SATURDAY, JUNE 5, 2010

NINETY-SECOND LEGISLATIVE DAY

CALL TO ORDER

The Senate met at 10:00 a.m., and was called to order by Mr. Speaker Ramsey.

PRAYER

The proceedings were opened with prayer by Senator Bunch.

PLEDGE OF ALLEGIANCE

Senator Bunch led the Senate in the Pledge of Allegiance to the Flag.

ROLL CALL

The roll call was taken with the following results:

Present 31

Senators present were: Barnes, Beavers, Berke, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Jackson, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey--31.

COMMUNICATIONS

June 3, 2010

The Honorable Ron Ramsey
301 6th Avenue North
Suite 1 Legislative Plaza
Nashville, TN 37243

RE: Request of Absence

Dear Speaker Ramsey:

I respectfully request to be excused from Session on Saturday, June 5, 2010. I have some personal matters outside of the legislature that require my attention. Thank you for your consideration of this request.

Sincerely,

/s/ Diane Black
State Senator, 18th District

APPROVED: Lieutenant Governor
Ron Ramsey

TO: Lt. Governor Ron Ramsey
FROM: Senator Reginald Tate
DATE: June 4, 2010
RE: Excused from Session

I am requesting permission to be excused from Session on Saturday, June 5, 2010, to attend my uncle's funeral.

Thank you in advance.

APPROVED: Lieutenant Governor
Ron Ramsey

STANDING COMMITTEE REPORT

FINANCE, WAYS AND MEANS

MR. SPEAKER: Your Committee on Finance, Ways and Means begs leave to report that we have carefully considered and recommend for passage: Senate Bills Nos. 2655, 2886 and 3052 with amendment; and House Joint Resolutions Nos. 851 and 1305.

MCNALLY, Chairperson
June 5, 2010

The Speaker announced that he had referred Senate Bills Nos. 2655, 2886 and 3052 with amendment; and House Joint Resolutions Nos. 851 and 1305 to the Committee on Calendar.

MOTION

Senator Norris moved, pursuant to Rule 21, **Senate Joint Resolution No. 1307** be passed on first consideration and lie over, which motion prevailed.

INTRODUCTION OF RESOLUTION

The Speaker announced that the following resolution was filed for introduction. Pursuant to Rule 21, the resolution lies over.

Senate Joint Resolution No. 1307 by Senator Norris and Mr. Speaker Ramsey.
General Assembly, Adjournment -- Adjourns sine die 106th general assembly at 6:00 p.m. on Wednesday, June 9, 2010.

MOTION

Senator Norris moved, pursuant to Rule 21, **House Joint Resolution No. 798**; and **Senate Resolutions Nos. 234 and 235** lie over and be referred to the appropriate committees or held on the Clerk's desk, which motion prevailed.

RESOLUTIONS LYING OVER

The Speaker announced that the following resolutions passed second consideration and were referred to the appropriate committees or held on the desk, pursuant to Rule 21:

House Joint Resolution No. 798 -- Memorials, Congress -- Urges the U.S. Nuclear Regulatory Commission to disapprove the request to import, process, and dispose of low-level radioactive waste from Italy, or any other country, in the United States.

The Speaker announced that he had referred House Joint Resolution No. 798 to the Committee on Finance, Ways and Means.

Senate Resolution No. 234 -- Naming and Designating -- "Don Spain Media Gallery", press area in LP 12.

The Speaker announced that he had referred Senate Resolution No. 234 to the Committee on Calendar.

Senate Resolution No. 235 -- Memorials, Public Service -- Representative Jason Mumpower.

The Speaker announced that he had referred Senate Resolution No. 235 to the Committee on Calendar.

NOTICES

MESSAGE FROM THE HOUSE
June 4, 2010

MR. SPEAKER: I am directed to transmit to the Senate, House Bill No. 2606. The House refused to recede from its action in nonconcurring in Senate Amendments Nos. 1 and 2. The Speaker appointed a Conference Committee composed of Representatives Lynn, Armstrong and Haynes to confer with a like committee from the Senate in open conference to resolve the differences between the Bodies on House Bill No. 2606.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE
June 4, 2010

MR. SPEAKER: I am directed to transmit to the Senate, House Bill No. 2611. The House nonconcurred in Senate Amendment No. 2.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE
June 4, 2010

MR. SPEAKER: I am directed to transmit to the Senate, House Bill No. 2613. The House nonconcurred in Senate Amendment No. 2.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE
June 4, 2010

MR. SPEAKER: I am directed to transmit to the Senate, House Bill No. 2618. The House refused to recede from its action in nonconcurring in Senate Amendments Nos. 1 and 2. The Speaker appointed a Conference Committee composed of Representatives Lynn, Gilmore and Swafford to confer with a like committee from the Senate in open conference to resolve the differences between the Bodies on House Bill No. 2618.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE
June 4, 2010

MR. SPEAKER: I am directed to transmit to the Senate, House Bill No. 2614. The House nonconcurred in Senate Amendments Nos. 2 and 3.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE
June 4, 2010

MR. SPEAKER: I am directed to transmit to the Senate, House Bill No. 2605. The House refused to recede from its action in nonconcurring in Senate Amendment No. 2. The Speaker appointed a Conference Committee composed of Representatives Lynn, Haynes and Odom to confer with a like committee from the Senate in open conference to resolve the differences between the Bodies on House Bill No. 2605.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE
June 4, 2010

MR. SPEAKER: I am directed to transmit to the Senate, House Bill No. 2602. The House refused to recede from its action in nonconcurring in Senate Amendments Nos. 1 and 2. The Speaker appointed a Conference Committee composed of Representatives Lynn, Haynes and Odom to confer with a like committee from the Senate in open conference to resolve the differences between the Bodies on House Bill No. 2602.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE
June 4, 2010

MR. SPEAKER: I am directed to transmit to the Senate, House Bill No. 2610. The House refused to recede from its action in nonconcurring in Senate Amendments Nos. 1 and 2. The Speaker appointed a Conference Committee composed of Representatives Lynn, Armstrong and

Haynes to confer with a like committee from the Senate in open conference to resolve the differences between the Bodies on House Bill No. 2610.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE
June 4, 2010

MR. SPEAKER: I am directed to transmit to the Senate, House Bill No. 2781. The House nonconcurred in Senate Amendment No. 2.

BURNEY T. DURHAM,
Chief Clerk.

REPORT OF COMMITTEE ON CALENDAR

MR. SPEAKER: Your Committee on Calendar begs leave to report that we have met and set the following bills on the calendar for Saturday, June 5, 2010: Senate Bills Nos. 1997, 2409, 2839, 3219, 3619, 3729, 2424, 2650, 3194, 3215, 3495 and 3621; House Bill No. 381; and Senate Bills Nos. 673, 2810 and 2560.

This the 4th day of June, 2010.
MIKE FAULK, Chairperson.

MOTION

Senator Faulk moved that Rule 19 and Rule 37 be suspended for the purpose of considering the Calendar next, which motion prevailed.

CALENDAR

Senate Bill No. 1997 -- Education -- As introduced, enacts the "Interstate Compact on Educational Opportunity for Military Children". Amends TCA Title 49.

On motion, Senate Bill No. 1997 was made to conform with **House Bill No. 1911**.

On motion, House Bill No. 1911, on same subject, was substituted for Senate Bill No. 1997.

On motion of Senator Gresham, Amendment No. 1 was withdrawn.

On motion of Senator McNally, Amendment No. 2 was withdrawn.

Thereupon, **House Bill No. 1911** passed its third and final consideration by the following vote:

Ayes 30
Noes 0

Senators voting aye were: Barnes, Beavers, Berke, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey--30.

A motion to reconsider was tabled.

Senator Faulk moved that **Senate Bill No. 2409** be rereferred to the Committee on Calendar, which motion prevailed.

Senate Bill No. 2839 -- Public Contracts -- As introduced, prohibits the state or any of its departments, agencies, or political subdivisions from entering into a contract for services performed by or at call centers, with a vendor, wherever located, who uses, or plans to outsource such services to be provided by, in or by any person residing in a foreign country. Amends TCA Title 5; Title 6; Title 7 and Title 12, Chapter 4, Part 1.

On motion, Senate Bill No. 2839 was made to conform with **House Bill No. 2822**.

On motion, House Bill No. 2822, on same subject, was substituted for Senate Bill No. 2839.

Senator Stewart moved that **House Bill No. 2822** be moved two places down on the Calendar for today, which motion prevailed.

Senate Bill No. 3219 -- Criminal Offenses -- As introduced, deletes the requirement that a person being photographed must be readily identifiable in order for the offense of unlawful photographing to be committed. Amends TCA Title 39.

Senator McNally moved to amend as follows:

AMENDMENT NO. 1

AMEND by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION ___. Tennessee Code Annotated, Section 39-16-601(4), is amended by adding the following language as new subdivision (D):

(D) When such institution or facility is a court-operated long-term residential substance abuse facility.

On motion, Amendment No. 1 was adopted.

Thereupon, **Senate Bill No. 3219**, as amended, passed its third and final consideration by the following vote:

Ayes 30
Noes 0

Senators voting aye were: Barnes, Beavers, Berke, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey--30.

A motion to reconsider was tabled.

RECALL OF BILL

On motion of Senator Crowe, **House Joint Resolution No. 1041** was recalled from the Committee on General Welfare, Health and Human Resources.

REFERRAL OF BILL

Senator Crowe moved that House Joint Resolution No. 1041 be referred to the Committee on Finance, Ways and Means, which motion prevailed.

MOTION

Senator Henry moved that Rule 83(8) be suspended for the purpose of placing **House Joint Resolution No. 1041** on the next calendar for the Committee on Finance, Ways and Means, which motion prevailed.

CALENDAR

Senator Watson moved that **Senate Bill No. 3619** be rereferred to the Committee on Calendar, which motion prevailed.

FURTHER ACTION ON HOUSE BILL NO. 2822

Senator Ketron moved that Amendment No. 1 be placed at the heel of the Amendments, which motion prevailed.

On motion of Senator McNally, Amendment No. 2 was withdrawn.

Senator McNally moved to amend as follows:

AMENDMENT NO. 3

AMEND by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION __. Tennessee Code Annotated, Section 6-58-101, is amended by adding the following as new, appropriately designated subsections:

( ) "National Flood Insurance Program (NFIP)" means the insurance program administered by the Federal Emergency Management Agency, as authorized by The National Flood Insurance Reform Act, compiled in 42 U.S.C. §§ 4001, et seq.;

( ) "Special flood hazard area" means the land area covered by the floodwaters of the base flood on NFIP maps;

SECTION __. Tennessee Code Annotated, Title 6, Chapter 58, is amended by adding the following language as a new, appropriately designated section:

(a) In cooperation with the Department of Economic and Community Development, all counties and municipalities in this state that have an effective flood insurance rate map or flood hazard boundary map published by the federal emergency management agency that identifies a special flood hazard area within the

political boundaries of the county or municipality shall meet the requirements for participation in the national flood insurance program authorized by 42 U.S.C. §§ 4001 et seq., and administered by the federal emergency management agency on or before June 30, 2012.

(b) If a county or municipality does not currently have an effective flood insurance rate map or flood hazard boundary map published by the federal emergency management agency that identifies a special flood hazard area within the political boundaries of county or municipality, the county or municipality shall have twenty-four (24) months from the effective date of any future flood insurance rate map or flood hazard boundary map published by the federal emergency management agency to meet the requirements for participation in the national flood insurance program.

On motion, Amendment No. 3 was adopted.

On motion of Senator Ketron, Amendment No. 1 was withdrawn.

Thereupon, **House Bill No. 2822**, as amended, passed its third and final consideration by the following vote:

Ayes	28
Noes	0
Present, not voting . . .	1

Senators voting aye were: Barnes, Beavers, Berke, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Herron, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tracy, Watson, Yager and Mr. Speaker Ramsey--28.

Senator present and not voting was: Henry--1.

A motion to reconsider was tabled.

Senate Bill No. 3729 -- Mental Retardation -- As introduced, requires notice be given of closure of state-owned residential facilities for persons with mental retardation or other developmental disabilities. Amends TCA Title 33, Chapter 1, Part 3.

Senator Crowe moved to amend as follows:

AMENDMENT NO. 1

AMEND by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 33, Chapter 1, Part 3, is amended by adding the following as a new section:

(a) In addition to other duties required by this title, the Division of Intellectual Disabilities Services (DIDS) shall:

(1) Provide written notice to the Health and Human Resources Committee of the House of Representatives and the Senate General Welfare, Health and Human Resources Committee of its intent to propose legislation to

permit immediate or gradual closure of any state-owned or state-operated facility that provides residential services to persons with mental retardation or other developmental disabilities at least sixty (60) days prior to the next legislative session; and

(2)(A) Provide written notice by registered mail to each resident, such resident's immediate family, if known, and such resident's guardian of its intent to propose legislation to permit immediate or gradual closure of any state-operated facility that provides residential services to persons with mental retardation or other developmental disabilities at least sixty (60) days prior to the next legislative session; and

(B) Include in the written notice provided under this subsection that the resident, the resident's immediate family, such resident's guardian, or any other interested party with standing to act on behalf of the resident has the right to pursue legal action relating to the notice provisions of this subsection and relating to the closure of the facility.

(b) Any state-owned or state-operated facility or group home that provides residential services to persons with mental retardation or other developmental disabilities and that has been funded by the general assembly in any fiscal year, shall not be closed, nor shall DIDS announce the pending closure of the facility, during the same fiscal year except through the provisions specified by subsection (a).

(c) DIDS may close any state-owned or state-operated facility that provides residential services to persons with mental retardation or other developmental disabilities only upon the effective date of an act of legislation that specifically authorizes the closure of the facility or with a specific line item appropriation for that purpose in an annual appropriations act.

(d) When a demonstrated health or safety emergency exists for a facility or a federal action that requires or necessitates a gradual or immediate closure exists for the facility, DIDS may seek relief from the requirements of this section in the chancery court of the county where the facility is located. In these situations:

(1) DIDS shall provide written notice by registered mail to each resident, the resident's immediate family, if known, and the resident's guardian, at least ten (10) days prior to filing an emergency petition in the chancery court; and

(2) All interested parties, including DIDS, the resident, the resident's immediate family, the resident's guardian, or other interested parties with standing to act on behalf of the resident shall have standing in the proceedings under this subsection (d).

(e) Any resident, family member or guardian, or other interested parties, with standing to act on behalf of the resident who wishes to challenge the decision or actions of DIDS regarding the notice requirements of subsection (a) shall have a cause of action in the chancery court of the county in which the facility is located, or in Davidson County chancery court. In addition to other relief allowable by law, the

resident, family member or guardian, or other interested party with standing to act on behalf of the resident may seek compensatory damages and attorney fees. Punitive damages shall not be allowable under this section.

(f) Any resident, family member or guardian, or other interested parties, with standing to act on behalf of the resident may challenge the decision of the state to close a facility in a de novo hearing in the chancery court of the county in which the facility is located, or in Davidson County chancery court. In addition to other relief allowable by law, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident may seek compensatory damages and attorney fees. Punitive damages shall not be allowable under this section.

(g) A court hearing as provided under subsection (f) shall consider each of the following items relevant to the closure of the facility:

(1) Estimated timelines for the implementation of the closure of the facility;

(2) The types and array of available and accessible community-based services for individuals with mental retardation and other developmental disabilities and their families;

(3) The rights of individuals with mental retardation and other developmental disabilities;

(4) The process used to develop a community living plan;

(5) Individual and community monitoring and safeguards to protect health and safety;

(6) The responsibilities of state and local governments;

(7) The process used to transfer ownership or the state's plan to reuse the property; and

(8) Other issues identified by DIDS, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident that may affect the residents, their families, employees, and the community.

(h) For any facility that DIDS has announced plans for closure prior to July 1, 2010, other than pursuant to a federal court order or settlement DIDS shall be subject to the notice provisions of this section within ten (10) days of July 1, 2010. DIDS shall delay proceedings toward closure until the proceedings for all hearings permitted under this section have been completed.

(i) Immediately upon the effective date of this act becoming law, all actions in furtherance of the planned closing or downsizing of Clover Bottom Developmental Center will immediately cease, including, but not limited to, laying off employees, moving the residents of the center to other placements, or both, unless such actions are specifically mandated by court order. Such actions will not resume until the following are accomplished:

(1) The DIDS constructs thirty (30) homes in the Middle Tennessee community, equipping each to provide a home to four (4) of the persons with mental retardation presently living at Clover Bottom. These homes will be state-operated and staffed by state employees, at the safe, prevailing resident-to-employee ratio;

(2) The DIDS immediately informs the families and guardians of each Clover Bottom resident that their choices for placement of their family member presently living at Clover Bottom include the thirty (30) community, state-operated homes presently being constructed or planned. The opportunity to make a new choice is to be available to the families and guardians of each Clover Bottom resident regardless of any prior choice of placement they have indicated; and

(3) The DIDS develops a plan to transfer persons presently employed at Clover Bottom to the new, state-operated community homes, as their construction is completed and Clover Bottom residents are transferred there. To the extent reasonably possible, the employees who are transferred to specific homes should be the same employees who have already been providing care to the Clover Bottom residents who will live in the new homes.

None of the requirements indicated above shall prevent the DIDS from continuing or instituting an immediate reduction in force to reduce the Clover Bottom workforce to the level which will be required to operate the thirty (30) new, state-operated community homes built for the present Clover Bottom residents, provided such reduction does not violate any existing court order.

SECTION 2. This act shall take effect July 1, 2010, the public welfare requiring it.

On motion, Amendment No. 1 was adopted.

Senator McNally moved to amend as follows:

AMENDMENT NO. 2

AMEND by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 33, Chapter 1, Part 3, is amended by adding the following as a new section:

Section 33-1-312.

(a) The Division of Intellectual Disabilities Services (DIDS), in any reduction in force of employees of Clover Bottom Developmental Center, shall not reduce the Clover Bottom workforce below the level required to operate eight (8) new four-person, state-operated community homes built for current Clover Bottom residents until such group homes are built in Davidson County or vicinity and operationally ready.

(b) The eight (8) group homes shall be state-operated and staffed by state employees, at the safe, prevailing resident-to-employee ratio, as determined by the Division of Intellectual Disabilities Services.

(c) To the extent reasonably possible and as allowed by state law, the employees of the eight (8) group homes shall be employees who have provided care to the Clover Bottom residents who will live in the new homes.

(d) Any employee of Clover Bottom Developmental Center who is involuntarily terminated at the time Clover Bottom is closed shall be entitled to severance pay and benefits in amounts specified in the 2010 General Appropriations Act or in such other amounts that may be specified in a later appropriations act effective at the time the terminations occur, whichever amounts are larger.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

On motion, Amendment No. 2 was adopted.

Thereupon, **Senate Bill No. 3729**, as amended, passed its third and final consideration by the following vote:

Ayes 29
Noes 0

Senators voting aye were: Barnes, Beavers, Berke, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tracy, Watson, Yager and Mr. Speaker Ramsey--29.

A motion to reconsider was tabled.

Senator Watson moved that **Senate Bill No. 2424** be moved one place down on the Calendar for today, which motion prevailed.

Senator McNally moved that **Senate Bill No. 2650** be placed on the next Calendar, which motion prevailed.

Senate Bill No. 2424 -- Sunset Laws -- As introduced, extends wildlife resources commission, June 30, 2014. Amends TCA Title 4, Chapter 29 and Title 70, Chapter 1.

On motion, Senate Bill No. 2424 was made to conform with **House Bill No. 2460**.

On motion, House Bill No. 2460, on same subject, was substituted for Senate Bill No. 2424.

On motion of Senator Watson, Amendment No. 1 was withdrawn.

On motion of Senator Watson, Amendment No. 2 was withdrawn.

Thereupon, **House Bill No. 2460** passed its third and final consideration by the following vote:

Ayes 27
Noes 2

Senators voting aye were: Barnes, Beavers, Berke, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Haynes, Henry, Herron, Johnson, Kelsey, Ketron, Kyle, McNally, Norris, Overbey, Southerland, Stewart, Tracy, Watson, Yager and Mr. Speaker Ramsey--27.

Senators voting no were: Harper and Marrero--2.

A motion to reconsider was tabled.

Senate Bill No. 3194 -- Purchasing -- As introduced, authorizes cooperative purchasing agreements between or among certain units of local government for the procurement of any supplies, services, or construction. Amends TCA Title 12, Chapter 3, Part 10.

On motion, Senate Bill No. 3194 was made to conform with **House Bill No. 3175**.

On motion, House Bill No. 3175, on same subject, was substituted for Senate Bill No. 3194.

Senator Ketron moved that Amendment No. 1 be placed at the heel of the Amendments, which motion prevailed.

Senator Ketron moved that Amendment No. 2 be placed at the heel of the Amendments, which motion prevailed.

Senator McNally moved that Amendment No. 3 be placed at the heel of the Amendments, which motion prevailed.

Senator Finney moved to amend as follows:

AMENDMENT NO. 4

AMEND by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 12-3-1009, is amended by designating the current language as subsection (a) and adding the following new language, to be designated as subsection (b):

(b)(1) Any municipality or municipal agency may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or any services other than construction, engineering or architectural services or construction materials with one (1) or more other local governments within this state or outside this state, to the extent the laws of the other state permit the joint exercise of purchasing authority, in accordance with an agreement entered into between or among the participants. A municipality may participate in a master agreement by adopting a resolution accepting the terms of the master agreement. If a participant in a joint or multi-party agreement is required to advertise and

receive bids, then it will be deemed sufficient for those purposes that the purchasing entity or the entity that procured the bid complied with its own purchasing requirements. When any general law, charter or private act requires that a municipality or municipal agency purchase an item or a service by competitive bidding, either formal or informal, the municipality or municipal agency may consider the price for the same item or service under any contract or agreement pursuant to this section in the same manner as one of the formal bids or informal quotations required under such general law, charter or private act.

(2) The powers conferred by this subsection (b) are in addition and supplemental to the powers conferred by any other law and without regard to the provisions, requirements or restrictions of any other law, and the limitations imposed by this subsection (2) shall not affect powers conferred by any other law.

SECTION 2. Tennessee Code Annotated, Section 12-3-1004, is amended by adding the following language as subsection (c):

(c)(1) Any municipality, county, utility district, or other local governmental unit of the state may purchase equipment, where the individual unit price does not exceed ten thousand dollars ($10,000), under the same terms of a legal bid initiated by any other municipality, county, utility district, or other local governmental unit of the State of Tennessee.

(2)(A) Any municipality, county, utility district, or other local governmental unit of the state may purchase directly from a vendor the same goods and equipment, where the individual unit price does not exceed ten thousand dollars ($10,000), at the same price and under the same terms as provided in a contract for such equipment entered into by any other municipality, county, utility district, or other local governmental unit of the state.

(B) Any municipality, county, utility district, or other local governmental unit of the state which purchases goods and equipment under the provisions of this subsection (c) shall directly handle payment, refunds, returns, and any other communications or requirements involved in the purchase of the equipment without involving the entity which originated the contract. The originating entity shall have no liability or responsibility for any purchases made by another entity under a contract that the originating entity negotiated and consummated.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

Pursuant to Rule 39(3), Amendment No. 4 was adopted by the following vote:

Ayes 29
Noes 0

Senators voting aye were: Barnes, Beavers, Berke, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tracy, Watson, Yager and Mr. Speaker Ramsey--29.

On motion of Senator Ketron, Amendment No. 1 was withdrawn.

On motion of Senator Ketron, Amendment No. 2 was withdrawn.

On motion of Senator McNally, Amendment No. 3 was withdrawn.

Thereupon, **House Bill No. 3175**, as amended, passed its third and final consideration by the following vote:

Ayes 30
Noes 0

Senators voting aye were: Barnes, Beavers, Berke, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey--30.

A motion to reconsider was tabled.

Senator Burks moved that **Senate Bill No. 3215** be placed on the next Calendar, which motion prevailed.

Senate Bill No. 3495 -- Fees -- As introduced, increases the fees for court officers in Wilson County for attending on grand jury or waiting in court from $75.00 to $100 and establishes the fee as a minimum; authorizes the county legislative body of such county to increase the fee by resolution no more than once annually. Amends Title 8, Chapter 21, Part 9.

Senator Beavers moved to amend as follows:

AMENDMENT NO. 1

AMEND by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 8-21-901(a)(4)(A), is amended by designating the existing language as subdivision (A)(i) and by adding the following language as a new subdivision (A)(ii):

(A)(ii) Notwithstanding subdivision (A)(i), in any county having a population of not less than eighty-eight thousand eight hundred (88,800) nor more than eighty-eight thousand nine hundred (88,900) according to the 2000 federal census or any subsequent federal census, the sheriff, constable, bailiff or other court officer, as applicable, shall be entitled to receive one hundred dollars ($100.00) per day for attending on grand jury or waiting in court. Such daily per diem allowance shall be a minimum daily per diem and may be increased no more than once annually by resolution of the county legislative body of any county to which this subdivision (A)(ii) applies.

SECTION 2. This act shall take effect July 1, 2010, the public welfare requiring it.

Pursuant to Rule 39(3), Amendment No. 1 was adopted by the following vote:

Ayes 28
Noes 0

Senators voting aye were: Beavers, Berke, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Watson, Woodson, Yager and Mr. Speaker Ramsey--28.

Thereupon, **Senate Bill No. 3495**, as amended, passed its third and final consideration by the following vote:

Ayes 29
Noes 0

Senators voting aye were: Barnes, Beavers, Berke, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Watson, Woodson, Yager and Mr. Speaker Ramsey--29.

A motion to reconsider was tabled.

Senator Beavers moved that **Senate Bill No. 3621** be placed on the last Calendar, which motion prevailed.

Senator Faulk moved that **House Bill No. 381**, as amended, be rereferred to the Committee on Calendar, which motion prevailed.

Senator Norris moved that **Senate Bill No. 673** be rereferred to the Committee on Calendar, which motion prevailed.

Senator Norris moved that **Senate Bill No. 2810** be placed on the last Calendar, which motion prevailed.

Mr. Speaker Ramsey moved that **Senate Bill No. 2560** be placed on the next Calendar, which motion prevailed.

MOTION

Senator Faulk moved that Rule 19 and Rule 44 be suspended for the purpose of considering the Message Calendar next, which motion prevailed.

MESSAGE CALENDAR

Senator Kyle moved that **Senate Bill No. 2616** be placed at the heel of the Message Calendar for today, which motion prevailed.

Senator Kyle moved that **Senate Bill No. 3901** be placed at the heel of the Message Calendar for today, which motion prevailed.

SENATE BILL ON HOUSE AMENDMENT

Senate Bill No. 3049 -- State Government -- As introduced, increases from 15 percent to 25 percent the maximum voting interest an insurance company can have in a TNInvestco. Amends TCA Title 4, Chapter 28 and Title 56.

HOUSE AMENDMENT NO. 2

AMEND by adding the following sections immediately preceding the effective date section and by renumbering the effective date section accordingly:

SECTION __. Tennessee Code Annotated, Section 4-28-102, is amended by adding the following language as new, appropriately designated subdivisions:

( ) "Minority-owned business" means a business that is wholly owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by one (1) or more individuals who are members of any racial or ethnic minority within the state and whose management and daily business operations are under the control of one (1) or more members of any racial or ethnic minority within the state;

( ) "Woman-owned business" means a business that is wholly owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women;

SECTION __. Tennessee Code Annotated, Section 4-28-106, is amended by adding the following language as a new, appropriately designated subsection:

( )(1) All qualified TNInvestcos, and the qualified businesses in which they invest, shall strive to maximize the participation of minority-owned businesses and woman-owned businesses to reflect the racial, ethnic and gender diversity of Tennessee's population.

(2) The Department of Economic and Community Development shall promote awareness of the program established by this chapter among minority-owned businesses and woman-owned businesses.

(3) The Department of Economic and Community Development shall undertake training programs and other educational activities to increase diversity of participation by encouraging minority-owned businesses and woman-owned businesses to apply, compete and qualify for investments under this chapter.

(4) Each TNInvestco shall coordinate its efforts to strive to maximize participation in minority-owned businesses and woman-owned businesses with the efforts of the Department of Economic and Community Development.

(5) Each TNInvestco shall provide information on its Web site concerning this program and the availability of capital to businesses including minority-owned businesses and woman-owned businesses.

SECTION __. Tennessee Code Annotated, Section 4-28-108, is amended by inserting the language "and the small and minority-owned business assistance program fund" immediately following the language "rural opportunity fund".

SECTION __. Tennessee Code Annotated, Section 4-28-109(a)(1), is amended by inserting the language "and the small and minority-owned business assistance program fund" immediately following the language "Tennessee rural opportunity fund".

SECTION __. Tennessee Code Annotated, Section 4-28-109(a)(2), is amended by deleting the language "shall be transferred from the general fund to the Tennessee rural opportunity fund" and by substituting instead the language "shall be transferred from the general fund and seventy-five percent (75%) of such amount shall be transferred to the Tennessee rural opportunity fund and twenty-five percent (25%) of such amount shall be transferred to the small and minority-owned business assistance program fund".

SECTION __. Tennessee Code Annotated, Section 4-28-110(a)(2), is amended by deleting subdivision (C) in its entirety and by substituting instead the following:

(C) All qualified investments that the qualified TNInvestco has made in the previous taxable year and the number of employees, including the number of minority and women employees, of each such qualified business at the time of such investment and as of December 1 of the preceding taxable year; and

SECTION __. Tennessee Code Annotated, Section 4-28-104, is amended by adding the following language as a new, appropriately designated subsection:

( ) If the general assembly subsequently authorizes an allocation of investment tax credits in addition to the two hundred million dollars ($200,000,000) authorized by this act and by Chapter 610 of the Public Acts of 2009, the Department of Revenue and the Department of Economic and Community Development, in reviewing the organizational documents of each applicant for certification and determining whether the applicant has satisfied the requirements of this chapter pursuant to subsection (c), shall additionally take into consideration the applicant's involvement of women and minorities.

SECTION __. Tennessee Code Annotated, Section 4-28-105, is amended by adding the following language as a new, appropriately designated subsection:

( ) If the general assembly subsequently authorizes an allocation of investment tax credits in addition to the two hundred million dollars ($200,000,000) authorized by this act and by Chapter 610 of the Public Acts of 2009, in reviewing applications and awarding such credits, the Commissioner of Revenue and the Commissioner of Economic and Community Development shall strive to select applicants whose investment team membership is reflective of the racial, ethnic and gender diversity of Tennessee's population.

AND FURTHER AMEND by deleting the language "the comptroller of the treasury" from the amendatory language of Section 17 of the bill as amended and by substituting instead the following:

the comptroller of the treasury and the state treasurer

Senator Overbey moved that the Senate concur in House Amendment No. 2 to **Senate Bill No. 3049**.

Senator Overbey moved that **Senate Bill No. 3049** be moved four places down on the Message Calendar for today, which motion prevailed.

SENATE BILL ON HOUSE AMENDMENT

Senate Bill No. 900 -- Sentencing -- As introduced, requires adult convicted of contributing to delinquency of a minor to serve 100 percent of Class A misdemeanor sentence, which is 11 months and 29 days, if offense involved supplying substance to a minor that is unlawful for minor to possess and minor engages in conduct that causes death of another. Amends TCA Title 37, Chapter 1, Part 1.

HOUSE AMENDMENT NO. 1

AMEND by deleting Section 2 in its entirety and substituting instead the following:

SECTION 2. This act shall take effect July 1, 2010, the public welfare requiring it.

Senator Burks moved that the Senate concur in House Amendment No. 1 to **Senate Bill No. 900**, which motion prevailed by the following vote:

Ayes 29
Noes 0

Senators voting aye were: Barnes, Beavers, Berke, Bunch, Burchett, Burks, Crowe, Faulk, Ford, Gresham, Harper, Haynes, Henry, Herron, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey--29.

A motion to reconsider was tabled.

HOUSE AMENDMENT NO. 2

AMEND by inserting the following language as a new Section 1 and by renumbering subsequent sections accordingly:

SECTION 1. This act shall be known and may be cited as the "Markie Voyles Act".

Senator Burks moved that the Senate concur in House Amendment No. 2 to **Senate Bill No. 900**, which motion prevailed by the following vote:

Ayes 29
Noes 0

Senators voting aye were: Barnes, Beavers, Berke, Bunch, Burchett, Burks, Crowe, Faulk, Ford, Gresham, Harper, Haynes, Henry, Herron, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey--29.

A motion to reconsider was tabled.

Senator Finney moved that **Senate Bill No. 3428** be moved down one place on the Message Calendar for today, which motion prevailed.

HOUSE BILL ON SENATE AMENDMENT

House Bill No. 209 -- Education -- As introduced, requires graduating high school students to take a foreign language proficiency test that will provide diagnostic information to educators. Amends TCA Title 49, Chapter 6, Part 60.

Senator Marrero moved to lift from the table a motion to reconsider on **House Bill No. 209**, which motion prevailed.

Senator Marrero moved that the Senate reconsider its action in passing **House Bill No. 209**, which motion prevailed.

Senator Marrero moved that the Senate reconsider its action in adopting Senate Amendment No. 1 to **House Bill No. 209**, which motion prevailed.

Senator Gresham moved that Senate Amendment No. 1 to **House Bill No. 209** be withdrawn, which motion prevailed.

Thereupon, **House Bill No. 209** was repassed on third and final consideration by the following vote:

Ayes 30
Noes 0

Senators voting aye were: Barnes, Beavers, Berke, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Johnson, Kelsey, Ketron, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey--30.

A motion to reconsider was tabled.

Senator Finney moved that **Senate Bill No. 3428** be placed at the heel of the Message Calendar for today, which motion prevailed.

House Bill No. 670 -- Criminal Procedure -- As introduced, requires a keeper of a jail to notify the Department of Homeland Security by facsimile transmission or other means of prisoners whose citizenship status in this country cannot be determined at time of arrest from documents in the prisoner's possession or if person is in this country illegally. Amends TCA Title 40.

Senator Gresham moved that the Senate refuse to recede from its action in adopting Senate Amendment No. 6 to **House Bill No. 670**, which motion prevailed.

Senator Gresham moved that the Senate refuse to recede from its action in adopting Senate Amendment No. 10 to **House Bill No. 670**, which motion prevailed.

Senator Gresham moved that the Senate refuse to recede from its action in adopting Senate Amendment No. 11 to **House Bill No. 670**, which motion prevailed.

Senator Gresham moved that the Senate refuse to recede from its action in adopting Senate Amendment No. 14 to **House Bill No. 670**, which motion prevailed.

Senator Gresham moved that the Senate refuse to recede from its action in adopting Senate Amendment No. 2 to **House Bill No. 670**, which motion prevailed.

Senator Gresham moved that the Senate refuse to recede from its action in adopting Senate Amendment No. 3 to **House Bill No. 670**, which motion prevailed.

Senator Gresham moved that the Senate refuse to recede from its action in adopting Senate Amendment No. 4 to **House Bill No. 670**, which motion prevailed.

Senator Gresham moved that the Senate refuse to recede from its action in adopting Senate Amendment No. 5 to **House Bill No. 670**, which motion prevailed.

Senator Gresham moved that the Senate refuse to recede from its action in adopting Senate Amendment No. 9 to **House Bill No. 670**, which motion prevailed.

Senator Gresham moved that the Senate refuse to recede from its action in adopting Senate Amendment No. 12 to **House Bill No. 670**, which motion prevailed.

Senator Gresham moved that the Senate refuse to recede from its action in adopting Senate Amendment No. 13 to **House Bill No. 670**, which motion prevailed.

Senator Gresham moved that the Senate refuse to recede from its action in adopting Senate Amendment No. 23 to **House Bill No. 670**, which motion prevailed.

Senator Gresham moved that the Senate refuse to recede from its action in adopting Senate Amendment No. 28 to **House Bill No. 670**, which motion prevailed.

Senator Gresham moved that the Senate refuse to recede from its action in adopting Senate Amendment No. 29 to **House Bill No. 670**, which motion prevailed.

Senator Gresham moved that the Senate refuse to recede from its action in adopting Senate Amendment No. 32 to **House Bill No. 670**, which motion prevailed.

FURTHER ACTION ON SENATE BILL NO. 3049

Senator Overbey moved that the Senate concur in House Amendment No. 2 to **Senate Bill No. 3049**, which motion prevailed by the following vote:

Ayes 20
Noes 5

Senators voting aye were: Barnes, Berke, Bunch, Burks, Finney, Ford, Harper, Haynes, Henry, Herron, Kelsey, Ketron, Marrero, Norris, Overbey, Southerland, Stewart, Watson, Woodson and Yager--20.

Senators voting no were: Beavers, Burchett, Faulk, McNally and Tracy--5.

A motion to reconsider was tabled.

House Bill No. 2187 -- Tennessee Housing Development Agency -- As introduced, requires agency to develop and implement a system of county needs scores to, among other things, ensure that suburban communities have equal opportunity and awards similar to urban communities. Amends TCA Title 13, Chapter 23.

Senator Bunch moved that the Senate refuse to recede from its action in adopting Senate Amendment No. 3 to **House Bill No. 2187**, which motion prevailed.

Senator Watson moved that **House Bill No. 2454** be placed at the heel of the Message Calendar for today, which motion prevailed.

Senator Watson moved that **House Bill No. 2510** be placed at the heel of the Message Calendar for today, which motion prevailed.

REPORT OF SELECT COMMITTEE
CONFERENCE COMMITTEE REPORT ON
HOUSE BILL NO. 3291/SENATE BILL NO. 3181

The House and Senate Conference Committee appointed pursuant to motions to resolve the differences between the two houses on House Bill No. 3291 (Senate Bill No. 3181) has met and recommends that all amendments be deleted.

The Committee further recommends that the following amendment (#1903932) be adopted, as follows:

AMEND by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 4-29-233(a), is amended by adding a new subdivision thereto, as follows:

( ) Tennessee court of the judiciary, created by § 17-5-201;

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

/s/ Senator Bo Watson
/s/ Senator Jack Johnson
/s/ Senator Tim Barnes

/s/ Representative Susan Lynn
/s/ Representative Mike Kernell
/s/ Representative Gary Odom

Senator Watson moved that the Conference Committee Report on **House Bill No. 3291/Senate Bill No. 3181** be adopted and made the action of the Senate, which motion prevailed by the following vote:

Ayes 23
Noes 6

Senators voting aye were: Barnes, Beavers, Bunch, Burchett, Burks, Crowe, Faulk, Gresham, Harper, Haynes, Henry, Jackson, Johnson, Kelsey, Ketron, McNally, Norris, Southerland, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey--23.

Senators voting no were: Berke, Finney, Ford, Kyle, Marrero and Overbey--6.

A motion to reconsider was tabled.

Senator Kyle moved that **Senate Bill No. 2616** be placed on the next Message Calendar, which motion prevailed.

Senator Kyle moved that **Senate Bill No. 3901** be placed on the next Message Calendar, which motion prevailed.

NOTICE

Pursuant to Rule 63, Senator Finney gave written notice to recall **Senate Bill No. 3209** from the Committee on Government Operations.

MOTION

Senator Norris moved that Rule 37 be suspended for the immediate consideration of **Senate Joint Resolution No. 1307**, out of order, which motion prevailed.

RESOLUTION LYING OVER

Senate Joint Resolution No. 1307 -- General Assembly, Adjournment -- Adjourns sine die 106th General Assembly at 6:00 p.m. on Wednesday, June 9, 2010.

On motion of Senator Norris, the rules were suspended for the immediate consideration of the resolution.

On motion, **Senate Joint Resolution No. 1307** was adopted.

NOTICE

Pursuant to Rule 63, Senator Faulk gave written notice to recall **House Joint Resolution No. 1051** from the Committee on Environment, Conservation and Tourism.

MESSAGE CALENDAR

SENATE BILL ON HOUSE AMENDMENT

Senate Bill No. 3428 -- Municipal Government -- As introduced, authorizes municipal governments to create an office of administrative hearing officer to hear building and property maintenance code violations, and further describes such administrative proceedings. Amends TCA Title 6, Chapter 54 and Title 66.

HOUSE AMENDMENT NO. 2

AMEND by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 6, Chapter 54, is amended by adding the following language as a new part:

§ 6-54-1001.

(a) Municipalities are authorized to create, by ordinance, the office of administrative hearing officer to hear building and property maintenance code violations.

(b) Such authorizing ordinance must, at minimum, contain:

(1) Reference to the municipal code sections subject to administrative jurisdiction; and

(2) The number of administrative hearing officer positions created.

(c) Two (2) or more municipalities may enter into an interlocal agreement to employ one (1) or more administrative hearing officers if so referenced in the adopting ordinance.

(d) No provision in this part diminishes or terminates any existing municipal power or authority.

(e) For purposes of this part, "municipality" means any incorporated town or city.

§ 6-54-1002.

(a) The administrative body has jurisdiction to hear cases involving violations of municipal ordinances regulating building and property maintenance, including:

(1) Locally adopted building codes;

(2) Locally adopted residential codes;

(3) Locally adopted plumbing codes;

(4) Locally adopted electrical codes;

(5) Locally adopted gas codes;

(6) Locally adopted mechanical codes;

(7) Locally adopted energy codes;

(8) Locally adopted property maintenance codes; and

(9) Ordinances regulating any subject matter commonly found in the above mentioned codes.

(b) Administrative hearing officers are not authorized to hear violations of codes adopted by the state fire marshal pursuant to § 68-120-101(a) enforced by a deputy building inspector pursuant to § 68-120-101(f).

§ 6-54-1003.

(a) Unless required for the disposition of ex parte matters specifically authorized by statute, an administrative hearing officer presiding over a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communication.

(b) Notwithstanding subsection (a), an administrative hearing officer may communicate with municipal employees or officials regarding a matter pending before the administrative body or may receive aid from staff assistants, members of the staff of the city attorney or a licensed attorney, if such persons do not receive ex parte communications of a type that the administrative hearing officer would be prohibited from receiving, and do not furnish, augment, diminish or modify the evidence in the record.

(c) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case, and no other person may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with any person serving as an administrative hearing officer without notice and opportunity for all parties to participate in the communication.

(d) If, before serving as an administrative hearing officer in a contested case, a person receives an ex parte communication of a type that may not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (e).

(e) An administrative hearing officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) business days after notice of the communication.

§ 6-54-1004.

(a) Any party may participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(b) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, unless prohibited by any provision of law, other representative.

§ 6-54-1005.

(a)(1) In any action set for hearing, the administrative hearing officer, upon the administrative hearing officer's own motion, or upon motion of one (1) of the parties or such party's qualified representatives, may direct the parties or the attorneys for the parties, or both, to appear before the administrative hearing officer for a conference to consider:

(A) The simplification of issues;

(B) The possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;

(C) The limitation of the number of witnesses; and

(D) Such other matters as may aid in the disposition of the action.

(2) The administrative hearing officer shall make an order that recites the action taken at the conference, and the agreements made by the parties as to any of the matters considered, and that limits the issues for hearing to those not disposed of by admissions or agreements of the parties. Such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(b) Upon reasonable notice to all parties, the administrative hearing officer may convene a hearing or convert a pre-hearing conference to a hearing, to be conducted by the administrative hearing officer sitting alone, to consider argument or evidence, or both, on any question of law.

(c) In the discretion of the administrative hearing officer, all or part of the pre-hearing conference may be conducted by telephone, television or other electronic means, if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

(d) If a pre-hearing conference is not held, the administrative hearing officer may issue a pre-hearing order, based on the pleadings, to regulate the conduct of the proceedings.

§ 6-54-1006.

(a) Each administrative hearing officer shall be appointed by the local governing body for a four-year term and serve at the pleasure of the appointing governing body. Such administrative hearing officer may be reappointed.

(b) An administrative hearing officer shall be one (1) of the following:

(1) Licensed building inspector;

(2) Licensed plumbing inspector;

(3) Licensed electrical inspector;

(4) Licensed attorney;

(5) Licensed architect;

(6) Licensed engineer; or

(c) A municipality may also contract with the Administrative Procedures Division, office of the Tennessee secretary of state to employ an administrative law judge on a temporary basis to serve as an administrative hearing officer. Such administrative law judge shall not be subject to the requirements of subsections 6-54-1007 (a) and (b).

§ 6-54-1007.

(a) Each person appointed to serve as an administrative hearing officer shall, within the six-month period immediately following the date of such appointment, participate in a program of training conducted by the University of Tennessee's Municipal Technical Advisory Service, referred to in this part as MTAS. MTAS shall issue a certificate of participation to each person whose attendance is satisfactory. The curricula for the initial training shall be developed by MTAS with input from the administrative procedures division, office of the Tennessee secretary of state. MTAS shall offer this program of training no less than twice per calendar year.

(b) Each person actively serving as an administrative hearing officer shall complete six (6) hours of continuing education every calendar year. MTAS develop the continuing education curricula and offer that curricula for credit no less than twice per calendar year. The education required by this section shall be in addition to any other continuing education requirements required for other professional licenses held by the individuals licensed under this part. No continuing education hours from one (1) calendar year may be carried over to a subsequent calendar year.

(c) MTAS has the authority to set and enact appropriate fees for the requirements of this section. A municipality shall bear the cost of the fees for administrative hearing officers serving their jurisdiction.

(d) Costs pursuant to this section shall be offset by fees enacted.

§ 6-54-1008.

(a) Upon the issuance of a citation for violation of a municipal ordinance referenced in the municipality's administrative hearing ordinance, the issuing officer shall provide written notice of:

(1) A short and plain statement of the matters asserted. If the issuing officer is unable to state the matters in detail at the time the citation is served, the initial notice may be limited to a statement of the

issues involved and the ordinance violations alleged. Thereafter, upon timely, written application a more definite and detailed statement shall be furnished ten (10) business days prior to the time set for the hearing;

(2) A short and plain description of the municipality's administrative hearing process including references to state and local statutory authority;

(3) Contact information for the municipality's administrative hearing office; and

(4) Time frame in which the hearing officer will review the citation and determine the fine and remedial period, if any.

(b) Citations issued for violations of ordinances referenced in the municipality's administrative hearing ordinance shall be signed by the alleged violator at the time of issuance. If an alleged violator refuses to sign, the issuing officer shall note the refusal and attest to the alleged violator's receipt of the citation. An alleged violator's signature on a citation is not admission of guilt.

(c) Citations issued upon absentee property owners may be served via certified mail sent to the last known address of the recorded owner of the property.

(d) Citations issued for violations of ordinances referenced in the municipality's administrative hearing ordinance shall be transmitted to an administrative hearing officer within two (2) business days of issuance.

§ 6-54-1009.

(a) Upon receipt of a citation issued pursuant to § 6-54-1008, an administrative hearing officer shall, within seven (7) business days of receipt, review the appropriateness of an alleged violation. Upon determining that a violation does exist, the hearing officer has the authority to levy a fine upon the alleged violator in accordance with this section. Any fine levied by a hearing officer must be reasonable based upon the totality of the circumstances.

(1) For violations occurring upon residential property a hearing officer has the authority to levy a fine upon the violator not to exceed five hundred dollars ($500.00) per violation. For purposes of this part, "residential property" means a single family dwelling principally used as the property owner's primary residence and the real property upon which it sits.

(2) For violations occurring upon non-residential property a hearing officer has the authority to levy a fine upon the violator not to exceed five hundred dollars ($500.00) per violation per day. For purposes of this part, "non-residential property" means all real property, structures, buildings and dwellings that are not residential property.

(b) If a fine is levied pursuant to subsection (a), the hearing officer shall set a reasonable period of time to allow the alleged violator to remedy the violation alleged in the citation before the fine is imposed. The remedial period shall be no less than ten (10) nor greater than one hundred twenty (120) calendar days, except where failure to remedy the alleged violation in less than ten (10) calendar days would pose an imminent threat to the health, safety or welfare of persons or property in the adjacent area.

(c) Upon the levy of a fine pursuant to subsection (a), the hearing officer shall within seven (7) business days, provide via certified mail notice to the alleged violator of:

(1) The fine and remedial period established pursuant to subsections (a) and (b);

(2) A statement of the time, place, nature of the hearing, and the right to be represented by counsel; and

(3) A statement of the legal authority and jurisdiction under which the hearing is to be held, including a reference to the particular sections of the statutes and rules involved.

(d) The date of the hearing shall be no less than thirty (30) calendar days following the issuance of the citation. To confirm the hearing, the alleged violator must make a written request for the hearing to the hearing officer within seven (7) business days of receipt of the notice required in subsection (c).

(e) If an alleged violator demonstrates to the issuing officer's satisfaction that the allegations contained in the citation have been remedied to the issuing officer's satisfaction, the fine levied pursuant to subsection (a) shall not be imposed or if already imposed cease; and the hearing date, if the hearing has not yet occurred, shall be cancelled.

§ 6-54-1010.

(a) If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative hearing officer may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(b) If the proceedings are conducted without the participation of the party in default, the administrative hearing officer shall include in the final order a written notice of default and a written statement of the grounds for the default.

§ 6-54-1011.

(a) The administrative hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) business days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(3) The administrative hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

(b) If a petitioner qualifies for intervention, the administrative hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(2) Limiting the intervenor's participation so as to promote the orderly and prompt conduct of the proceedings; and

(3) Requiring two (2) or more intervenors to combine their participation in the proceedings.

(c) The administrative hearing officer, at least twenty-four (24) hours before the hearing, shall render an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The administrative hearing officer may modify the order at any time, stating the reasons for the modification. The administrative hearing officer shall promptly give notice of an order granting, denying or modifying intervention to the petitioner for intervention and to all parties.

§ 6-54-1012.

(a) The administrative hearing officer shall regulate the course of the proceedings, in conformity with the pre-hearing order, if any.

(b) To the extent necessary for full disclosure of all relevant facts and issues, the administrative hearing officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the pre-hearing order.

(c) In the discretion of the administrative hearing officer and by agreement of the parties, all or part of the hearing may be conducted by telephone, television or other electronic means, if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceedings while taking place.

(d) The hearing shall be open to public observation pursuant to Title 8, Chapter 44, unless otherwise provided by state or federal law. To the extent that a hearing is conducted by telephone, television or other electronic means, the availability of public observation shall be satisfied by giving members of the public an opportunity, at reasonable times, to hear the tape recording and to inspect any transcript produced, if any.

§ 6-54-1013.

(a) In administrative hearings:

(1) The administrative hearing officer shall admit and give probative effect to evidence admissible in a court, and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The administrative hearing officer shall give effect to the rules of privilege recognized by law and to statutes protecting the confidentiality of certain records, and shall exclude evidence which in his or her judgment is irrelevant, immaterial or unduly repetitious;

(2) At any time not less than ten (10) business days prior to a hearing or a continued hearing, any party shall deliver to the opposing party a copy of any affidavit such party proposes to introduce in evidence, together with a notice in the form provided in subsection (b). Unless the opposing party, within seven (7) business days after delivery, delivers to the proponent a request to cross-examine an affiant, the opposing party's right to cross-examination of such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after a proper request is made as provided in this subdivision (2), the affidavit shall not be admitted into evidence. "Delivery", for purposes of this section, means actual receipt;

(3) The administrative hearing officer may admit affidavits not submitted in accordance with this section where necessary to prevent injustice;

(4) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the municipality. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available; and

(5)(A) Official notice may be taken of:

(i) Any fact that could be judicially noticed in the courts of this state;

(ii) The record of other proceedings before the agency; or

(iii) Technical or scientific matters within the administrative hearing officer's specialized knowledge; and

(B) Parties must be notified before or during the hearing, or before the issuance of any final order that is based in whole or in part on facts or material notice, of the specific facts or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the facts or material so noticed.

(b) The notice referred to in subdivision (2) shall contain the following information and be substantially in the following form:

The accompanying affidavit of _____ (here insert name of affiant) will be introduced as evidence at the hearing in _____ (here insert title of proceeding). _____ (here insert name of affiant) will not be called to testify orally and you will not be entitled to question such affiant unless you notify _____ (here insert name of the proponent or the proponent's attorney) at _____ (here insert address) that you wish to cross-examine such affiant. To be effective, your request must be mailed or delivered to _____ (here insert name of proponent or the proponent's attorney) on or before _____ (here insert a date seven (7) business days after the date of mailing or delivering the affidavit to the opposing party).

§ 6-54-1014.

(a) An administrative hearing officer shall render a final order in all cases brought before his or her body.

(b) A final order shall include conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order, including the remedy prescribed. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The final order must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order.

(c) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. The administrative hearing officer's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence.

(d) If an individual serving or designated to serve as an administrative hearing officer becomes unavailable, for any reason, before rendition of the final order, a qualified substitute shall be appointed. The substitute shall use any existing record and may conduct any further proceedings as is appropriate in the interest of justice.

(e) The administrative hearing officer may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(f) A final order rendered pursuant to subsection (a) shall be rendered in writing within seven (7) business days after conclusion of the hearing or after submission of proposed findings unless such period is waived or extended with the written consent of all parties or for good cause shown.

(g) The administrative hearing officer shall cause copies of the final order under subsection (a) to be delivered to each party.

§ 6-54-1015.

(a) All final orders shall state when the order is entered and effective.

(b) A party may not be required to comply with a final order unless the final order has been mailed to the last known address of the party or unless the party has actual knowledge of the final order.

§ 6-54-1016.

A municipality may collect a fine levied pursuant to this section by any legal means available to a municipality to collect any other fine, judgment or debt.

§ 6-54-1017.

(a) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review.

(b) Proceedings for judicial review of a final order are instituted by filing a petition for review in the chancery court in the county where the municipality lies. Such petition must be filed within sixty (60) calendar days after the entry of the final order that is the subject of the review.

(c) The filing of the petition for review does not itself stay enforcement of the final order. The reviewing court may order a stay on appropriate terms, but if it is shown to the satisfaction of the reviewing court, in a hearing that shall be held within ten (10) business days of a request for hearing by either party, that any party or the public at large may suffer injury by reason of the granting of a stay, then no stay shall be granted until a good and sufficient bond, in an amount fixed and approved by the court, shall be given by the petitioner conditioned to indemnify the other persons who might be so injured and if no bond amount is sufficient, the stay shall be denied.

(d) Within forty-five (45) calendar days after service of the petition, or within further time allowed by the court, the administrative hearing officer shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all the parties of the review proceedings, the record may be shortened. A party unreasonably

refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the record.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the administrative proceeding, the court may order that the additional evidence be taken before the administrative hearing officer upon conditions determined by the court. The administrative hearing officer may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(f) The procedure ordinarily followed in the reviewing court will be followed in the review of contested cases decided by the administrative hearing officer, except as otherwise provided in this chapter. The administrative hearing officer that issued the decision to be reviewed is not required to file a responsive pleading.

(g) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the administrative hearing officer, not shown in the record, proof thereon may be taken in the court.

(h) The court may affirm the decision of the administrative hearing officer or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the administrative hearing officer;

(3) Made upon unlawful procedure;

(4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(5) Unsupported by evidence that is both substantial and material in the light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the administrative hearing officer as to the weight of the evidence on questions of fact.

(i) No administrative hearing decision pursuant to a hearing shall be reversed, remanded or modified by the reviewing court unless for errors that affect the merits of such decision.

(j) The reviewing court shall reduce its findings of fact and conclusions of law to writing and make them parts of the record.

§ 6-54-1018.

(a) An aggrieved party may obtain a review of any final judgment of the chancery court under this chapter by appeal to the court of appeals of Tennessee.

(b) The record certified to the chancery court and the record in the chancery court shall constitute the record in an appeal. Evidence taken in court pursuant to Title 24 shall become a part of the record.

(c) The procedure on appeal shall be governed by the Tennessee Rules of Appellate Procedure.

SECTION 2. This act shall take effect July 1, 2010, the public welfare requiring it.

Senator Finney moved that the Senate concur in House Amendment No. 2 to **Senate Bill No. 3428**, which motion prevailed by the following vote:

Ayes 29
Noes 0

Senators voting aye were: Barnes, Beavers, Berke, Bunch, Burchett, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Jackson, Johnson, Kelsey, Ketron, Marrero, McNally, Norris, Southerland, Stewart, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey--29.

A motion to reconsider was tabled.

MOTION

On motion of Senators Black, Gresham and Ford, their names were added as sponsors of **Senate Bill No. 1997**.

On motion of Senator Herron, his name was added as sponsor of **Senate Bill No. 2839**.

On motion of Senators Harper and Marrero, their names were added as sponsors of **Senate Bill No. 3219**.

On motion of Senator Faulk, his name was added as sponsor of **Senate Bill No. 2886**.

On motion of Senator Harper, her name was added as sponsor of **House Joint Resolution No. 1305**.

On motion of Senator Bunch, his name was added as sponsor of **Senate Bill No. 2709**.

On motion of Senator Berke, his name was added as sponsor of **Senate Bill No. 2899**.

ADJOURNMENT

Senator Norris moved the Senate adjourn until 11:00 a.m., Wednesday, June 9, 2010, which motion prevailed.