

Sunset Public Hearing Questions for
TENNESSEE CLAIMS COMMISSION
Created by Section 9-8-301, *Tennessee Code Annotated*
(Sunset termination June 2015)

1. Provide a brief introduction to the Tennessee Claims Commission, including information about its purpose, statutory duties, staff, and administrative attachment.

Purpose & Duties: The Claims Commission is an administrative tribunal created to adjudicate money damages claims against the State based on the acts or omissions of state employees. As a condition for this waiver of its sovereign immunity, state employees are immunized from liability for state law claims for acts or omissions within the scope of their employment, except for willful, malicious, or criminal acts. These claims are payable from the Risk Management Fund. Damages for tort claims are limited to \$300,000 per claimant or \$1,000,000 per occurrence. The Commission also has jurisdiction over cases involving alleged breach of contract actions against the State. There is no limitation on the amount of damages in these types of claims. In addition, the Commission awards compensation to victims of crime through the Criminal Injuries Compensation Fund. The limitation on the total amount of damages that may be awarded in those cases is \$30,000.00.

Staff: The Eastern division office has two staff members: an Executive Secretary and a Administrative Assistant. The Middle division office has two staff members: an Executive Secretary and an Administrative Assistant. The Western division has two staff members: an Executive Assistant and an Administrative Assistant. The Clerk's office is staffed by the Administrative Clerk and a Legal Intern.

Administrative Attachment: The Claims Commission is attached to the Department of Treasury for administrative purposes. The Treasury Department processes financial and personnel transactions on the Commission's behalf. The department also provides information technology support and other administrative support to the Commission.

2. Provide a list of current commission members, or their designees, and describe how membership complies with Sections 9-8-301 and 302, *Tennessee Code Annotated*. Are there any vacancies on the commission and, if so, what is being done to fill those vacancies?

Commission Members: There are three Claims Commissioners, one for each of the grand divisions. They are:
William Shults, Eastern Division
Robert N. Hibbett (Chairman), Middle Division
Nancy Miller-Herron, Western Division

As required by Tenn. Code Ann. § 9-8-302, each of the Commissioners was appointed by the Governor and confirmed by the legislature. In addition, each commissioner shall have resided in the grand division from which such commissioner is appointed for one (1) year prior to appointment, resided in Tennessee for five (5) years prior to appointment, and shall have been licensed to practice law in Tennessee for at least five

(5) years prior to appointment. No commissioner may practice law while serving on the commission.

Vacancies: There are no vacancies on the Claims Commission at this time.

3. What were the commission's revenues (by source) and expenditures (by object) for fiscal year 2013 and to date for fiscal year 2014?

See Attachment A

4. What reports does the commission prepare on its operations, activities, and accomplishments, and who receives these reports?

The Commission provides an annual statistical report relative to its caseload to the State Treasurer. This information is reported to the General Assembly as part of the Treasurer's Annual Report.

5. Does the commission have a web site? If so, please provide its web address. What kind of public information is provided on the site?

The Commission maintains a website (<http://treasury.tn.gov/claims>). The web site provides the short biographies of each Commissioner; responses to Frequently Asked Questions; a glossary of legal terms; Tennessee Claims Commission rules; statutes applicable to the Commission; and contact information for the Clerk's office. The Claims Commission began publishing regular docket opinions and notices of upcoming meetings on the web site in January 2009.

6. Is the commission subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedure does the commission have for informing the public of its meetings and making its minutes available to the public?

The Commission is subject to the Sunshine Law. The Clerk posts meeting announcements in the Andrew Jackson Building and the Legislative Plaza at least two weeks prior to up-coming meetings. Meeting notices are also posted in the Eastern and Western division offices. Minutes of meetings are kept in the Clerk's office in Nashville and are available upon request. Additionally, notice of scheduled meetings is published on the web site <http://treasury.tn.gov/claims> and the Public Participation calendar by searching Department/Agency: Treasury Department at <https://apps.tn.gov/pmn/index.html>.

7. Please describe the duties and obligations of the administrative clerk authorized at Section 9-8-304, *Tennessee Code Annotated*.

The Clerk is the custodian of the official record of claims before the Commission. The

Clerk is responsible for receipt and filing of pleadings, preparation and filing of the appellate record in the cases before the Tennessee Court of Appeals and the Tennessee Supreme Court, responding to case inquiries from litigants, and communicating with other state agencies on behalf of the Commission. The Clerk acts as an administrative liaison between the Treasury Department and the Claims Commission.

8. The commission's enabling statute provides for each commissioner to be able to act individually (Section 9-8-305 and Section 9-8-307) and also provides for the commission to sit *en banc* upon the request of two members (Section 9-8-304). How many *en banc* sessions has the commission held during fiscal years 2013 and 2014 and for what type of claims?

Motions for hearing *en banc* were filed in 4 claims in fiscal year 2012-2013 and in 2 claims in fiscal year 2013-2014.

2012-2013 *En Banc* Sessions: 2

Dec 2012 – 3 claims – 1 Tort, 1 Worker's Compensation, 1 Contract (Although these were on the calendar, they were not considered at this session.)

Feb 2013 – 4 claims - 2 Torts, 1 Worker's Compensation, 1 Contract

2013-2014 *En Banc* Sessions: 2

Sep 2013 – 1 claim – 1 Tort

Mar 2014 – 1 claim – 1 Tort

9. What types of claims fall within the commission's jurisdiction? How many claims of each type were filed with the commission during the last two fiscal years (2013 and 2014)? How many of those claims required a formal hearing before the commission? What was the total dollar value of judgments awarded and the total by type of claim during the two year period? What was the average judgment per claim?

The Claims Commission has 22 areas of subject matter jurisdiction, which are set forth in Tenn. Code Ann. § 9-8-307(a)(1). They are:

- 1) **The negligent operation or maintenance of any motor vehicle or any other land, air, or sea conveyance;**
- 2) **Nuisances created or maintained;**
- 3) **Negligently created or maintained dangerous conditions on state controlled real property;**
- 4) **Legal or medical malpractice by a state employee;**
- 5) **Negligent care, custody and control of persons;**

- 6) **Negligent care, custody or control of personal property;**
- 7) **Negligent care, custody or control of animals;**
- 8) **Negligent construction of state sidewalks and buildings;**
- 9) **Negligent design and construction of public roads, streets, highways, or bridges and negligence in maintenance of state highways, and bridges and similar structures;**
- 10) **Dangerous conditions on state maintained highways;**
- 11) **Workers' compensation claims by state employees;**
- 12) **Actions for breach of a written contract;**
- 13) **Negligent operation of machinery or equipment;**
- 14) **Negligent deprivation of statutory rights created under Tennessee law;**
- 15) **Claims for the recovery of taxes collected or administered by the Department of Commerce and Insurance;**
- 16) **Claims for the loss, damage or destruction of the personal property of state employees based on § 9-8-111;**
- 17) **Claims for injuries incurred by persons where such injury occurred while the person was a passenger in a motor vehicle operated by a state employee while such employee was acting within the scope of employment;**
- 18) **Claims for libel and/or slander by a state employee;**
- 19) **Claims for compensation filed under the Criminal Injuries Compensation Act;**
- 20) **Actions based on § 69-1-201 (damages arising from hold harmless agreements required by army corps of engineers for water resource projects);**
- 21) **Actions based on violations of the requirements of procurement of commodities or services under title 71, chapter 4, part 7; and**
- 22) **Unconstitutional taking of private property, as defined in § 12-1-202, including intentional state governmental action resulting in a taking other than the taking of real property and real property rights for the state's system of highways or the state's system of interstate highways.**

In fiscal years 2013 and 2014, the Commission received claims for state employee negligence of all types, workers' compensation claims, inmate personal property loss claims, employee property loss claims, breach of contract claims, criminal injury compensation claims, and tax recovery claims. The Commission does not capture information in the format requested. The Commission chose to use a contract already in place with the Secretary of State's office for the TrialWorks system as a cost effective measure. This system is an effective case management system for the Clerk's office and the Claims Commission. All claims on the regular docket require a hearing unless they are decided on motion or have been settled. The information requested regarding the number of claims requiring a formal hearing, the total value of judgments awarded and the average judgment per claim is not captured on the Commission's case management system. Attachment B represents the amounts paid by the Division of Claims Administration for payments made from the Risk Management Fund.

10. Have there been any noticeable changes or trends concerning claims during the last few years? For example, has there been an increase or decrease in the total number of claims or specific types of claims, or a significant change in the size of claims or judgments?

There have not been any noticeable long-term trends in the claims filed before the Commission, but there has been an increase in the retaliatory tax claims filed in the last two years.

11. Has the commission promulgated rules as authorized in Section 9-8-306, *Tennessee Code Annotated*? If so, please cite the reference.

Yes. The Commission has promulgated rules that are codified in Chapter 0310-01-01 of the *Official Compilation of Rules and Regulations of the State of Tennessee*.

12. Section 9-8-308, *Tennessee Code Annotated*, levies a privilege tax of \$25.00 on the filing of claims with the commission with the provision that the tax is waived if claimants consent at the time of filing to have "their claims assigned to the small claims docket under Section 9-8-403(a)(2), and proceed upon affidavits filed with the claims commission without a hearing." How many claimants used this exemption during fiscal year 2013 and to date in 2014? Did it make a significant difference in the hearing caseload handled by each commissioner and the commission as a whole? Is the amount of the tax levied sufficient for the purposes for which it was intended? If not, what adjustments need to be made?

Tenn. Code Ann. § 9-8-308 levies a privilege tax on the filing of claims with the Claims Commission unless a claimant consents at the time of filing with the administrative clerk to have his claim assigned to the small claim docket and to proceed on affidavits or submits an oath of poverty demonstrating inability to pay. Claimants who have not paid the \$25.00 privilege tax or submitted an oath of poverty are presumed to have waived a hearing and to have agreed to proceed on affidavits. Several factors limit the application of the privilege tax, however, and its effect on the number of hearings held.

Most important, the tax is not applicable to claims that have been automatically transferred to the Claims Commission by the Division of Claims Administration due to a failure to resolve or settle the claim during the ninety-day settlement period. Regular docket claims, defined as claims seeking \$25,000 or more, are automatically transferred to the Commission from the Division of Claims Administration after ninety days and are therefore exempt from the filing fee requirement. In addition, the Division of Claims Administration also regularly transfers a number of Criminal Injuries Compensation claims when it is unable to reach a conclusion as to eligibility. A significant number of the remaining claims to which the privilege tax is applicable and which might require a hearing are resolved prior to a hearing by dispositive motion under the Tennessee Rules of Civil Procedure.

The following table reflects the number of claimants who paid the \$25 privilege tax.

Fiscal Year	<u>2012-13</u>	<u>2013-14</u>
Paid \$25 Privilege Tax	112	61
Oath of Poverty	74	21
Total Small Docket Claims	322	407
% Applying for Hearing	35%	33%

The number requesting a hearing usually ranges between 30-40%.

13. Section 9-8-310, *Tennessee Code Annotated*, allows for the filing of a grievance by any employee who feels they were terminated in retaliation for filing a workers' compensation claim. How many such grievances were filed during fiscal years 2013 and 2014? How many, if any, such grievances were determined to be well founded?

Tenn. Code Ann. § 9-8-310 permits employees the option of filing a grievance in accordance with the civil service procedure or filing a claim with the Claims Commission. The Claims Commission is not notified if employees elect to use the grievance process and has no means of knowing the outcome of such proceedings.

Although claims for retaliatory discharge are filed with the Commission, such claims are categorized in the Commission's case management system as Workers' Compensation claims, rather than as claims for retaliatory discharge. Based upon the Commissioners' recollections, there were few, if any, claims for retaliatory discharge during fiscal years 2013 and 2014.

14. Describe any items related to the commission that require legislative attention and your proposed legislative changes.

The Commission has no proposed legislation.

15. Should this commission be continued? Why or why not?

Yes. The Tennessee Claims Commission should be continued. The Claims Commission is the primary vehicle through which the State of Tennessee may be held accountable for acts of negligence by its employees and breaches of contracts by various departments and agencies. This jurisdiction has been created by the Legislature and represents a studied decision by that body to waive the State's innate sovereign immunity from suit in limited areas. Sunset of the Commission would leave aggrieved citizens without the ability to seek compensation from the State for losses occasioned by state employee negligence and would subject state employees to suit personally for acts taken in the course and scope of their employment. Additionally, the Commission adjudicates claims under the Criminal Injuries Compensation Act, which provides benefits for innocent victims of serious crimes who have no other resources with which to defray the financial costs of those crimes. The Commission has developed a specialized expertise since 1985 in handling cases in which the State has decided to permit suit against itself. It is respectfully submitted that to sunset the Tennessee Claims Commission would result in the loss of a Commission that efficiently handles claims against the State.

16. Please list all commission programs or activities that receive direct or indirect federal financial assistance and, therefore are required to comply with Title VI of the Civil Rights Act of 1964. Include the amount of federal funding received by program/activity.

The Commission receives no direct or indirect federal financial assistance.

If the commission does receive federal assistance, please answer questions 17 through 24.

If the commission does not receive federal assistance, proceed directly to question 23.

17. Does your commission prepare a Title VI plan? If yes, please provide a copy of the most recent plan.

Not applicable

18. Does your commission have a Title VI coordinator? If yes, please provide the Title VI coordinator's name and phone number and a brief description of his/her duties. If not, provide the name and phone number of the person responsible for dealing with Title VI issues.

Not applicable

19. To which state or federal agency (if any) does your commission report concerning Title VI? Please describe the information your commission submits to the state or federal government and/or provide a copy of the most recent report submitted.

Not applicable

20. Describe your commission's actions to ensure that commission staff and clients/program participants understand the requirements of Title VI.

Not applicable

21. Describe your commission's actions to ensure it is meeting Title VI requirements. Specifically, describe any commission monitoring or tracking activities related to Title VI, and how frequently these activities occur.

Not applicable

22. Please describe the commission's procedures for handling Title VI complaints. Has your commission received any Title VI-related complaints during the past year? If yes, please describe each complaint, how each complaint was investigated, and how each complaint was resolved (or, if not yet resolved, the complaint's current status).

Not applicable

23. Please provide a breakdown of current commission staff by title, ethnicity, and gender.

<u>Title</u>	<u>Ethnicity</u>	<u>Gender</u>
Commissioner	Caucasian	Female
Commissioner	Caucasian	Male
Commissioner	Caucasian	Male
Executive Asst.	Caucasian	Female
Admin Asst.	Caucasian	Male
Executive Secretary	Caucasian	Female
Admin Asst.	Caucasian	Female
Executive Secretary	Caucasian	Female
Admin Asst.	Caucasian	Male
Admin Clerk	Caucasian	Female

24. Please list all commission contracts, detailing each contractor, the services provided, the amount of the contract, and the ethnicity of the contractor/business owner.

Treasury entered into an agreement with the Secretary of State to use the TrialWorks case management system. This is the same system used by the Administrative Law Judges in the office of the Secretary of State. The Secretary of State has a contract with TrialWorks for the case management system. The TrialWorks case management system was acquired via a competitive process.

Attachment A

Tennessee Claims Commission				
Schedule of Revenue and Expenditures				
			<u>FY 2012-13</u>	<u>YTD FY 2014</u>
Revenues				
	Revenues from Risk Management Fund		1,302,728	931,652
	Revenues from Criminal Injuries Compensation Fund		285,965	204,509
			<u>1,588,693</u>	<u>1,136,161</u>
Direct Expenditures				
	Payroll		769,442	604,367
	Employee Benefits		287,662	211,618
Total Personal Services			<u>1,057,104</u>	<u>815,985</u>
	Travel		13,655	4,560
	Printing & Duplicating		(174)	(9)
	Communicating & Shipping		9,989	4,749
	Maint & Repair Services		1,939	990
	Prof & Admin Services		18,318	16,622
	Supplies		3,291	1,352
	Rentals & Insurance		3,401	3,106
	Awards and Indemnities		10	(100)
	Unclassified		1,600	-
	Equipment		-	-
	Training		4,095	100
	Computer Related Items		12,558	392
	Professional Services-State		72,448	49,050
Total other than Personal Services			<u>141,129</u>	<u>80,813</u>
Grand Total of Direct Expenditures			<u>1,198,233</u>	<u>896,798</u>
Total Indirect Expenditures			390,460	239,364
Total Direct & Indirect Expenditures			<u>1,588,693</u>	<u>1,136,161</u>

Attachment B

Total RMF Claim Payments:

	FY 2013	FY 2014 through March
Tort:		
Death:	1,934,531.20	1,063,605.00
Bodily Injury:	2,223,003.06	1,463,144.34
Property Damage:	1,112,205.31	704,318.37
Workers' Compensation:		
Death:	224,643.22	187,091.18
Medical:	14,111,115.01	11,186,731.05
Temp Disability	3,535,886.62	2,674,166.64
Perm Disability	7,283,689.06	5,707,683.02
Property Damage:		
Employee Property:	22,391.25	18,244.00
State Owned Property:	807,817.37	14,769.56
Total:	31,255,282.10	23,019,753.16