

SENATE BILL 466

By Bell

AN ACT to amend Tennessee Code Annotated, Title 2;
Title 5; Title 6; Title 7; Title 8 and Title 12, relative
to county government.

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

SECTION 1. Tennessee Code Annotated, Section 5-5-102, is amended by deleting subdivision (c)(1) in its entirety and substituting instead the following:

(1) Notwithstanding any law to the contrary, any county employee shall be disqualified from serving as a member of the county legislative body for the county that employs such county employee, by reason of being a county employee. Any member of a county legislative body who is a county employee on December 1, 2015, shall not become disqualified and may continue in office as a member of the county legislative body pursuant to this subdivision (c)(1) for the remainder of the member's term. Any member of a county legislative body who is a county employee on December 1, 2015, who is reelected to the county legislative body on or after that date, without any interruption in holding such office, may continue in office as a member of the county legislative body.

SECTION 2. Tennessee Code Annotated, Section 5-1-210(4), is amended by deleting the subdivision in its entirety and substituting instead the following:

(4) For the size, method of election, qualification for holding office, method of removal, and procedures of the county legislative body with such other provisions with respect to such body as are normally related to the organization, powers, and duties of governing bodies in counties; provided, however, any county employee shall be disqualified from serving as a member of the county legislative body for the county that

employs such county employee, by reason of being a county employee; provided, further, that any member of a county legislative body who is a county employee on December 1, 2015, shall not become disqualified and may continue in office as a member of the county legislative body for the remainder of the member's term. Any member of a county legislative body who is a county employee on December 1, 2015, who is reelected to the county legislative body on or after that date, without any interruption in holding such office, may continue in office as a member of the county legislative body.

SECTION 3. Tennessee Code Annotated, Section 2-12-102(b), is amended by adding the following language at the end of the subsection:

As used in this subsection (b), "qualifies as a candidate for any public office" means when a person has made a formal announcement of candidacy; has filed a petition seeking nomination for election to public office; or has received contributions or made expenditures or given consent for a campaign committee to receive contributions or make expenditures for the person's election to public office.

SECTION 4. Tennessee Code Annotated, Section 12-4-101(c), is amended by adding the following language as a new subdivision:

(4)

(A) This subsection (c) shall apply to:

(i) Any member of a local governing body of a county who is also an employee of such county on December 1, 2015, and who continues in office for the remainder of the member's term; or

(ii) Any member of a local governing body of a county who is also an employee of such county on December 1, 2015, and who is reelected to the governing body, without any interruption in holding the member's office.

(B) Nothing in this subsection (c) shall authorize any member of a local governing body of a county who is also an employee of such county to qualify as a candidate for the local governing body after December 1, 2015.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 6. This act shall take effect December 1, 2015, the public welfare requiring it, and shall apply to any election or vacancy occurring on or after such date.

HOUSE BILL 985

By Rogers

AN ACT to amend Tennessee Code Annotated, Title 2;
Title 5; Title 6; Title 7; Title 8 and Title 12, relative
to county government.

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

SECTION 1. Tennessee Code Annotated, Section 5-5-102, is amended by deleting subdivision (c)(1) in its entirety and substituting instead the following:

(1) Notwithstanding any law to the contrary, any county employee shall be disqualified from serving as a member of the county legislative body for the county that employs such county employee, by reason of being a county employee. Any member of a county legislative body who is a county employee on December 1, 2015, shall not become disqualified and may continue in office as a member of the county legislative body pursuant to this subdivision (c)(1) for the remainder of the member's term. Any member of a county legislative body who is a county employee on December 1, 2015, who is reelected to the county legislative body on or after that date, without any interruption in holding such office, may continue in office as a member of the county legislative body.

SECTION 2. Tennessee Code Annotated, Section 5-1-210(4), is amended by deleting the subdivision in its entirety and substituting instead the following:

(4) For the size, method of election, qualification for holding office, method of removal, and procedures of the county legislative body with such other provisions with respect to such body as are normally related to the organization, powers, and duties of governing bodies in counties; provided, however, any county employee shall be disqualified from serving as a member of the county legislative body for the county that

employs such county employee, by reason of being a county employee; provided, further, that any member of a county legislative body who is a county employee on December 1, 2015, shall not become disqualified and may continue in office as a member of the county legislative body for the remainder of the member's term. Any member of a county legislative body who is a county employee on December 1, 2015, who is reelected to the county legislative body on or after that date, without any interruption in holding such office, may continue in office as a member of the county legislative body.

SECTION 3. Tennessee Code Annotated, Section 2-12-102(b), is amended by adding the following language at the end of the subsection:

As used in this subsection (b), "qualifies as a candidate for any public office" means when a person has made a formal announcement of candidacy; has filed a petition seeking nomination for election to public office; or has received contributions or made expenditures or given consent for a campaign committee to receive contributions or make expenditures for the person's election to public office.

SECTION 4. Tennessee Code Annotated, Section 12-4-101(c), is amended by adding the following language as a new subdivision:

(4)

(A) This subsection (c) shall apply to:

(i) Any member of a local governing body of a county who is also an employee of such county on December 1, 2015, and who continues in office for the remainder of the member's term; or

(ii) Any member of a local governing body of a county who is also an employee of such county on December 1, 2015, and who is reelected to the governing body, without any interruption in holding the member's office.

(B) Nothing in this subsection (c) shall authorize any member of a local governing body of a county who is also an employee of such county to qualify as a candidate for the local governing body after December 1, 2015.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.


SECTION 6. This act shall take effect December 1, 2015, the public welfare requiring it, and shall apply to any election or vacancy occurring on or after such date.

Research Plan: Senate Bill 466 and House Bill 985, County Employees Serving on County Commission

Research Manager: Leah Eldridge

Lead Research Associate: Jennifer Barrie

Support: Ethel Detch

Deputy Executive Director Approval: Initial:  Date: 5/21/15

Executive Director Approval: Initial:  Date: 5/21/2015

Purpose

The Senate State and Local Government Committee and the House Local Government Committee asked the Commission to study legislation that would disqualify county government employees from serving on county legislative bodies.

Background

Tennessee law allows all county employees except those elected or appointed to fill countywide elective offices such as sheriff or property assessor to serve on a county legislative body. Senate Bill 466 by Bell and House Bill 985 by Rogers as introduced would change the law to forbid any county employee to serve on the county legislative body. The legislation would not apply to members elected before December 1, 2015. Proponents of this legislation argue that county employees who serve on these legislative bodies may be biased toward county government. Opponents note that in some of the most rural counties, the schools and the county government are often the biggest employers, especially of professional people, and that prohibiting county employees from serving would eliminate some of the most able candidates.

Step 1. Define the Problem

How best to ensure objectivity and effectiveness of county legislative bodies while protecting the rights of county employees as citizens to run for elective office.

Step 2. Assemble Some Evidence

- Review referred legislation
 - Review committee hearings on the bill and summarize comments and concerns of committee members, the bill sponsors, and others speaking for or against the bill.

- Review Senate Bill 466 and related statutes to determine what the bill does, including any statutes dealing with
 - governance structures,
 - separation of powers, and
 - conflicts of interest.
- Review the fiscal note. Consult with Fiscal Review Committee staff and follow up with agencies submitting support forms to determine the estimated cost and the method and rationale for the estimates.
- Interview bill sponsors, bill proponents, and other stakeholders to determine what is driving the issue.
- Review constitutional and statutory requirements governing the authority of county commissions and qualifications for county commissioners. Determine whether they are the same or different for municipalities, metropolitan governments, and state offices. Review history of these laws.
- Review applicable Attorney General's opinions.
- Review CTAS manual regarding qualifications for commissioners and operations of county commissions.
- Determine how many of Tennessee's county commissioners are also county employees and whether this practice seems more prevalent in counties of any particular size.
- Determine whether county or other government employees may serve on legislative bodies in other states. For states where they can, determine how conflicts of interest are addressed.
- Review literature on governance structures and conflicts of interest to determine possible ways to prevent conflicts of interest.

Step 3. Construct Alternatives

Alternatives will be based on

- current law,
- proposed change in the current law, and
- any additional alternatives drawn from the research and analysis in Step 2.

Describe each alternative specifically enough to project outcomes in Step 5.

Step 4. Select Criteria

- Effectiveness of ensuring objectivity of county commissioners
- Availability of candidates willing to serve as county commissioners

- Constitutionality
- Estimate receptiveness of
 - county governments
 - county employees
 - general public

Step 5. Project Outcomes

- Estimate effectiveness of ensuring objectivity of county commissioners
- Evaluate any constitutional issues
- Estimate acceptability to county governments, county employees, and others

Step 6. Confront Trade-offs

- How will the differences between the current law and the other alternatives affect the public?
- How will the differences between the current law and the other alternatives affect the pool of candidates willing to serve on county legislative bodies?
- What are the pros and cons of the potential solutions?

Step 7. Decide which alternatives to present to the Commission

Based on the results of Step 6, choose the alternatives that most practically and realistically resolve the problem

Step 8. Produce the Draft Report

Develop and present a draft for review and comment to the Commission

Revisit Steps 5 through 8.

- Respond to feedback from Commission regarding outcome projections, trade-offs, and selection of alternatives
- Revise and edit the draft to reflect comments of the Commission
- Submit final report to the Commission for approval

