less if searchable databases were not required. If searchable PDF files were used instead, they estimated initial costs of \$591,750 and \$655,400 each year thereafter.⁴² Fiscal Review staff noted that the counties' constitutional structure, with its multiple independent elected officials, impedes having central county websites, although several counties do. Connectivity is a problem in many parts of the state. Although it has steadily improved, some areas are still considered "underserved" or "unserved" by Connected Tennessee.⁴³ Some of the costs of enacting the proposed legislation could be mitigated by providing technical assistance through CTAS, MTAS, or other organizations.

⁴²This estimate assumes that development costs would be shared among counties, but annual maintenance costs would not.

⁴³See <http://www.connectedtn.org/learn>.

Most states have clauses in their transparency laws prohibiting disclosure of information already held by law to be confidential.

At least some of Tennessee's larger communities have already implemented transparency features such as those required in the legislation. Knox County Finance Director Chris Caldwell indicates that having more information available can be accomplished with little additional burden because the county already has full-time staff who handle their website and e-government functions.

Privacy and Security Considerations

State and local governments maintain databases of various information that laws deem confidential. The release of data might be restricted for reasons of security, safety, individual privacy, or corporate proprietary protections. Regardless of the approach used to improve government transparency, care should be taken to protect this information. Most states have clauses in their transparency laws prohibiting disclosure of information already held by law to be confidential. Beyond statutory requirements, policy makers should consider whether anyone might be unintentionally harmed by the disclosure of information and whether or not the format would be easily understood by the average citizen.

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Appendix A: Government Transparency Legislation

SENATE BILL 2831

By Ketron

AN ACT to amend Tennessee Code Annotated, Title 9, Chapter 4, Part 51, to enact the "Taxpayer Transparency Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 9, Chapter 4, Part 51, is amended by adding the following language as a new, appropriately designated section:

9-4-5117.

(a) This section shall be known and may be cited as the "Taxpayer Transparency Act".

(b) The general assembly finds that Tennessee's taxpayers should be able to easily access the details on how state government is spending their tax dollars and what performance results are achieved for those expenditures. It is the intent of the general assembly, therefore, to direct the department of finance and administration to create and maintain a searchable budget database web site detailing where, for what purpose and what results are achieved for all taxpayer investments in state government.

(c) As used in this section:

(1) "Agency" means a state department, office, board, commission, bureau, division, institution, or institution of higher education. "Agency" includes individual state agencies and programs, as well as those programs and activities that cross agency lines. "State agency" includes all elective offices in the executive and legislative branches of government;

(2) "Commissioner" means the commissioner of finance and administration;

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(3)

(A) "Entity or recipients" means a:

- (i) Corporation;
- (ii) Association;
- (iii) Union;
- (iv) Limited liability company;
- (v) Limited liability partnership;
- (vi) Other legal business entity, including non-profit;
- (vii) Grantee;
- (viii) Contractor; or
- (ix) County, city or other local government entity;

(B) "Entity or recipients" does not include an individual recipient of state assistance;

(4) "Funding action or expenditure" includes details on the type of spending (grant, contract, appropriations, etc.). This includes tax exemptions or credits. Where possible, a hyperlink to the actual grants or contracts shall be provided;

(5) "Funding source" means the state fund or account the expenditure is appropriated from;

(6) "Searchable budget database web site" means a web site that allows the public at no cost to search and aggregate information for the following:

(A) Name and principal location or residence of the entity or recipients of funds;

(B) Amount of funds expended;

- (C) Funding or expending agency;
 - (D) Funding source of the revenue expended;
 - (E) Budget program or activity of the expenditure;
 - (F) Descriptive purpose for the funding action or expenditure;
 - (G) Expected performance outcome for the funding action or expenditure;
 - (H) Past performance outcomes achieved for the funding action or expenditure;
 - (I) Any state audit or report relating to the entity or recipient of funds or the budget program/activity or agency; and
 - (J) Any other relevant information specified by the department of finance and administration; and
- (7) "State audit or report" includes any audit or report issued by the comptroller of the treasury, fiscal review or other committee, or executive body relating to the entity or recipient of funds or the budget program or activity or agency.

(d) By January 1, 2013, the commissioner shall develop and make publicly available a single, searchable budget database web site, including the required data for fiscal year 2012-2013.

(e) Effective July 1, 2013, the searchable budget database web site shall be updated for each fiscal year not later than thirty (30) days following the close of the fiscal year. In addition, the commissioner may update the searchable budget database web site as new data becomes available. All state agencies shall provide to the commissioner all data that is required to be included in the searchable budget database web site not later than thirty (30) days after the data becomes available to the agency.

The commissioner shall provide guidance to agency heads to ensure compliance with this section.

(f) The commissioner shall ensure that all data added to the searchable budget database web site remains accessible to the public for a minimum of ten (10) years.

(g) The commissioner shall not be considered in compliance with this section if the data required for the searchable budget database web site is not available in a searchable and aggregate manner or if the public is redirected to other government web sites, unless each of those sites has information from all agencies and each category of information required can be searched electronically by field in a single search.

SECTION 2. This act shall take effect July 1, 2012, the public welfare requiring it.

HOUSE BILL 3328

By Carr

AN ACT to amend Tennessee Code Annotated, Title 5;
Title 6; Title 7 and Title 49, to enact the "Local
Government Transparency Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Local Government
Transparency Act".

SECTION 2.

(a) Beginning July 1, 2014, each county, city and school district shall post on its
web site the following information:

(1) Contact information, including the phone number and e-mail address,
for all elected and appointed officials, including the head of each department and
the public records custodian;

(2) Annual budget ordinances and appropriation ordinances;

(3) The procedures required to apply for building permits and zoning
variances;

(4)

(A) Any budget, financial audit, audit schedule, or special project
report, including without limitation the comprehensive annual
financial report, performance audits, and reports required by law;

(B) All such reports shall include the following:

(i) All actual revenues and expenditures for the previous
fiscal year. Any report focusing on any subset of total should
specify that only partial amounts are shown and identify the total
amount and the nature of items not included in the report;

- (ii) Revenues should be broken out by source, including the broad categories of local, state and federal tax dollars;
- (iii) Expenditures should be separated into current operating, capital and debt service; and
- (iv) Expenditure summaries for local units of government should reflect the per-resident calculation for comparison to other local governmental bodies. For school districts, a per-pupil calculation should be made based on full-time equivalent enrollment;

(5) A detailed list of the taxes and fees imposed by the city, county or school district;

(6) Ordinances, resolutions and rules governing the award of all bids and contracts for purchase in the amount of twenty-five thousand dollars (\$25,000) or more; and

(7) All bids and contracts for purchase in the amount of twenty-five thousand dollars (\$25,000) or more.

(b)

(1) Beginning July 1, 2014, each county, city and school district shall maintain and make publicly available a single, searchable expenditure and revenue web site database that allows the public at no cost to review information concerning moneys collected and expended by the county, city or school district.

(2) The web site database shall include the following data concerning all expenditures made by the unit of local government or school district:

(A) The name and principal location or address of the entity receiving moneys, except that information concerning a payment to an employee of the unit of local government or school district shall identify the individual employee by name and business address or location only;

(B) The amount of expended moneys;

(C) The funding source of the expended moneys;

(D) The date of the expenditure;

(E) The name of the budget program, activity, or category supporting the expenditure;

(F) A description of the purpose for the expenditure; and

(G) To the extent possible, a unique identifier for each expenditure.

(3) The expenditure data shall be provided in an open structured data format that:

(A) May be downloaded by the user; and

(B) Allows the user to systematically sort, search and access all data.

(4) The web site database shall contain only information that is a public record or that is not confidential or otherwise protected from public disclosure pursuant to state or federal law.

(5) The county, city or school district shall:

(A) Update the financial data contained on the web site database at least monthly;

(B) Archive the financial data for at least five (5) years, which shall remain accessible and searchable on the web site database; and

(C) Make the web site database easily accessible from the main page of the county, city or school district provider's web site.

SECTION 3.

(a) The information required to be posted under Section 2 shall be easily accessible from the county, city or school district's home web page and searchable.

(b) The information required to be posted by this act is in addition to any other posting requirements required by law.

(c) If a unit of local government or school district fails to comply with this act, then any citizen who is a resident of the city, county or school district may file suit in the appropriate circuit or chancery court where the city, county or school district is located. The citizen may bring a mandamus or injunction action to compel the city, county, or school district to comply with the requirements set forth in subsection (a). The court may impose any penalty or other sanction as it deems appropriate. The court, in its discretion, may also award to the citizen bringing the action reasonable attorneys' fees and costs.

(d) No home rule municipality may adopt posting requirements that are less restrictive than as provided in this act.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

Appendix B: Persons Interviewed

Melissa Ashburn
Legal Consultant
Municipal Technical Advisory Service
University of Tennessee

Christy Ballard
General Counsel
Tennessee Department of Education

Chris Caldwell
Director of Finance
Knox County

Joseph Carr
State Representative
Rutherford County

John Chobanian
Director of Strategic Marketing
and Innovation
Office of the Governor

Wendy Davis
Director of Public Affairs
Douglas County, Colorado

Jessica Himes
Local Government Fiscal Analyst
Fiscal Review Committee
Tennessee General Assembly

Elisha Hodge
Open Records Counsel
Tennessee Comptroller of the Treasury

William Ketron, State Senator
Rutherford County

Janet Kleinfelter
Tennessee Deputy Attorney General
Public Interest Division

Lisa McKeithan
Manager, Regulatory and Transparency,
Office of Management and Enterprise Services
State of Oklahoma

Charles “Butch” Peccolo
Chief Financial Officer
University of Tennessee

Lola Potter
Public Information Officer
Tennessee Department of Finance and Administration

David Purkey
Assistant Commissioner for Homeland Security
Tennessee Department of Safety and Homeland
Security

Dale Sims
Vice President for Business and Finance
Tennessee Board of Regents

Jan Sylvis
Chief of Accounts
Tennessee Department of Finance and Administration