SENATE BILL 3280

By McNally

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 4; Title 8, Chapter 44 and Title 10, Chapter 7, relative to open government.

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

SECTION 1. Tennessee Code Annotated, Section 8-44-101, is amended by deleting subsection (a) and substituting instead the following:

(a) Because openness in government supports and enhances public confidence, discourages abuse, and allows citizens to participate equally in decisions affecting their lives, the general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.

SECTION 2. Tennessee Code Annotated, Section 8-44-102, is amended by adding the following as a new subsection thereto:

(d) This section shall not be construed as prohibiting discussions or the mere communication of factual information between individual members of a governing body where the purpose is to educate members on specific issues.

SECTION 3. Tennessee Code Annotated, Section 8-44-106, is amended by adding the following as a new subsection thereto:

(e) If the plaintiff substantially prevails on any part of the claim against the governing body, the court, in its discretion, may award reasonable attorneys' fees against the governing body.

SECTION 4. Tennessee Code Annotated, Title 8, Chapter 44, Part 1, is amended by adding the following as a new section thereto:

§ 8-44-109.

(a) The municipal technical advisory service (MTAS) for municipalities and the county technical assistance service (CTAS) for counties, in order to provide guidance and direction, shall develop a program for educating their respective public officials about the open meetings laws codified in this chapter, and how to remain in compliance with such laws. MTAS shall also develop such a program for members of local planning commissions created by municipalities. CTAS shall also develop such a program for members of local planning commissions created by counties and regional planning commissions.

(b) The Tennessee School Board Association shall develop a program for educating elected school board members about the open meetings laws and how to remain in compliance with such laws.

(c) The utility management review board shall develop a program for board members of water, wastewater and gas authorities created by private act or under the general law and of utility districts in order to educate such board members about the open meetings laws and how to remain in compliance with such laws.

(d) The state emergency communications board created by § 7-86-302 shall develop a program for educating emergency communications district board members about the open meetings laws and how to remain in compliance with such laws.

SECTION 5. Tennessee Code Annotated, Title 8, Chapter 44, Part 1, is amended by adding the following as a new section thereto:

§ 8-44-110.

(a) Executive sessions are not required by this part, but may be held by a governing body for the following purposes:

(1) To discuss the consideration the governing body is willing to offer or accept when considering the purchase, sale, exchange, lease, or market value of

real property; provided, however, that the material terms of any contract to purchase, exchange, or lease real property shall be disclosed in the public portion of a meeting prior to the execution of the contract. If an executive session is utilized pursuant to this exception, in addition to the members of the governing body, only persons representing the interests of the governing body in the transaction may be present during the executive session. This real property discussion exception shall not apply if:

(A) Any member of the governing body involved in the transaction has a personal interest in the transaction and attends or participates in the executive session concerning the real property; or

(B) A condemnation action has been filed to acquire the real property involved in the discussion;

(2) To discuss strategy in preparation for negotiations between the governing body and a group of public employees; or

(3) To discuss and evaluate the job performance of the director of schools with a written evaluation from the discussion that would be made public.

(b) Nothing in this section requires that a governing body hold a meeting or any portion of a meeting in closed session.

(c) Before any meeting shall be closed under this section:

(1) A quorum of the governing body shall convene in public. The presiding officer, or in the case of attorney-client meetings, counsel shall explain to the members and public assembled the specific statutory or legal exemption for closing the meeting;

(2) Members of the governing body shall vote by roll call in the public portion of the meeting on whether the closing is necessary. A majority vote shall be required to go into executive session;

(3) The presiding officer or counsel representing the governing body shall explain to the members of the governing body and any members of the public present that no other business shall be discussed during the closed session; and

(4) Any meeting or portion of a meeting to be closed pursuant to the pending litigation or pending controversy exemption shall be conducted by the lawyer for the governing body who shall:

(A) Advise the members that the meeting is between the lawyer and the client;

(B) Explain that the meeting is being held for the sole purpose of relaying confidential client communication and legal advice regarding pending or anticipated litigation; and

(C) Explain that all comments from the members shall be directed to the lawyer.

SECTION 6. Tennessee Code Annotated, Section 10-7-503, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a)

(1)

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

(B) The custodian of a public record or the custodian's designee shall promptly make available for inspection and copying any public record not specifically exempt from disclosure. In the event that is not practicable for the record to be promptly available for inspection and copying, the custodian shall within four (4) business days:

(i) Make such information available to the requestor;

(ii) Deny the request in writing by citing the specific legal exemption; or

(iii) Furnish a written acknowledgement of the request and a statement of the time reasonably necessary to produce such information or to determine whether the request shall be granted or denied.

(2) Failure to respond to the request as described in subdivision (a)(1) shall constitute a denial and the person making the request shall have the right to bring an action as provided in § 10-7-505.

(3) This section shall not be construed as requiring a governmental entity or public official to sort through files to compile information; however a person requesting such information shall be allowed to inspect the records and retrieve the information.

(4) This section shall not be construed as requiring a governmental entity or public official to create a record that does not exist; however the redaction of confidential information from a public record or electronic database shall not constitute a new record.

(5) A governmental entity is prohibited from avoiding its disclosure obligations by contractually delegating its responsibility of inspecting and copying records to a private entity.

(6) A governmental entity or public official shall not require a request for a public record to be in writing or on a specific form unless such request is reasonably

considered to be complicated and the entity or official reasonably determines it may be necessary to contact the requestor for further information.

(7) Identification shall only be required in retrieving a public record if such record is reasonably determined to involve personal security by the entity or official retrieving such record.

(8) "Public record or records" or "state record or records" means 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.

SECTION 7. Tennessee Code Annotated, Section 10-7-505, is amended by deleting the language "citizen of Tennessee" in subsection (a) and substituting instead the language "person".

SECTION 8. Tennessee Code Annotated, Section 10-7-505(b), is amended by adding the language "or circuit court" immediately after the language "chancery court" in the first sentence.

SECTION 9. Tennessee Code Annotated, Section 10-7-505(b), is further amended by adding the language "or circuit court" after the language "chancery court every time it appears in the second sentence.

SECTION 10. Tennessee Code Annotated, Title 8, Chapter 4, is amended by adding the following sections as a new part thereto:

8-4-601.

(a) There is created the office of ombudsperson to answer questions and provide information to public officials and the public regarding public records. The role of such office shall also include collecting data on open meetings law inquiries and

problems and providing educational outreach on the open records laws codified in title 10, chapter 7, and the open meetings laws codified in title 8, chapter 44.

(b) The office of ombudsperson shall answer questions and issue informal advisory opinions as expeditiously as possible to any person including local government officials, members of the public and the media. State officials shall continue to consult with the office of the attorney general and reporter for such opinions. Any opinion issued by the office of the ombudsperson shall by posted on the office's web site.

(c) The office of ombudsperson is hereby authorized to informally mediate and assist with the resolution of issues concerning the open records laws codified in title 10, chapter 7.

8-4-602.

(a) There is created an advisory committee on open government to provide guidance and advice for the office of ombudsperson.

(b) The advisory committee shall consist of six (6) members to be appointed for a term of four (4) years; provided that the three (3) members listed in subdivisions (b)(1)-(3) shall be appointed for an initial term of four (4) years and the three (3) members listed in subdivisions (b)(4)-(6) shall be appointed for an initial term of two (2) years. The advisory committee shall be made up of one (1) member from each of the following groups who will be appointed by the comptroller from a list of three (3) nominees submitted from each group:

(1) One (1) member from the Tennessee Coalition for Open Government;

(2) One (1) member from the Tennessee Press Association;

(3) One (1) member from the Tennessee Municipal League;

(4) One (1) member from by the Tennessee County Services Association;

(5) One (1) member from the Tennessee School Boards Association; and

(6) One (1) member from Common Cause.

(c) The members shall not receive compensation for serving on the committee but shall be reimbursed for attendance at meetings in accordance with the comprehensive travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general.

8-4-603.

(a) The advisory committee, with the guidance and assistance of the office of ombudsperson, may review and provide written comments on any proposed legislation regarding the open meetings laws codified in title 8, chapter 44, and the open records laws codified in title 10, chapter 7.

(b) The office of ombudsperson and the advisory committee shall provide a report to the general assembly and to the governor by March 1 of each year.

SECTION 11. This act shall take effect July 1, 2008, the public welfare requiring it.