STATE OF TENNESSEE

PUBLIC CHAPTER NO. 368

SENATE BILL NO. 2042

By McNally, Henry, Burchett, Gresham

Substituted for: House Bill No. 1985

By Fitzhugh, Hardaway

AN ACT to amend Tennessee Code Annotated, Title 10, Chapter 7, Title 9, Chapter 3 and Title 4, Chapter 3, relative to audit committees and audit work papers.

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

SECTION 1. Tennessee Code Annotated, Section 9-3-405, is amended by adding the following language as new subsections:

(c) Except as provided in subsection (d), all meetings of an audit committee created pursuant to this chapter shall abide by the notice requirements adhered to by the local government to which the audit committee is attached.

(d) All meetings of an audit committee created pursuant to this chapter shall be subject to the open meetings provisions of Title 8, Chapter 44, except, upon a majority vote of those members in attendance for the public portion of the meeting, the audit committee may hold confidential, nonpublic executive sessions to discuss the following items:

(1) Items deemed not subject to public inspection under §§ 10-7-503 and 10-7-504, and all other matters designated as confidential or privileged under this code;

(2) Current or pending litigation, and pending legal controversies;

(3) Pending or ongoing audits or audit related investigations;

(4) Information protected by federal law; and

(5) Matters involving information under § 9-3-406 where the informant has requested anonymity.

(e) The presiding officer shall announce during the public portion of the audit committee meeting that no business, other than that described under subdivisions (d)(1)-(d)(5), shall be considered during the confidential, nonpublic executive session by the audit committee.

(f) For purposes of providing notice of a confidential, nonpublic executive session, the agenda must disclose the general nature of the item or items to be discussed as described under subdivisions (d)(1)-(d)(5).

(g) A meeting at which both subject matter open to the public and confidential subject matter will be discussed shall be conducted as follows:

(1) All business relating to subject matter that is public in nature shall be conducted first; and

(2) At the conclusion of the meeting relating to subject matter that is public in nature, and upon a successful majority vote to enter into executive session, the chair shall announce to the members and the public assembled that the public portion of the meeting is adjourned and that the remainder of the meeting will concern matters that are confidential under subdivisions (d)(1)-(d)(5). When everyone at the meeting who is not authorized to attend the confidential portion of the meeting has departed, the confidential portion of the meeting shall commence.

(h) Only individuals whose presence is reasonably necessary in order for the audit committee to carry out its executive session responsibilities may attend the portion of the executive session relevant to that person's presence. However, nothing contained in this section shall prohibit the comptroller of the treasury or the comptroller's designee from attending or being present during an executive session.

(i) This chapter is not intended to prevent the full governing body of the local government from going into confidential, nonpublic executive session with the audit committee at a regularly or specially scheduled meeting of the full governing body for the purpose of further discussing only those matters as described under subdivisions (d)(1)-(d)(5). All portions of meetings of the full governing body of the local government, where matters described under subdivisions (d)(1)-(d)(5) will be discussed, shall be exempt from the provisions of Title 8, Chapter 44; provided, that the full governing body of the local government shall abide by the same executive session notice requirements imposed upon the audit committee by this section, and shall not make a decision or deliberate toward a decision on any matter.

SECTION 2. Tennessee Code Annotated, Title 9, Chapter 3, Part 4, is amended by adding the following as a new section thereto:

§ 9-3-406.

(a) An audit committee created pursuant to this chapter shall establish a process by which employees, taxpayers or other citizens may confidentially report suspected illegal, improper, wasteful or fraudulent activity. The detailed information received pursuant to such a report of illegal, improper, wasteful or fraudulent activity or any investigation thereof, except those matters disclosed in the final reports, shall be

considered audit working papers and shall be confidential under the provisions of Title 10, Chapter 7.

(b) The provisions of § 50-1-304 shall apply to all local government employees. In addition, no local government employees shall suffer any of the prohibited retaliatory actions specified in § 50-1-304 for reporting or cooperating with the audit committee, internal auditors, or auditors from, or approved by, the comptroller of the treasury, or for reporting any facts to the local government to which the audit committee is attached. Any person who knowingly and willingly retaliates or takes adverse action of any kind against any person for reporting alleged wrongdoing pursuant to the provisions of this chapter commits a Class A misdemeanor.

SECTION 3. Tennessee Code Annotated, Section 4-3-304(7), is amended by adding the following sentence immediately after the last sentence of the paragraph:

Notwithstanding any law to the contrary, working papers created, obtained or compiled by an internal audit staff are confidential and are therefore not an open record pursuant to Title 10, Chapter 7.

SECTION 4. Tennessee Code Annotated, Section 4-3-304(9), is amended by adding the following immediately after the last sentence of the paragraph:

Notwithstanding any law to the contrary, working papers created, obtained or compiled by an internal audit staff are confidential and are therefore not an open record pursuant to Title 10, Chapter 7.

SECTION 5. Tennessee Code Annotated, Section 10-7-504(a), is amended by adding the following as a new subdivision:

(22) The audit working papers of the comptroller of the treasury, and state, county, and local government internal audit staffs conducting audits as authorized by 4-3-304 shall be considered confidential and therefore shall not be open records pursuant to Title 10, Chapter 7.

SECTION 6. This act shall be effective upon becoming the law, the public welfare requiring it.

PASSED: May 21, 2009

RON RAMSEY
SPEAKER OF THE SENATE

KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 5th day of June 2009

PHIL BREDESEN, GOVERNOR