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Ramsey wants Judicial Selection Commission to expire

Lt. Gov. Ron Ramsey has decided the Judicial Selection Commission should be scrapped and the governor allowed to appoint whomever he wishes to judgeships.

Gov. Phil Bredesen, whose 2006 feud with the commission had to be settled by the state Supreme Court, is opposed to the idea. His relationship with the commission has improved over the past couple of years, and he argues the screening it provides is an important part of the appointment process. That's also the argument of the Tennessee Bar Association and other legal interest groups.

Both the selection commission and the Judicial Evaluation Commission are in "wind down" mode and will expire June 30 if the legislature doesn't renew them. Ramsey (R-Blountville) believes neither entity is needed.

He contends the current system of retention elections for appellate judges is unconstitutional, but his plan would allow it to continue until a referendum can be held in 2014 on a constitutional amendment. If voters agree to the proposal, retention elections would become part of the constitution. If they don't, the state would return to choosing intermediate appellate judges and Supreme Court justices by popular election.

To enact his proposal, Ramsey must pass two pieces of legislation: a bill reinstating a statute allowing the governor on his own to make interim judicial appointments and a joint resolution initiating the constitutional amendment. Both measures will begin moving soon in the Senate, possibly as early as next week. Any of several bills could be amended to contain Ramsey's plan.

Ramsey met Tuesday with House Speaker Kent Williams (R*-Elizabethton) and Rep. Joe McCord (R-Maryville) to push his plan. McCord is sponsoring a bill that as amended contains language Ramsey proposed last year to reform the selection commission. The bill, approved Tuesday by the House Civil Practice Subcommittee, changes the process by which members of the commission are appointed. Currently, the 17 members are named by the House and Senate speakers, with most of the appointments having to come from names submitted by legal interest groups. Ramsey argued last year that the groups should be limited to offering non-binding advice.

Bredesen also pushed to reform the commission last year. He wanted the opportunity to get more choices for judicial appointments without rejecting the names first given him, and he wanted to make the commission's deliberations public. Rep. Jimmy Naifeh (D-Covington), then the House speaker, didn't like Ramsey's proposed changes. So with the two speakers and the governor unable to strike a deal on reform, no legislation was passed to extend the life of the selection commission and the evaluation commission.

Constitutional amendment. Ramsey doesn't disagree with the bar association and other groups that a system of appointment is preferable to popular election of members of the Court of Appeals, Court of Criminal Appeals, and Tennessee Supreme Court. But he believes, despite a 1973 Supreme Court ruling to the contrary, that the Tennessee Constitution doesn't permit it.

His proposed constitutional amendment would imbed retention elections in the constitution while changing the current choice between "yes" and "no" to one of "replace" or "retain" to make it clearer to voters, he says, that they're deciding whether to keep or get rid of a judge.

The amendment also would change the current eight-year term for judges to a four-year term, putting them on the ballot for replacement or retention more frequently.

'Tennessee Plan.' Tennessee's current version of the Missouri Plan, which added the Supreme Court to a yes-no approach established earlier for the intermediate appellate courts, was enacted in 1994.

Supporters of the plan argue it isn't in the public interest for judges to wage expensive election campaigns and raise money from lawyers who practice in their courts or from other parties potentially affected by rulings.

As the law stands, judges at the trial level and below still run in contested elections. But the higher judges face only a yes-no vote every eight years. Beforehand, they're evaluated by the Judicial Evaluation Commission.

Supporters of the evaluation commission contend it plays an important role, if sometimes an unseen one. While no judge has received a negative recommendation

since its creation in 1994, one or two are believed to have stepped down knowing they were about to get one. The commission's recommendations appear on the ballot.

Screening. The other main element of the Tennessee Plan, the screening process, is defended by the legal establishment as important for ensuring professionalism. Without it, a governor could appoint political pals, or the pals of political boosters, to judgeships. Requiring candidates to submit public applications and undergo interviews and vetting by the selection commission is viewed as ensuring that the posts are filled by qualified jurists.

The commission's defenders concede politics sometimes influences its actions — certainly, politics was in play during the feud with Bredesen — but even at its worst, it weeds out the hacks. At its best, it ensures the governor chooses among the most qualified applicants.

A few years ago, Bredesen sometimes found the commission more limiting than helpful. He wanted to increase the number of minority judges on the intermediate appeals courts and the Supreme Court and felt it would be easier to accomplish this if he could consider black lawyers and judges throughout the state. The commission's list of three names typically included only one minority candidate. Moreover, capable lawyers or judges who might be willing to accept an appointment don't always wish to aggressively pursue it.

The commission's membership has changed some, and the governor lately has expressed satisfaction and appreciation. Of course, Bredesen is nearing the end of his term. Ramsey, meanwhile, is a candidate for governor in 2010 and hopes to make judicial appointments.

Lightning rod. The commission sometimes serves a political purpose for governors. Without it, a governor might hear from fifteen persons wanting an appointment. Fourteen ultimately will be unhappy with him. But if the selection commission narrows the field to three, only two of the losers end up blaming the governor.

Constitution. Originally, the legislature chose Tennessee's judges. But in 1870 a new constitution was adopted providing that judges "shall be elected by the qualified voters of the state." And for the next 100 years, judges ran in contested elections.

In 1971, the legislature adopted a merit-selection plan in which all appellate judges were appointed by the governor from nominations submitted by a screening commission. The Supreme Court upheld the constitutionality of the plan in 1973, noting that the constitution refers to elections other than contests between candidates — such as ratification votes on constitutional amendments and other referendums.

In 1974, the legislature removed the five Supreme Court justices from the plan, returning them to popular election. They were put back when the new "Tennessee Plan" was enacted 20 years later.

A constitutional convention in 1977 proposed 13 amendments to the constitution. All were approved by voters the following year except one that would have remodeled the judicial system. One provision of the

remodeling would have removed the language in the constitution concerning election of judges by the qualified voters and replaced it with a provision for appointment of judges by the governor from names submitted by a nominating commission. It also included retention elections.

The House Civil Practice Committee, chaired by Rep. Brian Kelsey (R-Germantown), who questions the constitutionality of the Tennessee Plan, has heard testimony from several experts and advocates this year, including Court of Appeals Judge Holly Kirby, who within the bounds of her position defended the court decision.

Kirby stood in for the scheduled speaker, University of Tennessee law professor Penny White, a former member of the Supreme Court. White, the only judge ever to lose a retention election, was ousted by voters in 1996 after a death penalty ruling sparked organized opposition.

Hooker & Dunn. In a hearing held by the committee Tuesday, only opponents to retention elections asked to speak. Former governor Winfield Dunn, a Republican, and the Democrat he defeated in 1970, John Jay Hooker, came to the meeting together. Dunn told the lawmakers the "original words of the Tennessee Constitution represent precisely what the people meant for them to mean." He suggested they address the issue with "an appropriate constitutional amendment."

Nashville attorney Maclin Davis argued if the Supreme Court's reasoning about retention elections for judges is correct, a law could be passed to let the governor and legislators run in uncontested elections too. Kelsey has requested an attorney general's opinion on the question.

Abortion. Contributing to the opposition of some Republican lawmakers to retention elections is a belief in some quarters that popular elections would give the pro-life movement a better chance to elect a court that would repeal the 2000 *Planned Parenthood v. Sundquist* decision. The 4-1 ruling held that Tennessee's constitution contains greater protection of abortion rights than the U.S. Supreme Court has found in the federal Constitution.

Besides making it difficult to impose any restrictions on abortion — even those upheld by the U.S. Supreme Court — the decision means that even if the nation's highest court were to overturn *Roe v. Wade*, the right to an abortion would still be constitutionally protected in Tennessee. Pro-life forces are pushing a constitutional amendment that would nullify the *Planned Parenthood* ruling, but it's a long and difficult process.

Only one member involved in that decision, Chief Justice Janice Holder, is still on the court.

Up in air. While Ramsey likely can win passage of his proposal in the Senate, its fate in the House, where Republicans have a one-vote majority, is far from certain, especially with the governor opposed.

But supporters of the current plan are at a decided disadvantage, because opponents don't have to do anything to get rid of the judicial selection and evaluation commissions. They'll be gone unless both houses take affirmative action to save them. Unless Ramsey changes his position, the odds that the Senate will take such action aren't strong.

● State revenue collections for March, reflecting February sales, came in \$106.2 million below estimates. It was the 13th month of the last 15 in which sales tax collections declined from the same month a year earlier. Year-to-date collections through eight months are \$698 million below budget.

● Eddie Jones, retired editor of the *Nashville Banner* and former executive director of the Nashville Area Chamber of Commerce, died of a heart attack

Sunday at age 85. Jones, who served as press secretary to Gov. Frank Clement, ran the successful campaign in 1967 to legalize liquor by the drink in Nashville. Until his death, he continued to work for the Dye Van Mol & Lawrence public relations firm.

● With two Republican members absent, Democrats on the House Elections Subcommittee defeated legislation by Rep. Gerald McCormick (R-Chattanooga) Wednesday to legalize corporate

campaign contributions. McCormick said he wanted to "level the playing field" with unions.

● The Senate Finance Committee approved 8-3 a bill to let wineries ship, directly to consumers, up to three cases per customer each year if they obtain a \$300 license.

● Dan Miller, 67, longtime news anchor for WSMV-Channel 4 in Nashville, died of a heart attack Wednesday night in Augusta, Ga., his hometown.

Legislative update

Speaker helps move trust fund bill

The administration bill to shore up the state's shrinking Unemployment Trust Fund won approval Tuesday in the House Employee Affairs Subcommittee — thanks to Speaker Kent Williams (R*-Elizabethton).

With the three Republicans on the six-member panel unwilling to send the measure to full committee this week, Williams joined the meeting. He told members "if we don't do something, and do something soon, our fund is going to be broke."

Business interests reluctantly back the bill because they don't want the fund to become insolvent. If it did, the federal government would intervene with a loan — which under the state constitution would have to be repaid before the end of the fiscal year in which it came — and the necessary surcharge to pay back the loan could hit businesses harder than the proposed tax increase.

Under the bill, employers would be taxed on the first \$9,000 in wages for each employee, rather than the current \$7,000. That would be a permanent change. In addition, a surtax of 0.6% would be imposed until the trust fund rises to \$650 million — more than \$400 million above its present level.

The bill also makes changes in law to enable the state to receive federal stimulus money for its unemployment benefits program.

An amendment filling in details of the final administration proposal passed 4-3. The bill itself then passed on a voice vote. It is set for the full House Consumer and Employee Affairs Committee Tuesday. The Senate version is in the Senate Commerce Committee the same day.

SJR 127. A proposition declaring the Tennessee constitution neutral on abortion cleared the House Health Committee 20-7 Tuesday — the first time the joint resolution has made it out of a House standing committee. The Senate has passed it five times over the years.

The constitutional amendment, which effectively would nullify a 2000 state Supreme Court decision that concluded abortion protections are implicit in the constitution, was sent to the House Calendar and Rules Committee. But Thursday, without debate, Calendar and Rules referred it to the Budget Subcommittee.

The legislation avoided a fiscal note and, initially, review by the House Budget Subcommittee by providing

that public notice of the pending constitutional change be given online. When Rep. Brian Kelsey (R-Germantown) tried the same approach last week with his proposal to ban a state income tax, the Budget Subcommittee rejected the idea because some citizens don't have computers.

The constitution itself mandates public notice before the next election because any constitutional amendment must be approved by two consecutive general assemblies. The cost ordinarily is estimated at \$20,000.

Secretary of State Tre Hargett sent legislative leaders a memo Wednesday saying his office, which is responsible for issuing the notice, could absorb the cost if necessary without an appropriation — this time, but not for other constitutional amendments.

If the measure gets to the House floor, it will pass easily. But the big test will be in the next assembly, when both houses must approve it by two-thirds votes to get it on the 2014 ballot for ratification.

AT&T. The House Commerce Committee adopted a compromise amendment on the AT&T deregulation bill Tuesday and deferred action on the bill itself until next week. Tennessee Regulatory Authority Chairman Eddie Roberson told the panel he was much more comfortable with the bill after the changes, which AT&T negotiated with TRA and other parties. The main battle remaining, one on which AT&T is neutral, is over an amendment the cable industry wants — and small phone companies don't — concerning interconnection requests in rural areas. The committee adopted that amendment too.

Lots of guns. Few issues are more dear to Tennessee legislators than the right to bear arms. But one that may be is property rights. Wednesday, with FedEx leading the charge, a coalition of business interests managed to shoot down legislation that would have prevented businesses from banning firearms in their parking lots. Under the bill, sponsored by Rep. Josh Evans (R-Greenbrier), employers could ban weapons in the workplace, but they could not stop workers from keeping guns in their cars in company parking lots. The House Criminal Practice Subcommittee deferred the issue to 2010. It may be studied this summer.

Meanwhile, the Senate Judiciary Committee approved Wednesday a bill allowing permit holders to carry guns into establishments that serve alcohol, provided they don't drink, unless a business posts a sign prohibiting it. The measure was sent out with less restrictive language than the version passed Monday by the House.

Tennessee Notes & Quotes

■ State Sen. **Roy Herron** (D-Dresden) confirmed this week he plans to run for governor in 2010, but he won't make a formal announcement until "the appropriate time." Herron, who showed \$282,167 in his last campaign disclosure, can spend it on a gubernatorial bid. He's the third Democrat to enter the race. Nashville businessman **Ward Cammack**, the second, has retained L.A. Harris & Associates as a fund-raising consultant and hired Blue State Digital, which worked on **Barack Obama's** presidential campaign, to develop his online component. Former House majority leader **Kim McMillan** of Clarksville formed her exploratory committee a year ago.

■ Amid a 20-city campaign blitz during a congressional break, U.S. Rep. **Zach Wamp** of Chattanooga, one of four Republican candidates for governor, attended the Pro-Life Women's Day on the Hill luncheon in Nashville Tuesday, the day the constitutional amendment on abortion cleared the House Health Committee. The other contenders are Lt. Gov. **Ron Ramsey**, Memphis District Attorney **Bill Gibbons**, and Knoxville Mayor **Bill Haslam**, who in Knoxville alone has raised \$1.7 million.

■ A *New York Times* story Wednesday on the struggles of several Tennessee cities and counties that relied on bond derivatives created a buzz. The story focused on Memphis-based Morgan Keegan & Company's role in marketing the derivatives and the state's approval of the company to conduct required training for local officials. It also noted that Tennessee was one of the few states to pass a law intended to regulate the sale of the complicated financial instruments. It did so in 1999.

■ Thursday, the Tennessee Republican Party issued a press release claiming that "*The New York Times* reported today that the Bredesen administration in recent years has sponsored a series of seminars across the state designed to get municipal governments involved in using the complex and risky Wall Street transactions to finance their operations and projects." Actually, the administration wasn't mentioned in the *Times* article, and it sponsored no seminars. What the article reported was that then-Comptroller **John Morgan** appointed a panel of government and industry representatives to devise a curriculum for the training required under the 1999 law. Morgan asked business professors to teach the course, but they declined. So the job was left to the people in the business, who benefited from sales. The municipalities also benefited — until the financial market turned sour.

■ "The blood is going to be on your hands and not on mine." — Rep. **JoAnne Favors** (D-Chattanooga) to Rep. **Curry Todd** (R-Collierville), on Todd's bill allowing permit holders to carry guns in restaurants that serve alcohol. The House passed the bill Monday.

■ **Tony Gottlieb**, lobbyist for DAD of Tennessee, asked the Tennessee Ethics Commission Monday to reduce a \$750 fine it levied against the organization for failing to pay a \$150 registration fee last year. He said members of the group pay no dues, and its bank account has only

\$400. **Charles Farmer** moved to drop the penalty, but after others pointed out that DAD failed to respond to notices, the motion failed 4-1. The fine stands. Gottlieb is considering a court challenge in a separate case, in which the commission fined him \$650 for making two campaign donations to Rep. **Stacey Campfield** (R-Knoxville). State law prohibits lobbyists from making campaign contributions. Gottlieb argues the law is unconstitutional.

■ Chattanooga lawyer **Nathaniel Goggans** joined the commission Monday. He's an appointee of Lt. Gov. **Ron Ramsey**. Last month, two other new members came aboard, **Charles Farmer** of Jackson and **John King** of Knoxville, appointees of Gov. **Phil Bredesen**. The other members are **Linda Knight** and **Dianne Neal** of Nashville and Chairman **Larry Brown** of Memphis. Brown missed Monday's meeting because of illness.

■ The ethics commission is due to expire June 30. Renewal legislation has not yet been scheduled. A bill by Sen. **Bill Ketron** (R-Murfreesboro) and Rep. **Curry Todd** (R-Collierville) to fold the commission into the Registry of Election Finance will be in committee next week.

■ A surprise party for House Speaker Emeritus **Jimmy Naifeh** (D-Covington), honoring his 18 years as speaker, was thrown at Jimmy Kelly's restaurant Wednesday night, with lawmakers from both parties on hand. Speaker **Kent Williams** (R*-Elizabethton) took part. Naifeh served as House speaker longer than anyone in Tennessee history.

■ "Rather than have 30,000 people mad at you, you want five million mad at you." — Rep. **Charles Curtiss** (D-Sparta) to Rep. **Stacey Campfield** (R-Knoxville), when Campfield suggested the possibility of having workers pay a share of the higher taxes employers face to keep the Unemployment Trust Fund solvent.

■ Former secretary of state **Riley Darnell** is back on Capitol Hill — as a lobbyist. He's representing the Nashville Building and Construction Trades Council.

■ "Boy, would I have liked to have been able to run for office without competition. Three times I would have been the governor of Tennessee if I hadn't had to beat somebody." — **John Jay Hooker**, arguing against the judicial selection and retention plan for judges, in the House Civil Practice Subcommittee.

■ At the Republican Ladies Day on the Hill luncheon at the Sheraton Wednesday, notepads inscribed with the name of Senate Majority Leader **Mark Norris** (R-Collierville) were placed at every seat — an idea of Norris' wife, **Chris**. Later in the afternoon, five freshmen representatives showed up at his office: **Bob Ramsey**, **Vance Dennis**, **Josh Evans**, **Ryan Haynes**, and **Joe Carr**. Each had a signed message on what they thought was the senator's stationery: "Please come to my office. I need to speak to you immediately. I'm about to kill your companion bill in the Senate."

■ The usual suspects can't be rounded up. **Jerry Cooper**, **Randy Rinks**, and **Frank Buck** all have retired.