



General Assembly of Tennessee  
**OFFICE OF LEGAL SERVICES**  
War Memorial Building  
Nashville, Tennessee 37243-0059

January 17, 2015

**M E M O R A N D U M**

TO: Honorable Ron Ramsey, Lt. Governor and Senate Speaker  
Chairs of standing committees of the Senate  
Honorable Beth Harwell, Speaker of the House of Representatives  
Chairs of the standing committees of the House of Representatives

FROM: Joseph Barnes, Director, Office of Legal Services *JAB*  
Douglas Himes, Legislative Attorney, Office of Legal Services *DH*

SUBJECT: Office of the Repealer - 2014 Annual Report

**I. BACKGROUND INFORMATION**

The Office of the Repealer was created within the Office of Legal Services (OLS) by Chapter 475 of the Public Acts of 2013 (Tenn. Code Ann. § 3-12-109). The OLS Repealer accepts submissions from Tennessee citizens and entities for review of Tennessee state laws and rules believed to be anachronistic, obsolete, defective, duplicative, contradictory, unnecessary, or incomprehensible.

As required by statute, the OLS Repealer webpage was fully functional by July 1, 2013, including the ability to electronically receive completed OLS Repealer submission forms. A "link" to the OLS Repealer webpage appeared on the homepage of the Tennessee General Assembly from July 2013 until mid-October 2013. The OLS Repealer webpage remains available through the OLS' webpage. In addition to electronic submissions, the OLS Repealer accepts completed submissions through traditional mail. Beginning this year, the OLS Repealer will annually report its findings and recommendations to the Speaker of the Senate, the Speaker of the House of Representatives, and the Chairs of the standing committees. Please accept this memorandum as the 2014 Annual Report of the Office of the Repealer. The 2014 Annual Report encompasses submissions made to

the OLS Repealer from July 1, 2013, through December 31, 2014. During this reporting period, the OLS Repealer received nine completed submissions via the website and no submissions via regular mail. All nine submissions were made by state employees/officials. Each submission was assigned a unique identifying file number and reviewed by staff. In addition, agencies identified as having familiarity with submissions were requested to submit comments to the OLS Repealer. On a month-to-month basis, the OLS Repealer received submissions as follows:

July 2013	=	0
August 2013	=	0
September 2013	=	1
October 2013	=	2
November 2013	=	1
December 2013	=	0
January 2014	=	0
February 2014	=	1
March 2014	=	0
April 2014	=	0
May 2014	=	0
June 2014	=	0
July 2014	=	0
August 2014	=	0
September 2014	=	0
October 2014	=	2
November 2014	=	2
<u>December 2014</u>	=	<u>0</u>
TOTAL	=	9

## II. SUBMISSION FORMS RECEIVED & RECOMMENDATIONS

The OLS Repealer makes the following findings and recommendations as to the submission forms submitted:

**A. 2013-1 – director of schools vacancies.** Tenn. Code Ann. § 8-48-206 provides:

All persons selected under authority of this part to fill offices temporarily shall be persons possessing qualifications under the general law to fill such offices; *but if in any county a superintendent of schools is inducted into the military service and no person resides in the county holding a certificate from the state board of education qualifying such person for the office of superintendent of schools, then the county legislative body may elect a person without a certificate and this person shall be recognized as the temporary superintendent of schools by the state board of education.* (emphasis supplied).

The italicized portion has been identified as "contradictory" as it conflicts with the duties of a local board of education. See, Tenn. Code Ann. § 49-2-203(a)(14). Since enactment of the Education Improvement Act of 1991, the director of schools is no longer an elected official. The local board of education employs the director. If the director were called into military service, the local board of education would be responsible for making alternative arrangements for the director's duties. The OLS Repealer finds that the italicized language above is both obsolete and contradictory and recommends its deletion from the statute.

**B. 2013-2 – state employed administrative professionals:** Tenn. Code Ann. § 8-50-102 provides automatic salary advancements for certain state employed administrative professionals. It has been submitted that the terminology used in the statute is "defective" as it refers to an outdated certifying organization and testing. The OLS Repealer finds that certain terminology used in the statute is obsolete. The OLS Repealer recommends that the statute be updated to reflect current terminology and practice.<sup>1</sup>

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<sup>1</sup> The OLS Repealer contacted the Department of Human Resources concerning this submission. The Department of Human Resources suggests the following revised language:

Section 8-50-102. Any administrative assistant or administrative professional or any employee performing closely related administrative support duties of the state who successfully passes the certified administrative professional examination sponsored by the International Association of Administrative Professionals shall be granted automatic two-step salary advancement under the state's basic compensation plan. Any automatic pay

**C. 2013-3 – public school nurse program.** The Tennessee public school nurse program is established in Tennessee Code Annotated, Title 68, Chapter 1, Part 12. It is submitted that this program is "obsolete" since school health matters are generally provided for under the Connie Hall Givens Coordinated School Health Improvement Act. Tenn. Code Ann. §§ 49-1-1001 – 49-1-1006. The OLS Repealer finds that certain statutory provisions of the two programs are duplicative. The OLS Repealer recommends that legislation consolidating these programs could be pursued.<sup>2</sup>

**D. 2013-4 – denatured horsemeat.** Tenn. Code Ann. § 53-7-101 provides:

All horsemeat sold, offered for sale or exposed for sale shall be denatured with at least two percent (2%) charcoal or other similar inert ingredient and shall be in package form, and so labeled as to show that it contains horsemeat that has been denatured with at least two percent (2%) charcoal or other similar inert ingredient.

It has been submitted that this provision is "unnecessary" and may not serve a legitimate purpose. The OLS Repealer cannot concur with this submission. The intent of this provision is to render horsemeat unfit for human consumption. A violation of this provision is punishable as a Class C Misdemeanor. Tenn. Code Ann. § 53-7-103. In Tenn. Op. Atty. Gen. 13-95 (November 27, 2013), the Attorney General opined that these provisions expressly prohibit the sale of horsemeat slaughtered in this state for human consumption regardless of where the sale occurs. The issue of whether horsemeat should be available for human consumption is a policy decision. It is the role of the General Assembly to decide such policy matters.

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increase pursuant to this section shall take effect with the next pay period beginning after the department receives documentation of the certification. The automatic pay increase provided for in this section shall not affect any employee's eligibility for any regular merit increase. If necessary, one (1) or two (2) steps shall be added to the compensation plan to provide for the automatic increase provided for by this section.

<sup>2</sup> If such recommendation is pursued, the OLS Repealer suggests that the Department of Education and the Department of Health coordinate with the legislative sponsors and the Office of Legal Services in order to make administrative decisions necessary to operate a unitary school health program.

**E. 2014-1 – Office of the Repealer.** Tenn. Code Ann. § 3-12-109 creates "the office of the repealer within the office of legal services". It has been submitted that the OLS Repealer is "duplicative" and "unnecessary" as the Repealer's duties are duplicative of the Office of Legal Services and previous statutory reviews conducted at the request of legislative leadership and other members.<sup>3</sup> The OLS Repealer cannot concur with this submission. The duties of the Office of the Repealer and the Office of Legal Services while similar are not identical. The issue of whether to repeal the Repealer is a policy decision. It is the role of the General Assembly to decide policy matters, including whether the OLS Repealer should be amended or terminated.

**F. 2014-2 – failure to put name of grower or packer on produce container.** Tenn. Code Ann. § 39-14-129 provides:

(a) It is an offense for any person who sells, offers for sale or consigns any fruits, berries, vegetables, or produce of any kind to fail to clearly mark on the containers in which that produce is packaged the name and address of the grower, packers, or other persons offering that produce for sale.

(b) A violation of this section is a Class C misdemeanor.

It has been submitted that this statute is unnecessary and should be repealed. Conversely, it has been suggested that this statute promotes accountability and good business practices. The OLS Repealer cannot concur with this submission. The issues of whether such business practices should be required or, if required, be punished as a criminal offense if violated, are policy decisions. It is the role of the General Assembly to decide such policy matters.

**G. 2014-3 - timber.** Tenn. Code Ann. § 39-14-410 provides:

(a) It is the duty of any sawmill owner or operator or other person purchasing timber in the form of logs, dye wood, cord wood, hickory blocks, stave blocks, hoop poles, cross ties, shrubbery or any other kind of timber from the lands sold to the state for taxes or other state-owned land or lands belonging to an individual, firm or corporation, to obtain from the seller a bill

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<sup>3</sup> The duties of the Office of Legal Services include a duty to "[c]onduct a continuing review of the Tennessee Code Annotated and uncodified public chapters and advise the general assembly as to legislation deemed necessary to remove defective or anachronistic laws in light of the common law and judicial decisions". Tenn. Code Ann. § 3-12-101(6). In addition, several reviews of Tennessee Code Annotated have been conducted in recent general assemblies with a goal of eliminating obsolete and unnecessary provisions of law.

of sale for the same or other evidence of ownership which shall be preserved by the purchaser for a period of one (1) year and shall be available for inspection to any person concerned in such timber.

(b) A violation of this section is a Class A misdemeanor.

It has been submitted that this section is unnecessary and should be repealed. Conversely, it has been suggested that this statute serves as a deterrent to related criminal activities and promotes good business practices. The OLS Repealer cannot concur with this submission. The issues of whether such business practices should be required or, if required, be punished as a criminal offense if violated, are policy decisions. It is the role of the General Assembly to decide such policy matters.

**H. 2014-4 – building finance committee.** Tenn. Code Ann. § 4-14-109 creates a "building finance committee" within the Industrial Development Division of the Department of Economic and Community Development. It has been submitted that this committee is "anachronistic", "obsolete", and "unnecessary" as it terminated on June 30, 2014. The OLS Repealer finds that while the committee did "terminate" on June 30, 2014, it is still in existence and is currently in wind down. See, generally, § 4-29-112. If the committee is not extended during the 2015 session of the General Assembly it will cease to exist on June 30, 2015. The OLS Repealer cannot concur with this submission.<sup>4</sup>

**I. 2014-5 – Department of Safety.** Tenn. Code Ann. § 4-3-2001 creates and establishes "the department of safety". It has been submitted that the use of this terminology throughout Tennessee Code is "anachronistic", "obsolete", "defective", and "contradictory" since the Department uses the name "Department of Safety & Homeland Security" on the State's official website and in other communications. Tennessee Code Annotated is the official compilation of the statutory law of the State of Tennessee. Tenn. Code Ann. § 1-1-111(b). The OLS Repealer notes the inconsistent nomenclature and recommends that the code be updated through legislation to reflect current usage.

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<sup>4</sup> The Department of Economic and Community Development could offer legislation during the 2015 session of the General Assembly evincing their intent not to extend the building finance committee by deleting references to it and by correspondingly cleaning-up other code sections related thereto.

## OLS REPEALER IDENTIFIED RECOMMENDATIONS

In accordance with Tenn. Code Ann. § 3-12-109(b)(3), the OLS Repealer makes the following findings and recommendations:

**A. *Horse racing.*** The OLS Repealer finds that the provisions of Tenn. Code Ann. Title 4, Chapter 36 concerning the Racing Control Act of 1987 are obsolete and recommends that such provisions be repealed.

**B. *Judicial nomination.*** The OLS Repealer finds that portions of Tenn. Code Ann. Title 17, Chapter 4, Part 1 creating a judicial nomination program are obsolete and recommends that such provisions be replaced or repealed.

**C. *Judicial evaluation.*** The OLS Repealer finds that portions of Tenn. Code Ann. § 17-4-201 creating a judicial performance evaluation program are obsolete and recommends that such provisions be replaced or repealed.

If you have any questions, please contact Joseph Barnes at (615) 741-9504 or Doug Himes at (615) 741-9506.