SENATE BILL 114
By Campfield

HOUSE BILL 285

By Dennis

AN ACT to amend Tennessee Code Annotated, Title 8, relative to the office of solicitor general.

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

SECTION 1. Tennessee Code Annotated, Title 8, is amended by adding the following as Chapter 28 thereto:

8-28-101. The solicitor general for the state shall be appointed by a joint vote of the general assembly for a term of four (4) years. The solicitor general shall perform the duties of the office as required by law and shall be subject to any penalty prescribed by law.

8-28-102. The solicitor general shall be a graduate of an accredited law school, shall be licensed in the state of Tennessee, and shall have such training or practical experience as may be deemed necessary to perform the duties of the office.

8-28-103. The solicitor general shall receive a compensation for services as set by the general assembly. The solicitor general shall not be allowed any fees or perquisites of office nor hold any other office of trust or profit under this state or the United States.

8-28-104. The solicitor general, consistent with budgetary limitations, is authorized to appoint such assistants and other personnel as the solicitor general may deem necessary to perform the duties of the office. All assistants and other personnel shall hold office during the pleasure of the solicitor general and shall have such titles and perform such duties as may be assigned to them by the solicitor general. All assistants shall take oath to discharge the duties imposed.

8-28-105. The solicitor general and assistants shall be under the disabilities, restrictions, and disqualifications of district attorneys general.

8-28-106. The solicitor general, or assistants acting at the solicitor general's discretion, has the following duties:

(1) To defend the constitutionality and validity of all legislation of statewide applicability, except as provided in subdivision (2), enacted by the general assembly, except in those instances where the solicitor general is of the opinion that such legislation is not constitutional, in which event the solicitor general shall so certify to the speaker of each house of the general assembly;

(2) To exercise discretion to defend the constitutionality and validity of all private acts and general laws of local application enacted by the general assembly and of administrative rules or regulations of this state. However, a sufficient adversary relationship must exist before the discretion not to defend the constitutionality of all legislation of local application may be exercised. If such discretion not to defend is exercised, such decision shall be certified to the speaker of each house of the general assembly, in the same manner as provided in subdivision (1);

(3) To notify the director of the fiscal review committee of any lawsuit filed in state or federal court in which the state is a named party and the solicitor general or assistants are representing the state, which contains as part of the pleadings an allegation which would raise an issue:

(A) Of insufficient funding of a law as enacted or amended, including any regulation authorized by such act; or

(B) That the implementation by a department, agency or governmental entity of a law as enacted or amended, including any

regulation authorized by such act, was accomplished in a manner that resulted in insufficient funding, which lawsuit, if adjudicated in the plaintiff's favor, would result in a mandated increase in state expenditures;

(4) To confer with the speaker of each house of the general assembly upon notification by the director of the fiscal review committee under § 3-7-109;

(5) To notify the director of the office of legal services or the director's designee and the director of the fiscal review committee of any lawsuit filed in state or federal court in which the state is a named party and the solicitor general or assistants are representing the state, and in which the adjudication could result in a significant increase in state expenditures, in which a decision on a policy issue which may result in a significant increase in state expenditures, or in which a decision may affect the bond rating of the state.

(6) To bring suit upon behalf of the state, local government units or local education agencies to recover public funds from entities financed by the funds and their directors or officers when the funds through the improper actions of the directors or officers have been used for unauthorized purposes, misapplied or misappropriated; and

(7) To attend to any other duty which may devolve upon, or be imposed upon, the solicitor general by law.

8-28-107. In all cases in which the solicitor general has certified to the speaker of each house of the general assembly the decision not to defend the constitutionality and validity of any law pursuant to § 8-28-106, the speakers, acting jointly, may employ legal counsel to defend the constitutionality of such law. Such counsel shall be paid such compensation for their services as the speakers may deem just; the same to be paid out

of any money in the state treasury not otherwise appropriated, upon the certification of the speakers to the commissioner of finance and administration.

8-28-108. The speaker of the senate and the speaker of the house of representatives, acting jointly, may employ legal counsel to advise them; provided, that the solicitor general shall remain the state's sole representative in federal and state court proceedings under § 8-27-106. Such counsel shall be paid such compensation for services rendered as the speakers may approve and such compensation shall be paid out of any money in the state treasury not otherwise appropriated, upon the certification of the speakers to the commissioner of finance and administration.

8-28-109. The solicitor general shall attend in person, or by assistant, and prosecute or defend, as the case may be, any and all suits, civil or criminal, in the supreme court of the United States, in the United States court of appeals for the judicial circuit of the United States comprising the state of Tennessee, or in any of the district courts of the United States held in the state of Tennessee, in which suit or suits the state may be a party, or in which the state has or may have interests of a pecuniary nature.

8-28-201. The solicitor general, in performing the duties of such office where the state of Tennessee is a party litigant, or there is reasonable cause to indicate it will be a party litigant, is hereby empowered to require any person to testify under oath as to any matter which is a proper subject of inquiry by the solicitor general. The solicitor general, or a designee, is authorized to administer all necessary oaths.

8-28-202.

(a) For these purposes, the solicitor general is empowered to issue civil investigative demands to require the attendance of witnesses or the submission of documents, or both, at specified times and places, to give testimony in the case or matter therein stated. The demand shall mention the parties to the

inquiry and the party at whose instance the witness is called, and, if necessary, require the witness also to bring any books, documents, or other writings, records or tangible objects under the witness' control, which may be pertinent to the inquiry.

(b) No witness called to testify or to produce records, books, documents, writings or other tangible objects under this part shall be required to testify in any county other than the witness' county of residence or the county where the records or tangible objects are found under the witness' control.

8-28-203. Failure of any witness to comply with the terms of a civil investigative demand shall be certified to the chancery court of the judicial district in which the witness resides, and such chancery court shall exercise the authority granted it by law in the treating of contempt of court matters, including, but not limited to, those powers granted in §§ 29-9-103 — 29-9-105; all to the end that the witness shall be compelled to appear to give testimony at the time and place specified by the chancery court.

8-28-204. Any witness who appears as directed by the civil investigative demand, but upon appearance refuses to testify on matters not privileged by law, shall be punished as prescribed in § 8-28-203.

8-28-205. Any witness served with a civil investigative demand shall be paid fees and mileage on the same basis as authorized to be paid witnesses in the courts of this state.

8-28-206. All testimony, books, documents or other writings, records or tangible objects obtained by the solicitor general pursuant to §§ 8-28-201 - 8-28-202 shall be confidential and shall not be publicly divulged by the office of the solicitor general except in the discharge of the duties of the office or in legal proceedings in which the state is a party.

8-28-207.

(a) Upon consent of the district attorney general, the solicitor general may designate any full-time salaried attorney general investigator who meets the qualifications of § 38-8-106 and the training requirements of § 38-8-107(a) to act with the same authority as a district attorney criminal investigator when on active duty in connection with criminal matters for which the solicitor general has jurisdiction as provided by law.

(b) Any investigator so designated shall, while on such active duty in the affected jurisdiction, have the same authority as is provided by law for any full-time criminal investigator employed by the district attorney general.

(c) The authority conferred by this section shall be in addition to any authority otherwise conferred by law upon the solicitor general.

SECTION 2. Tennessee Code Annotated, Section 8-6-109(b), is amended by deleting subdivisions (9) through (12), inclusive, in their entirety.

SECTION 3. Tennessee Code Annotated, Section 8-6-109, is amended by deleting subsections (c) through (e), inclusive, in their entirety.

SECTION 4. Tennessee Code Annotated, Title 8, Chapter 6, is amended by deleting Part 4 in its entirety.

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 which 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 January 1, 2012, the public welfare requiring it.