

SENATE BILL 2153

By Bell

AN ACT to amend Tennessee Code Annotated, Title 2;
Title 5; Title 6; Title 7; Title 8 and Title 12, relative
to local government.

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

SECTION 1. This act shall be known and may be cited as the "County Governmental Assurance Act."

SECTION 2. Tennessee Code Annotated, Section 5-5-102, is amended by deleting subdivision (c)(1) in its entirety and substituting instead the following:

(1)

(A) Notwithstanding any law to the contrary, any county employee shall be disqualified from serving as a member of the county legislative body for the county that employs such county employee, by reason of being a county employee. Any member of a county legislative body who is a county employee on December 1, 2018, shall not become disqualified and may continue in office as a member of the county legislative body pursuant to this subdivision (c)(1) for the remainder of the member's term. Any member of a county legislative body who is a county employee on December 1, 2018, who is reelected to the county legislative body on or after that date, without any interruption in holding such office, may continue in office as a member of the county legislative body.

(B) Any county legislative body may elect to exempt the county from the application of subdivision (c)(1)(A) with respect to employees of the county by adoption of a resolution by a two-thirds (2/3) vote and approval by a majority of the registered voters of the county voting in an election on the question of

whether to exempt the county, pursuant to the procedures in subdivision

(c)(1)(C).

(C) Upon adoption of a resolution in accordance with subdivision (c)(1)(B), and receipt of a certified copy of the adopted resolution regarding the exemption, the county election commission shall call an election to be held in accordance with § 2-3-204 to approve or reject the exemption of the county from the application of subdivision (c)(1)(A). An election to approve or reject the exemption may be considered a general election for purposes of § 2-3-204(c), which shall be conducted as follows:

(i) The ballots used in the election shall provide options to vote "FOR" or "AGAINST" the resolution exempting the county, and the voters shall vote for or against approval of the resolution;

(ii) The votes cast shall be canvassed and the results proclaimed and certified by the county election commission to the county legislative body;

(iii) The qualifications of voters shall be the same as those required for participation in general elections;

(iv) All laws applicable to general elections shall apply to the determination of the approval or rejection of the exemption of the county; and

(v) If the majority of those voting in the election vote for the resolution exempting the county, the resolution shall be deemed to be approved on the date that the county election commission makes its official canvass of the election returns.

SECTION 3. Tennessee Code Annotated, Section 5-5-102(c), is amended by adding the following as a new subdivision (3):

(3)

(A) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality may vote on matters in which such member has a conflict of interest if the member informs the governing body immediately prior to the vote as follows:

"Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents."

(B) In the event a member of a local governing body of a county or a municipality has a conflict of interest in a matter to be voted upon by the body, such member may abstain for cause by announcing the abstention for cause to the presiding officer. Any member of a local governing body of a county or municipality who abstains from voting for cause on any issue coming to a vote before the body shall not be counted for the purpose of determining a majority vote.

(C) The vote of any person having a conflict of interest who does not inform the governing body of such conflict as provided in subdivision (c)(3)(A) shall be void if challenged in a timely manner. As used in this section, "timely manner" means during the same meeting at which the vote was cast and prior to the transaction of any further business by the body.

(D) Nothing in this subdivision (c)(3) shall be construed as altering, amending, or otherwise affecting § 12-4-101(a). In the event of any conflict between this subdivision (c)(3) and § 12-4-101(a), § 12-4-101(a) shall prevail.

SECTION 4. Tennessee Code Annotated, Section 5-5-112, is amended by deleting the section in its entirety.

SECTION 5. Tennessee Code Annotated, Section 5-1-210(4), is amended by deleting the subdivision and substituting instead the following:

(4) For the size, method of election, qualification for holding office, method of removal, and procedures of the county legislative body with such other provisions with respect to such body as are normally related to the organization, powers, and duties of governing bodies in counties, subject to the following restrictions:

(A)

(i) Any county employee shall be disqualified from serving as a member of the county legislative body for the county that employs such county employee, by reason of being a county employee;

(ii) Any member of a county legislative body who is a county employee on December 1, 2018, shall not become disqualified and may continue in office as a member of the county legislative body for the remainder of the member's term; and

(iii) Any member of a county legislative body who is a county employee on December 1, 2018, who is reelected to the county legislative body on or after that date, without any interruption in holding such office, may continue in office as a member of the county legislative body.

(B) Any county legislative body may elect to exempt the county from the application of subdivision (4)(A) with respect to employees of the county by adoption of a resolution by a two-thirds (2/3) vote and approval by a majority of the registered voters of the county voting in an election on the question of whether to exempt the county, pursuant to the procedures in subdivision (4)(C).

(C) Upon adoption of a resolution in accordance with subdivision (4)(B), and receipt of a certified copy of the adopted resolution regarding the exemption,

the county election commission shall call an election to be held in accordance with § 2-3-204 to approve or reject the exemption of the county from the application of subdivision (4)(A). An election to approve or reject the exemption may be considered a general election for purposes of § 2-3-204(c), which shall be conducted as follows:

(i) The ballots used in the election shall provide options to vote "FOR" or "AGAINST" the resolution exempting the county, and the voters shall vote for or against approval of the resolution;

(ii) The votes cast shall be canvassed and the results proclaimed and certified by the county election commission to the county legislative body;

(iii) The qualifications of voters shall be the same as those required for participation in general elections;

(iv) All laws applicable to general elections shall apply to the determination of the approval or rejection of the exemption of the county; and

(v) If the majority of those voting in the election vote for the resolution exempting the county, the resolution shall be deemed to be approved on the date that the county election commission makes its official canvass of the election returns.

SECTION 6. Tennessee Code Annotated, Section 2-12-102(b), is amended by adding the following language at the end of the subsection:

As used in this subsection (b), "qualifies as a candidate for any public office" means a person has made a formal announcement of candidacy; has filed a petition seeking nomination for election to public office; or has received contributions or made

expenditures or given consent for a campaign committee to receive contributions or make expenditures for the person's election to public office.

SECTION 7. Tennessee Code Annotated, Section 6-20-205, is amended by adding the following as a new subsection (b):

(b)

(1) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality may vote on matters in which such member has a conflict of interest if the member informs the governing body immediately prior to the vote as follows:

"Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents."

(2) In the event a member of a local governing body of a county or a municipality has a conflict of interest in a matter to be voted upon by the body, the member may abstain for cause by announcing the abstention for cause to the presiding officer. Any member of a local governing body of a county or municipality, who abstains from voting for cause on any issue coming to a vote before the body shall not be counted for the purpose of determining a majority vote.

(3) The vote of any person having a conflict of interest who does not inform the governing body of such conflict as provided in subdivision (b)(1) shall be void if challenged in a timely manner. As used in this subdivision (b)(3), "timely manner" means during the same meeting at which the vote was cast and prior to the transaction of any further business by the body.

(4) Nothing in this subsection (b) shall be construed as altering, amending or otherwise affecting § 12-4-101(a). In the event of any conflict between this subsection (b) and § 12-4-101(a), § 12-4-101(a) shall prevail.

SECTION 8. Tennessee Code Annotated, Section 6-54-107, is amended by deleting subsection (c) and substituting instead the following:

(c)

(1) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality may vote on matters in which such member has a conflict of interest if the member informs the governing body immediately prior to the vote as follows:

"Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents."

(2) In the event a member of a local governing body of a county or a municipality has a conflict of interest in a matter to be voted upon by the body, the member may abstain for cause by announcing the abstention for cause to the presiding officer. Any member of a local governing body of a county or municipality who abstains from voting for cause on any issue coming to a vote before the body shall not be counted for the purpose of determining a majority vote.

(3) The vote of any person having a conflict of interest who does not inform the governing body of such conflict as provided in subdivision (c)(1) shall be void if challenged in a timely manner. As used in this subdivision (c)(3),

"timely manner" means during the same meeting at which the vote was cast and prior to the transaction of any further business by the body.

(4) Nothing in this subsection (c) shall be construed as altering, amending or otherwise affecting § 12-4-101(a). In the event of any conflict between this subsection (c) and § 12-4-101(a), § 12-4-101(a) shall prevail.

SECTION 9. Tennessee Code Annotated, Section 12-4-101, is amended by adding the following language as a new subsection (c):

(c)

(1)

(A) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality and whose employment predates the member's initial election or appointment to the governing body of the county or municipality may vote on matters in which the member has a conflict of interest if the member informs the governing body immediately prior to the vote as follows:

"Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents."

(B) The vote of any such member having a conflict of interest who does not so inform the governing body of such conflict shall be void if challenged in a timely manner.

(C) As used in this subdivision (c)(1), "timely manner" means during the same meeting at which the vote was cast and prior to the transaction of any further business by the body.

(2) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality and whose employment began on or after the date on which the member was initially elected or appointed to serve on the governing body of the county or municipality shall not vote on matters in which the member has a conflict of interest.

(3)

(A) In the event a member of a local governing body of a county or a municipality has a conflict of interest in a matter to be voted upon by the body, such member may abstain for cause by announcing the abstention for cause to the presiding officer.

(B)

(i) Any member of a local governing body of a municipality who abstains from voting for cause on any issue coming to a vote before the body shall not be counted for the purpose of determining a majority vote.

(ii) This subdivision (c)(3)(B) shall in no way be construed to apply to any county having a metropolitan form of government and having a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census.

(4)

(A) This subsection (c) shall apply to:

(i) Any member of a local governing body of a county who is also an employee of such county on December 1, 2018, and who continues in office for the remainder of the member's term; or

(ii) Any member of a local governing body of a county who is also an employee of such county on December 1, 2018, and who is reelected to the governing body, without any interruption in holding the member's office.

(B) Nothing in this subsection (c) shall authorize any member of a local governing body of a county who is also an employee of such county to qualify as a candidate for the local governing body after December 1, 2018.

(5) Any county legislative body may elect to exempt the county from the application of subdivision (c)(4) with respect to employees of the county by adoption of a resolution by a two-thirds (2/3) vote and approval by a majority of the registered voters of the county voting in an election on the question of whether to exempt the county, pursuant to the procedures in subdivision (c)(6).

(6) Upon the adoption of a resolution in accordance with subdivision (c)(5), and receipt of a certified copy of the adopted resolution regarding the exemption, the county election commission shall call an election to be held in accordance with § 2-3-204 to approve or reject the exemption of the county from the application of subdivision (c)(4). An election to approve or reject the exemption may be considered a general election for purposes of § 2-3-204(c), which shall be conducted as follows:

(A) The ballots used in the election shall provide options to vote "FOR" or "AGAINST" the resolution exempting the county, and the voters shall vote for or against approval of the resolution;

(B) The votes cast shall be canvassed and the results proclaimed and certified by the county election commission to the county legislative body;

(C) The qualifications of voters shall be the same as those required for participation in general elections;

(D) All laws applicable to general elections shall apply to the determination of the approval or rejection of the exemption of the county; and

(E) If the majority of those voting in the election vote for the resolution exempting the county, the resolution shall be deemed to be approved on the date that the county election commission makes its official canvass of the election returns.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. This act shall take effect December 1, 2018, the public welfare requiring it, and shall apply to any election or vacancy occurring on or after such date.