



# 2018 Legislation

(and some other stuff)

TAPA Spring Retreat

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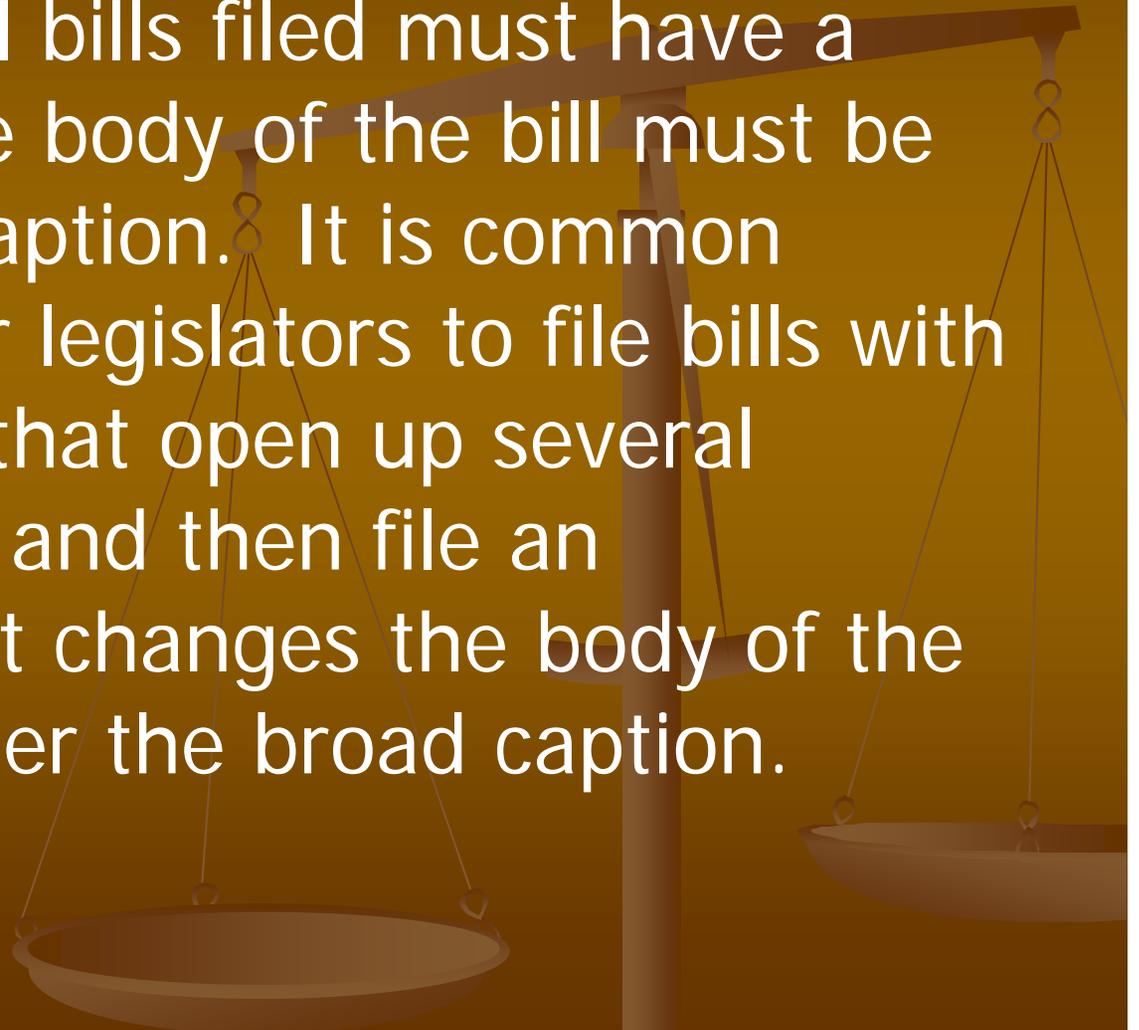
# Basic Rule of Lobbying

- There are no permanent enemies...
- There are no permanent friends...



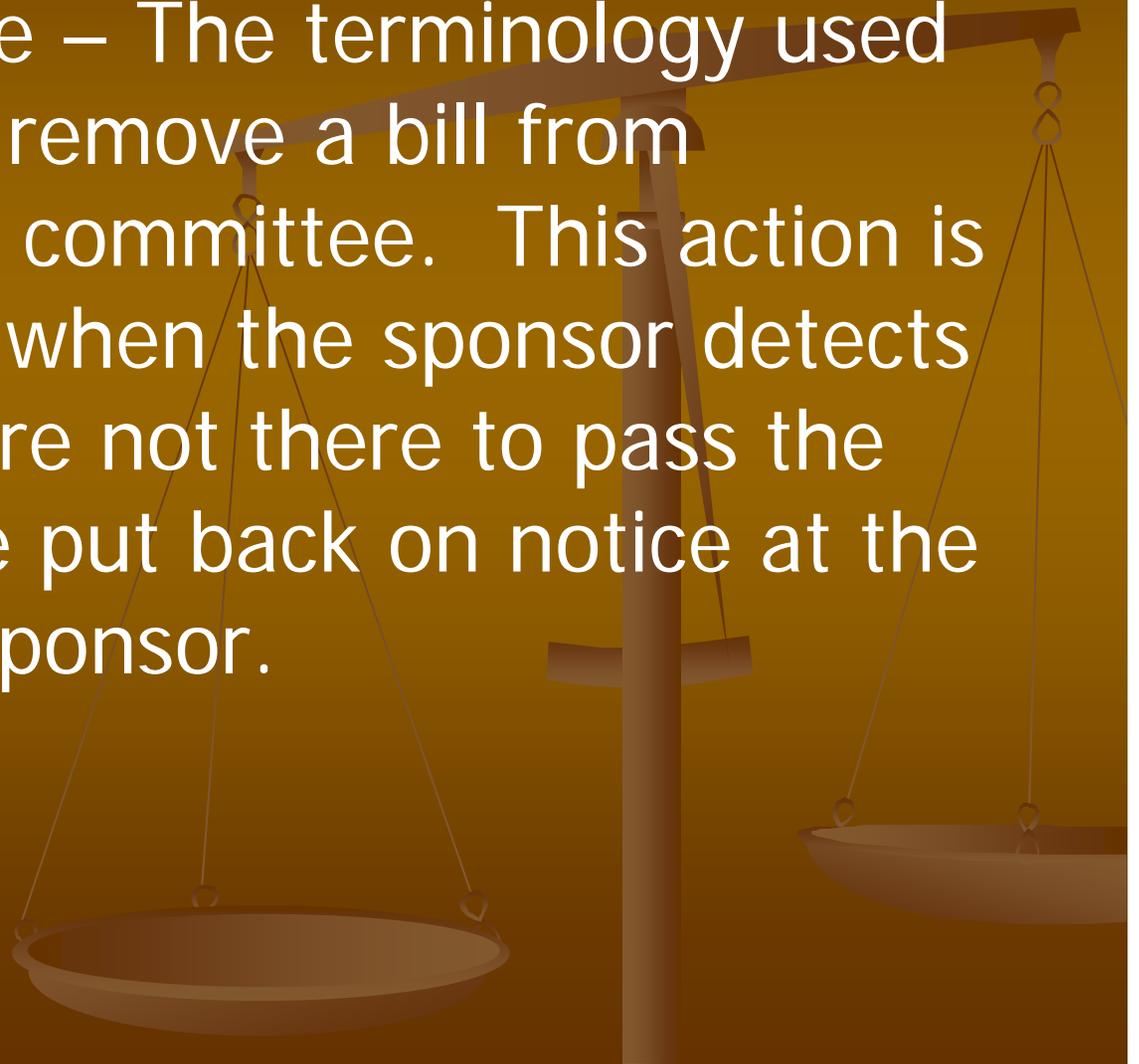
# Some Basic Terminology

- Caption Bill – All bills filed must have a caption, and the body of the bill must be related to the caption. It is common practice now for legislators to file bills with broad captions that open up several sections of TCA and then file an amendment that changes the body of the bill but falls under the broad caption.

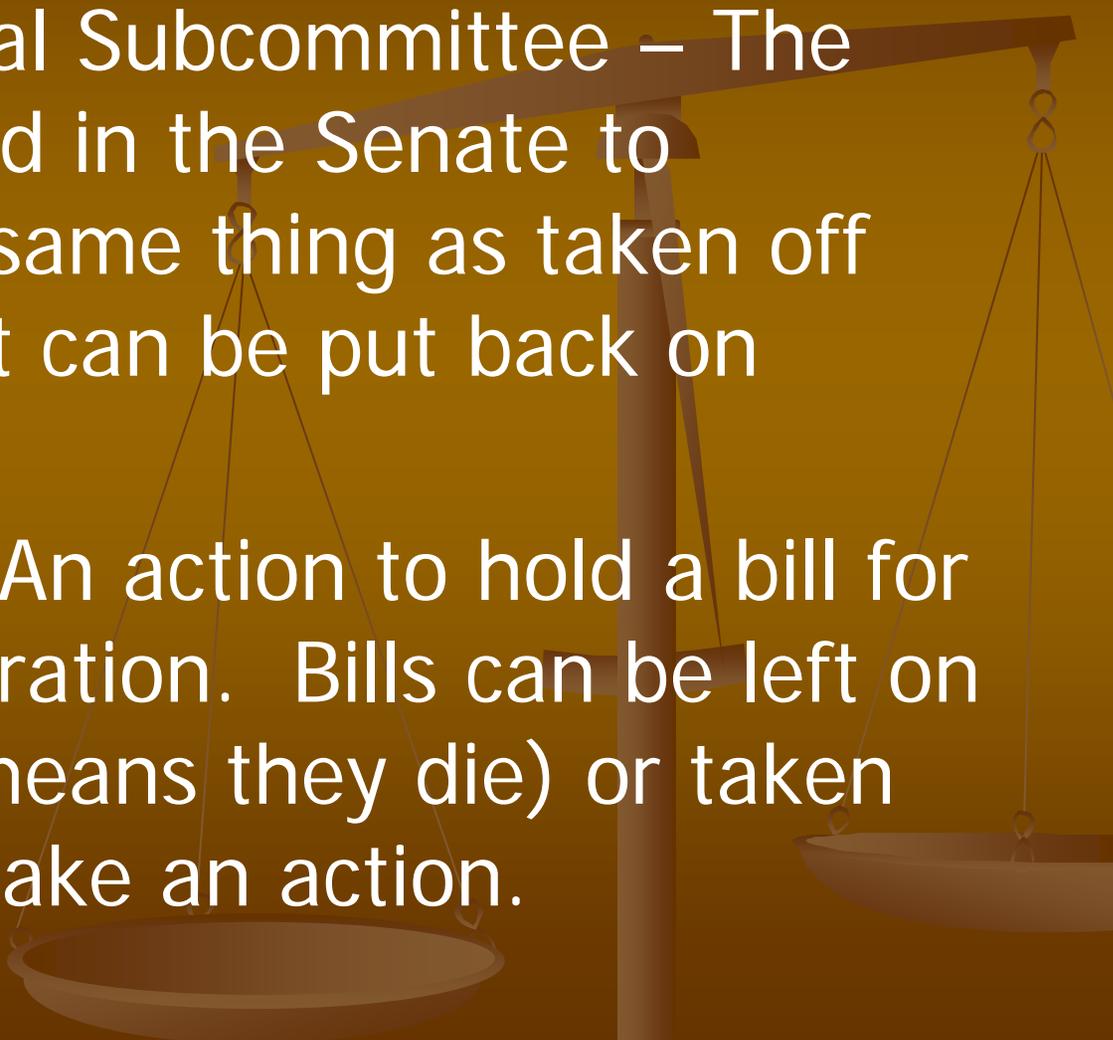


# Some Basic Terminology

- Taken Off Notice – The terminology used in the House to remove a bill from consideration in committee. This action is generally taken when the sponsor detects that the votes are not there to pass the bill. Bills can be put back on notice at the request of the sponsor.



# Some Basic Terminology



- Placed in General Subcommittee – The terminology used in the Senate to accomplish the same thing as taken off notice. Again, it can be put back on notice.
- Held on Desk – An action to hold a bill for another consideration. Bills can be left on the desk (that means they die) or taken off the desk to take an action.

# SB 1620 by \*Briggs (HB 1568) by \*Daniel

- Planning, Public - Increases, from three years to five years, the period for which a regional planning commission must maintain the records of a commission member's attendance at the required training and continuing education. - Amends TCA Title 13, Chapter 3.
- Analysis: This is a caption bill. It will be amended to deal with a situation in Knox County over regional jurisdiction between the county and Knoxville. It was not amended; another bill was used.

# SB 1879 by \*Briggs (HB 1920) by \*Staples

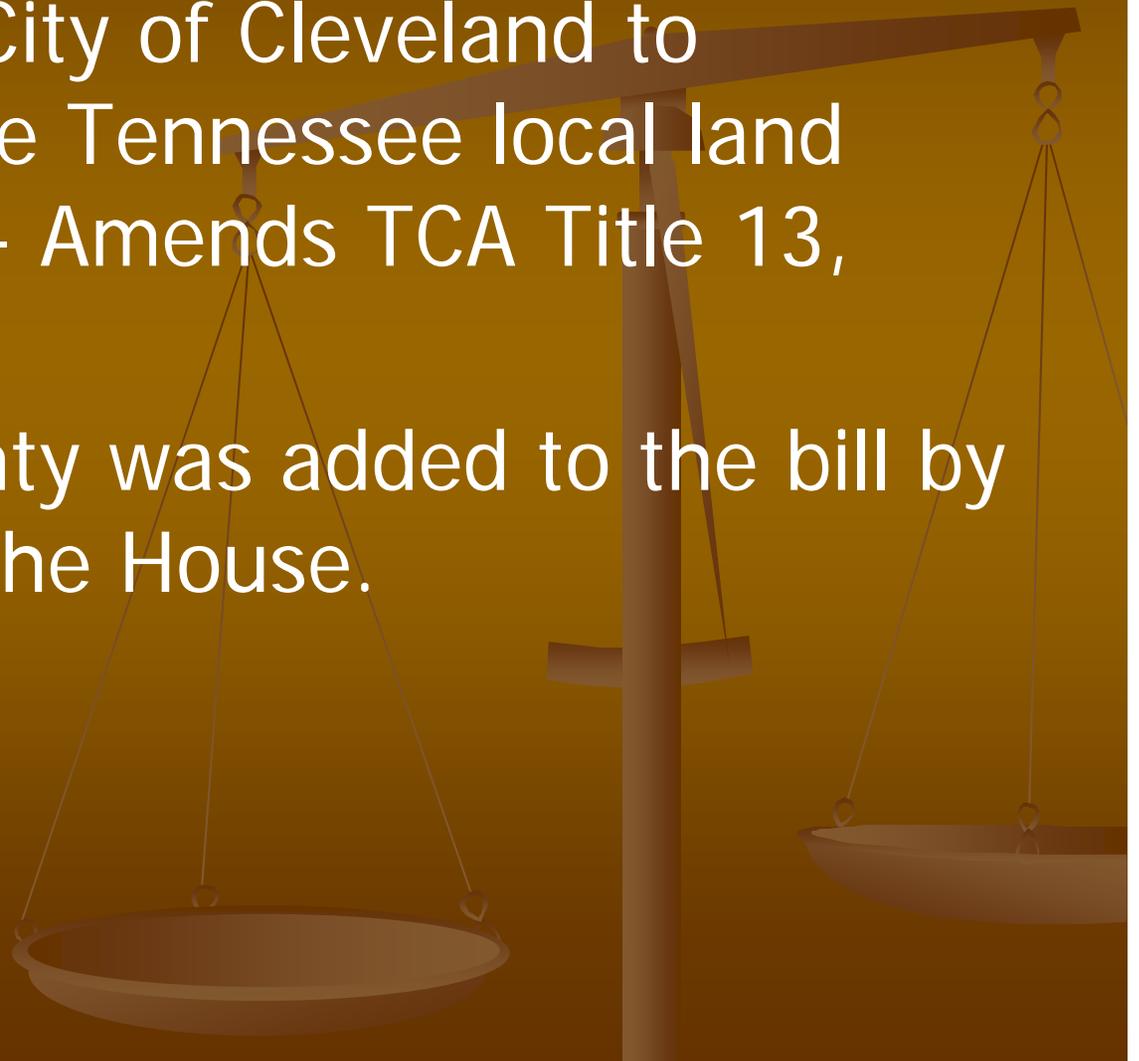
- Planning, Public - Prevents new or amended subdivision regulations proposed by a regional planning commission from taking effect until approved by the county legislative body of any county, and by the governing body of any municipality, lying wholly or partly within the region; removes requirement that a regional planning commission hold a public hearing on subdivision regulations prior to adoption. - Amends TCA Title 13.
- An amendment to make it permissive, not mandatory, has been filed.

# SB 1614 by \*Harper (HB 1557) by \*Staples

- Prohibits local legislative body from imposing term limits on a person appointed to a board by the mayor if the person serves without compensation, not including travel and expenses. - Amends TCA Title 5; Title 6 and Title 7. Amended
- A county legislative body may adopt a resolution by a majority vote prohibiting term limits for persons appointed to boards or commissions by the county mayor if the appointee serves without compensation, not including reimbursement for travel and expenses.

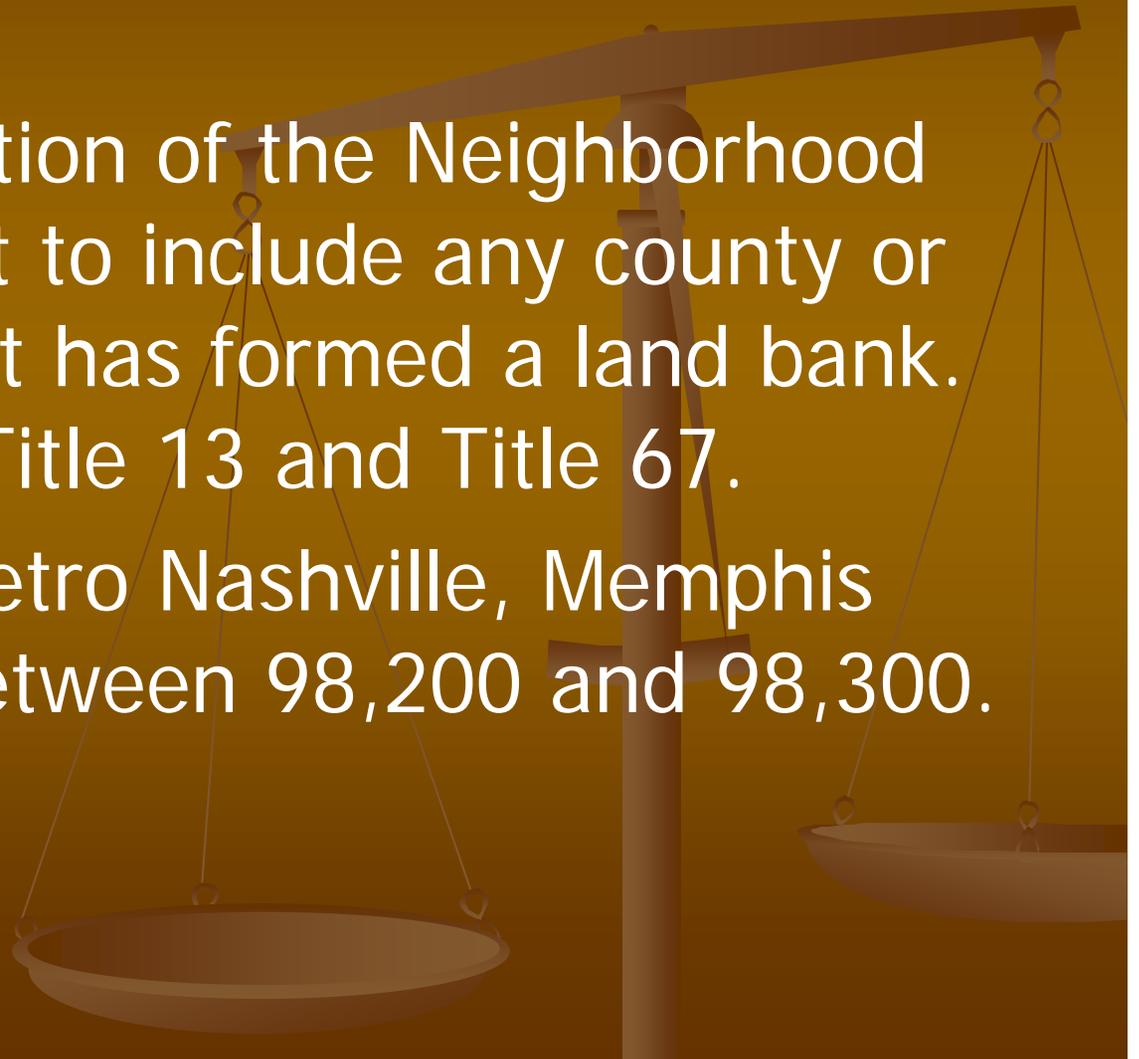
# SB 2347 by \*Gardenhire (HB 2350) by \*Brooks K

- Authorizes the City of Cleveland to participate in the Tennessee local land bank program. - Amends TCA Title 13, Chapter 30.
- Hardeman County was added to the bill by amendment in the House.



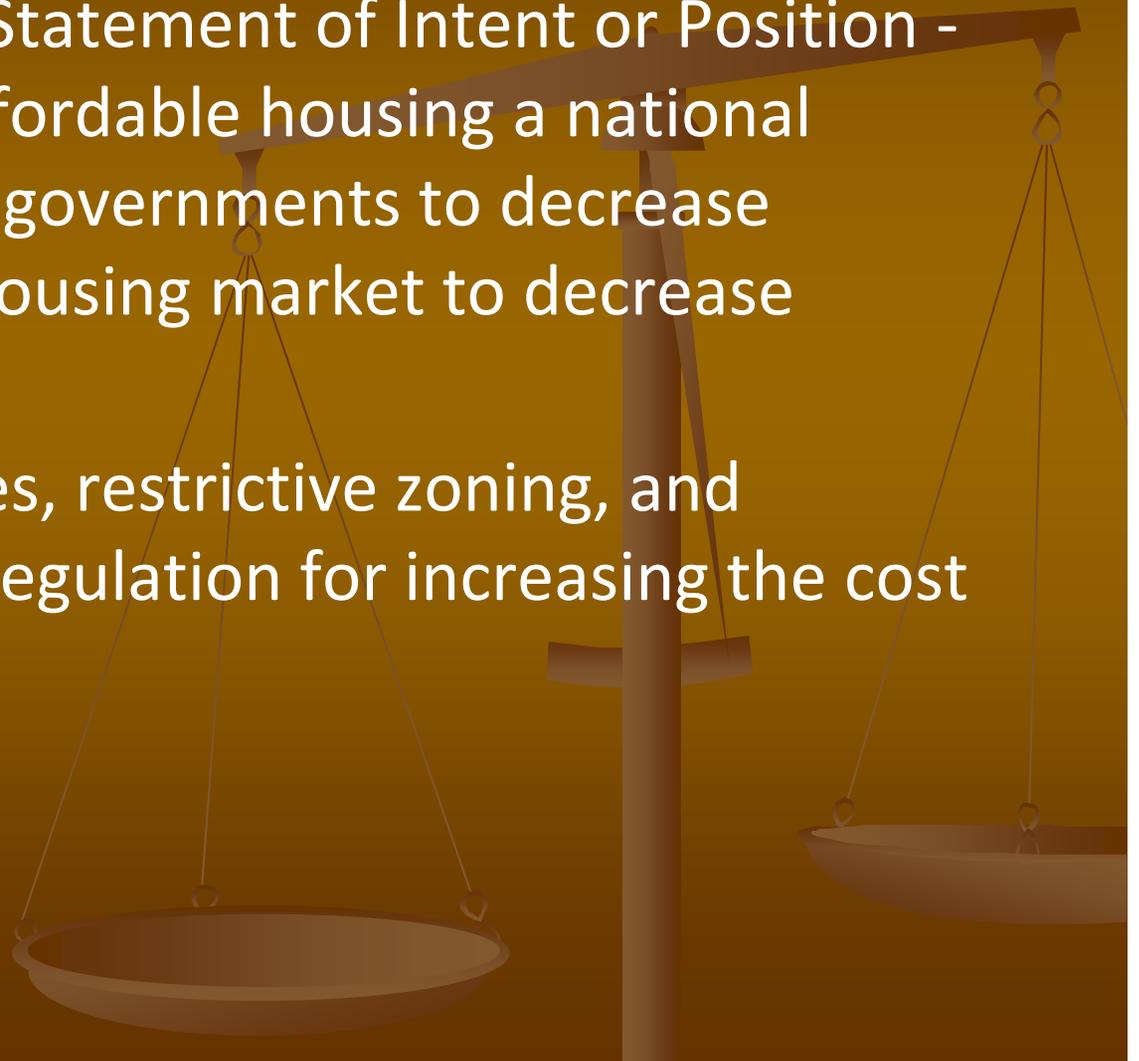
# SB 2126 by \*Jackson (HB 2423) by \*White M

- Extends application of the Neighborhood Preservation Act to include any county or municipality that has formed a land bank.
  - Amends TCA Title 13 and Title 67.
- Also includes Metro Nashville, Memphis and a county between 98,200 and 98,300.

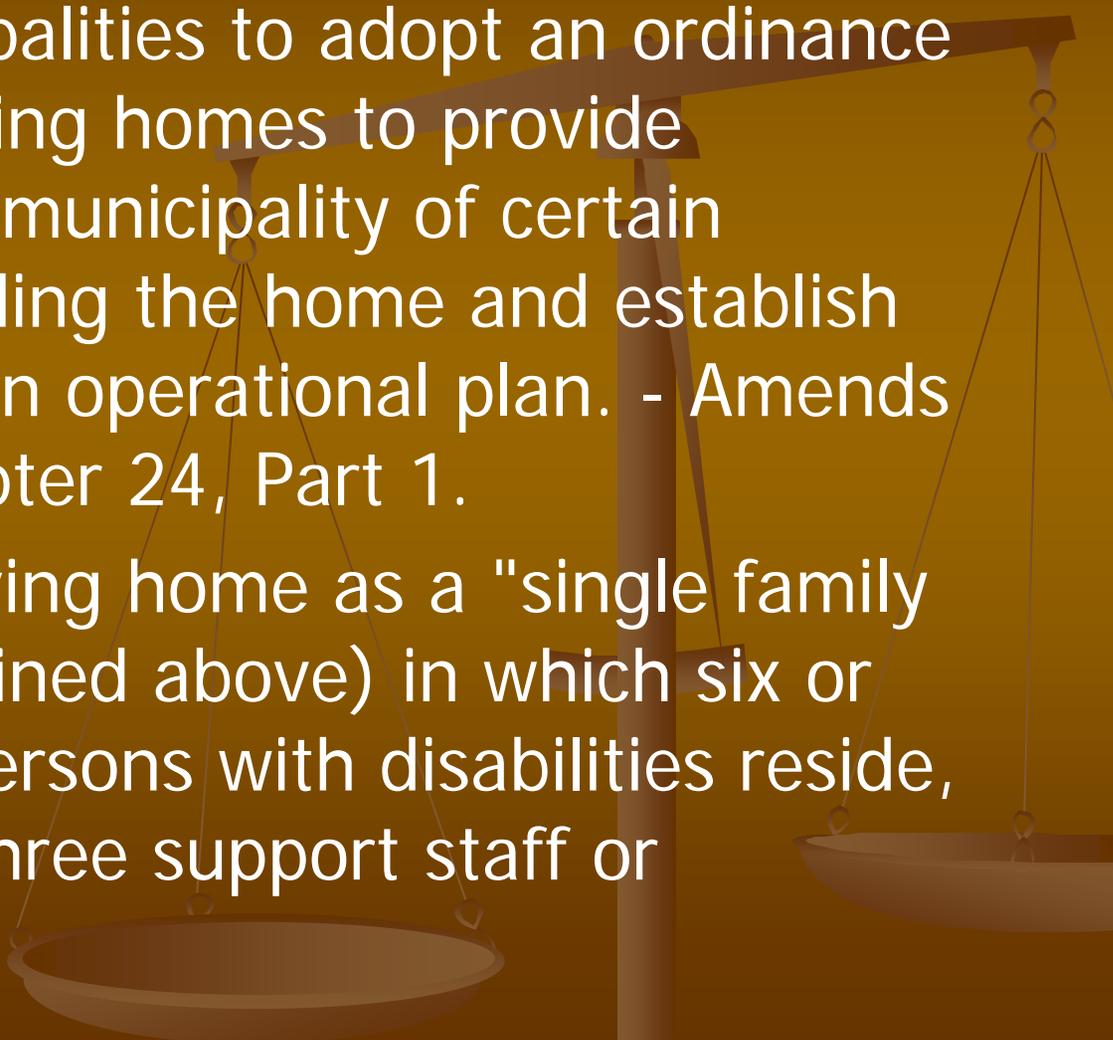


# HJR 0743 by \*Sparks

- General Assembly, Statement of Intent or Position - Supports making affordable housing a national priority; urges local governments to decrease regulation of new housing market to decrease regulatory costs.
- The HBA blames fees, restrictive zoning, and excessive land use regulation for increasing the cost of housing.

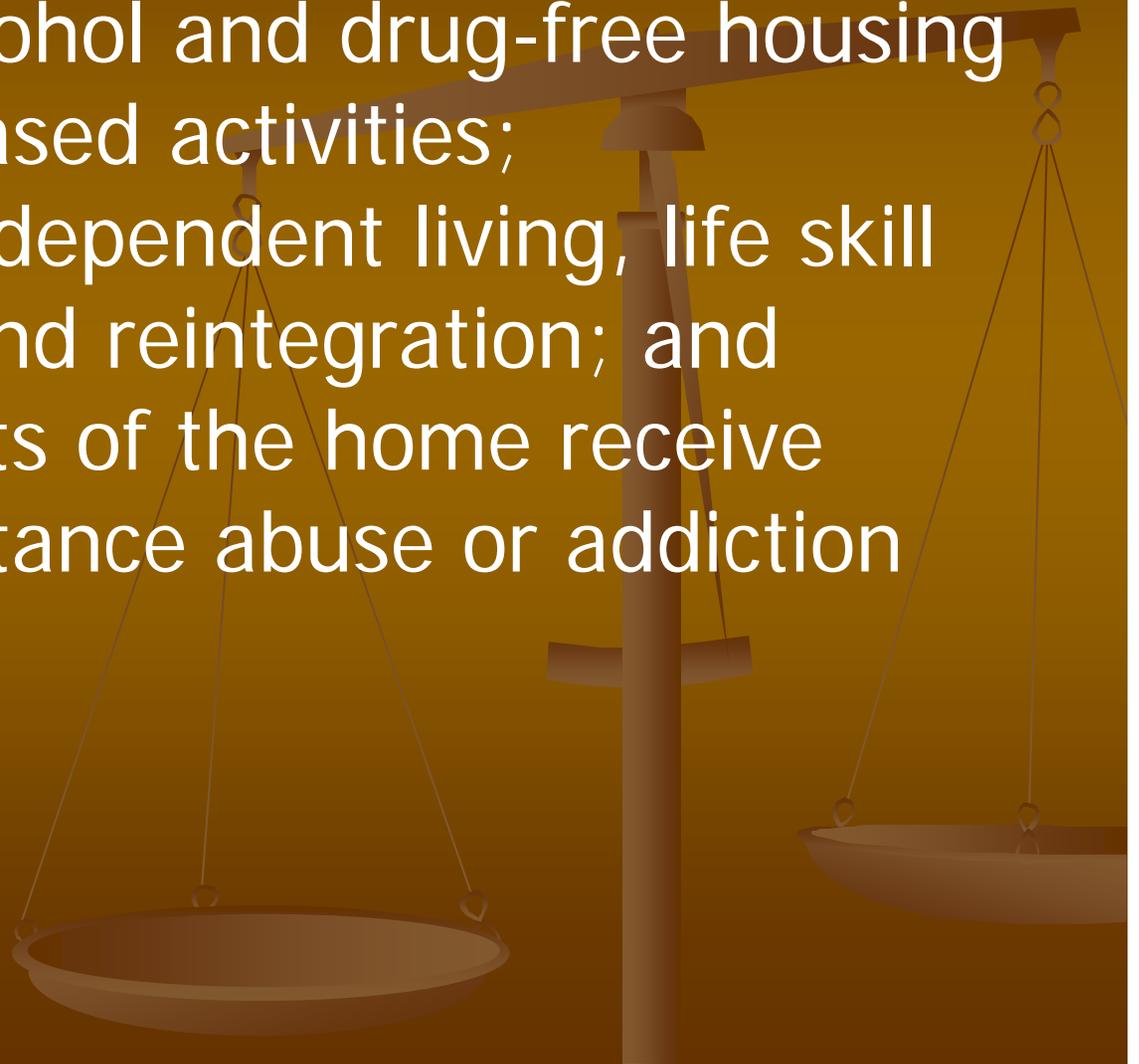


# SB 2214 by \*Swann (HB1929) by \*Curcio

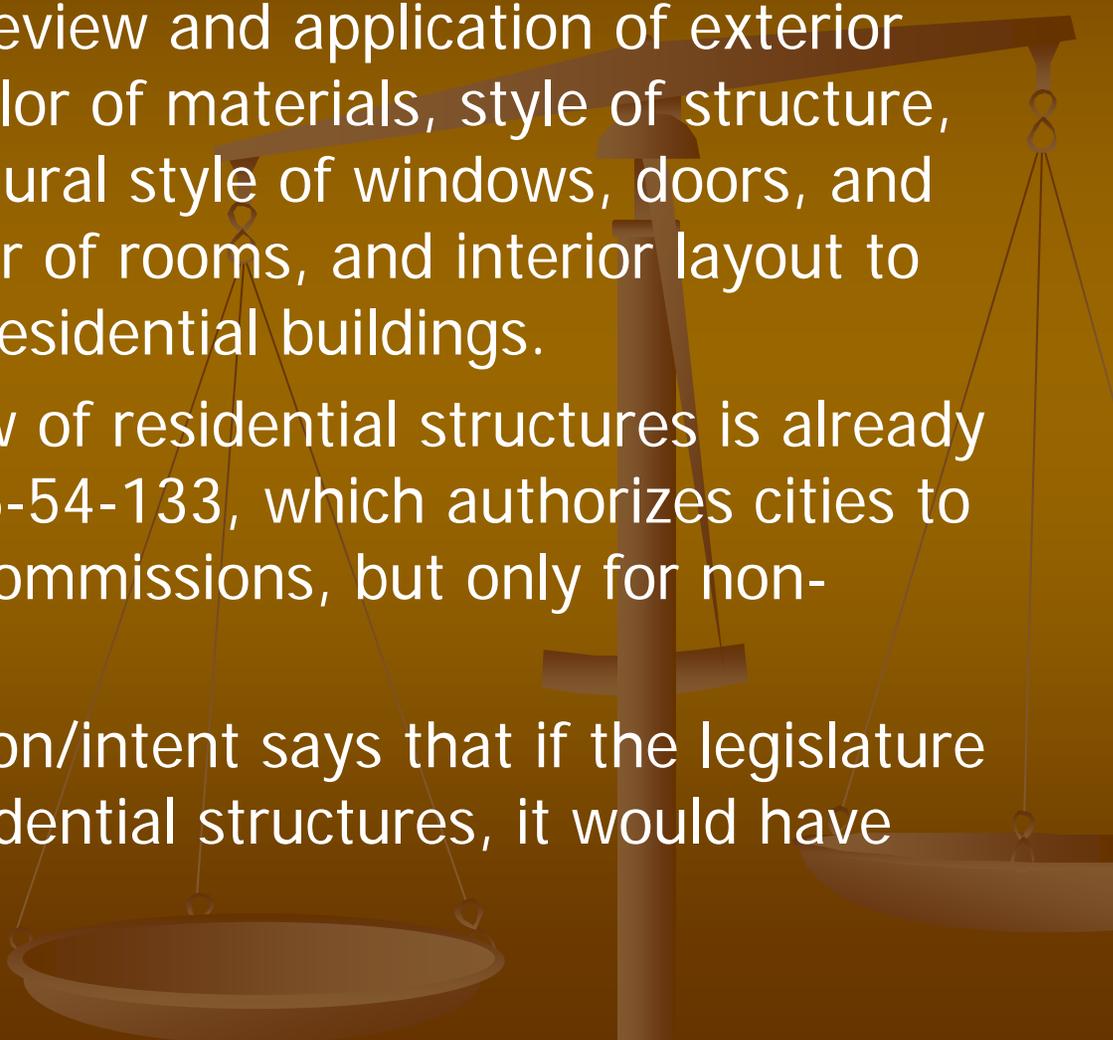
- Authorizes municipalities to adopt an ordinance requiring sober living homes to provide notification to the municipality of certain information regarding the home and establish and comply with an operational plan. - Amends TCA Title 13, Chapter 24, Part 1.
  - Defines a sober living home as a "single family residence" (as defined above) in which six or fewer unrelated persons with disabilities reside, along with up to three support staff or guardians, that:
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# Sober Living Home

- (1) Provides alcohol and drug-free housing and recovery-based activities;
- (2) Promotes independent living, life skill development, and reintegration; and
- (3) The residents of the home receive outpatient substance abuse or addiction treatment.

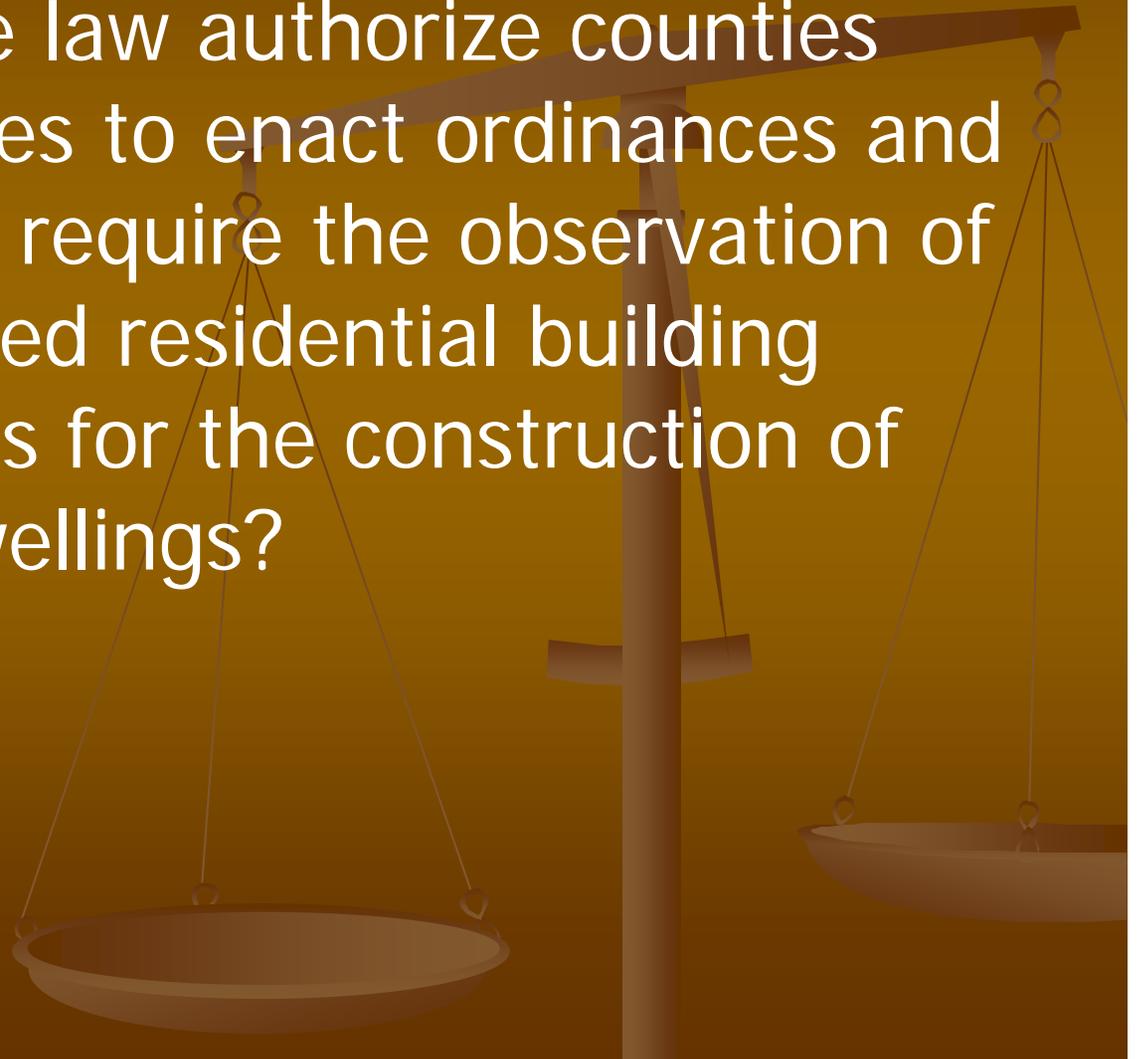


# SB 0520 by Massey / HB 0476 by Gravitt

- Bill prohibits design review and application of exterior building materials, color of materials, style of structure, location and architectural style of windows, doors, and garage doors, number of rooms, and interior layout to single or two-family residential buildings.
  - However, such review of residential structures is already precluded by TCA § 6-54-133, which authorizes cities to have design review commissions, but only for non-residential structures.
  - Legislative construction/intent says that if the legislature meant to include residential structures, it would have said so.
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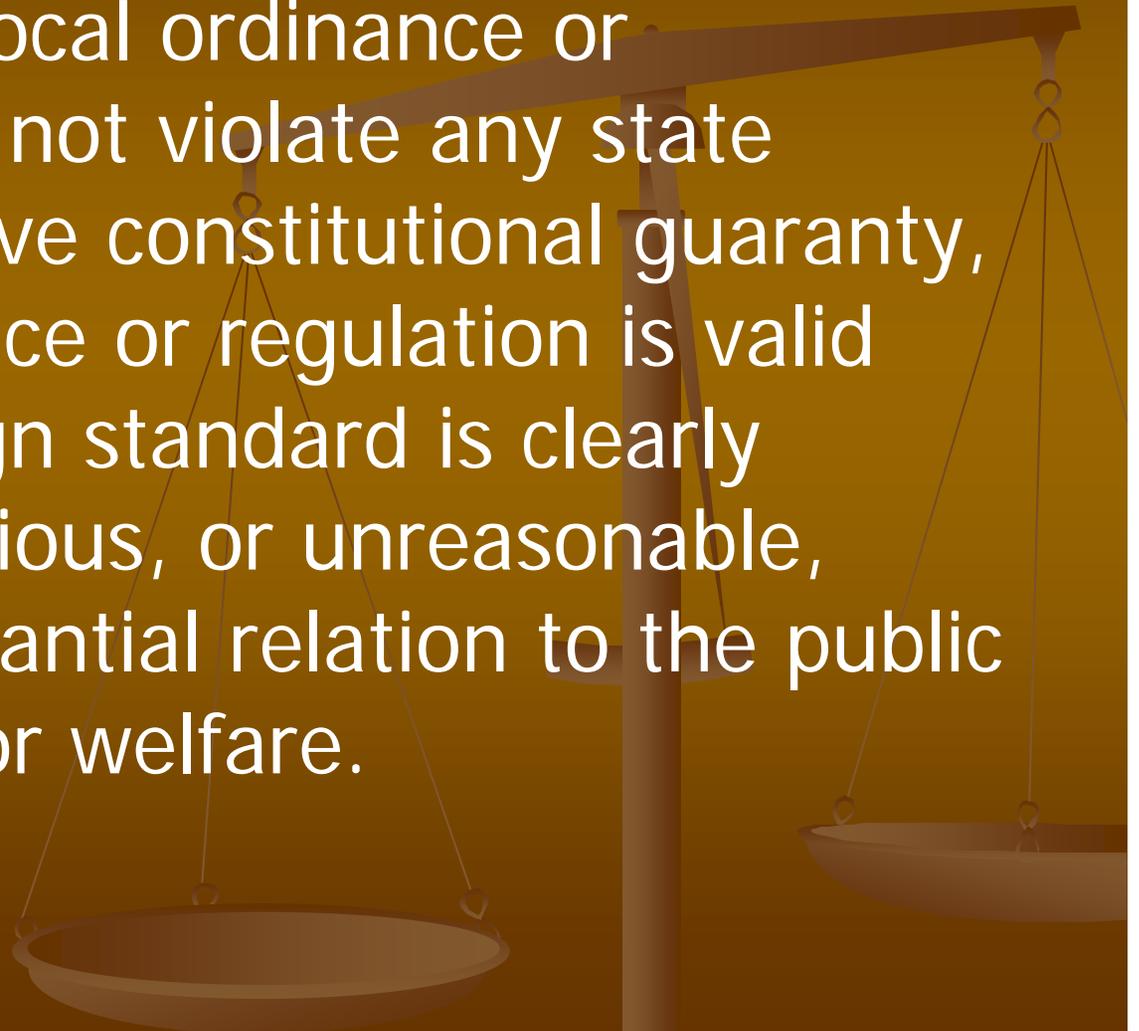
# However ... AG Opinion

- Does Tennessee law authorize counties and municipalities to enact ordinances and regulations that require the observation of appearance-based residential building design standards for the construction of single family dwellings?

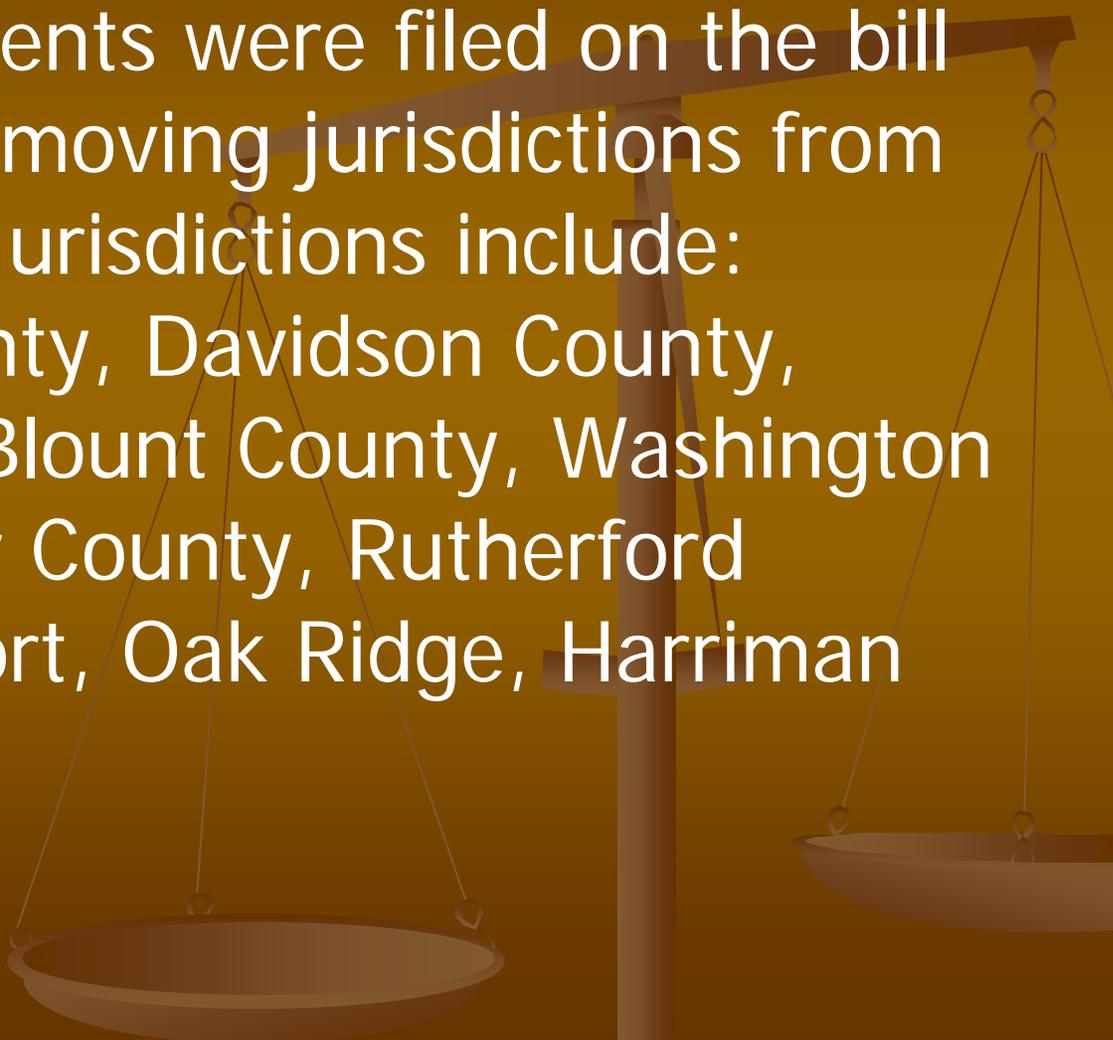


# Well, Maybe

- Assuming the local ordinance or regulation does not violate any state statute or positive constitutional guaranty, such an ordinance or regulation is valid unless the design standard is clearly arbitrary, capricious, or unreasonable, having no substantial relation to the public health, safety, or welfare.



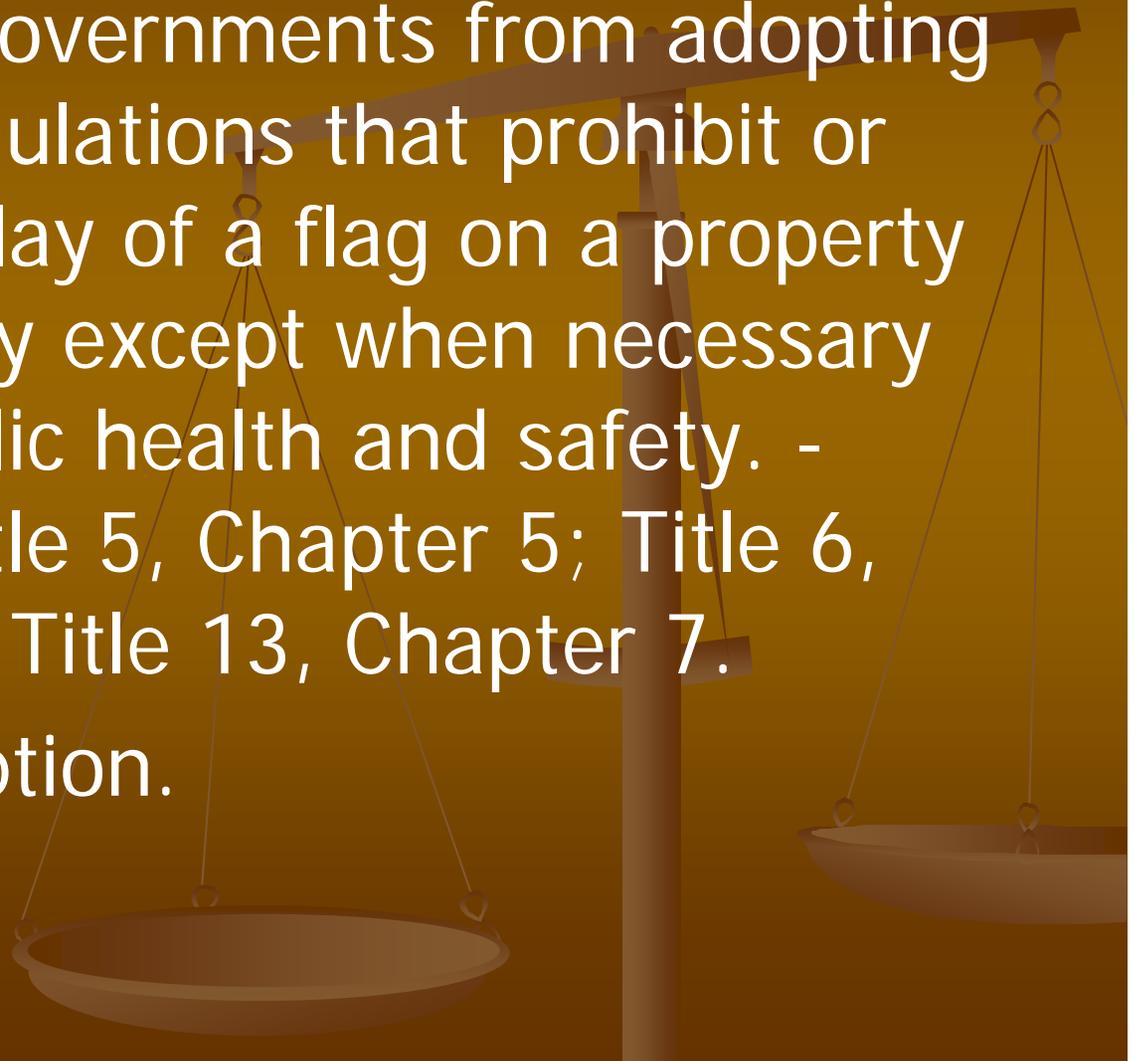
# Design Review



- Eleven amendments were filed on the bill in the Senate removing jurisdictions from the bill. Those jurisdictions include: Williamson County, Davidson County, Sevier County, Blount County, Washington County, Sumner County, Rutherford County, Kingsport, Oak Ridge, Harriman and Mt. Juliet.

# SB 2117 by \*Niceley (HB 2195) by \*Goins

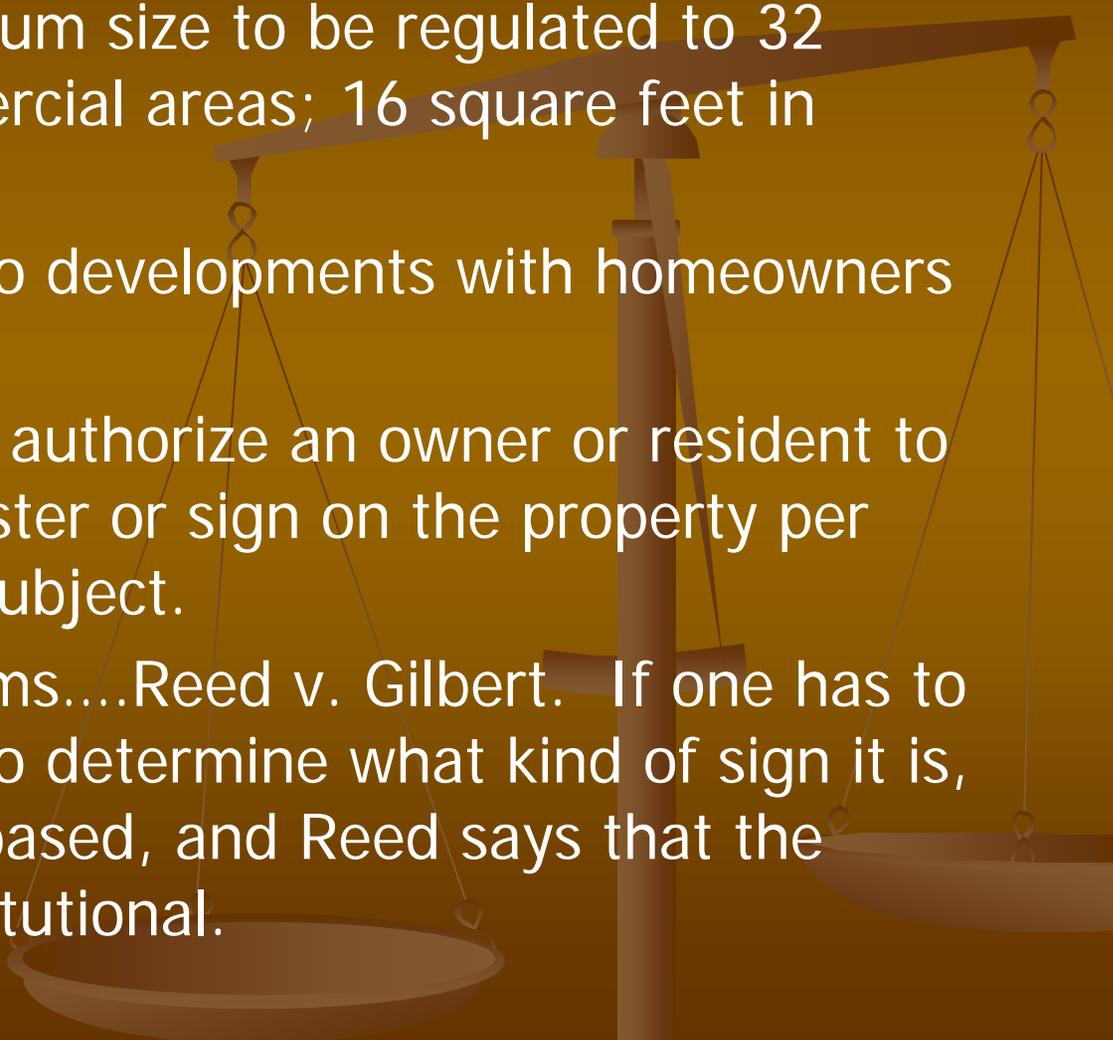
- Prohibits local governments from adopting or enforcing regulations that prohibit or restrict the display of a flag on a property owner's property except when necessary to promote public health and safety. - Amends TCA Title 5, Chapter 5; Title 6, Chapter 54 and Title 13, Chapter 7.
- Another preemption.



# SB 1089 by Ketron / HB 1199 by Rudd

- Prohibits state or local governments from regulating the shape and quantity of political signs placed on private property; prohibits homeowners associations from prospectively prohibiting by contract or covenant the placement of political signs by an owner or lawful resident of the association. - Amends TCA Title 2 and Title 66.
- Prohibits a local government from regulating the shape and quantity of political signs for a period beginning 60 days before a general election until the day after the next general election.

# SB 1089/HB 1199

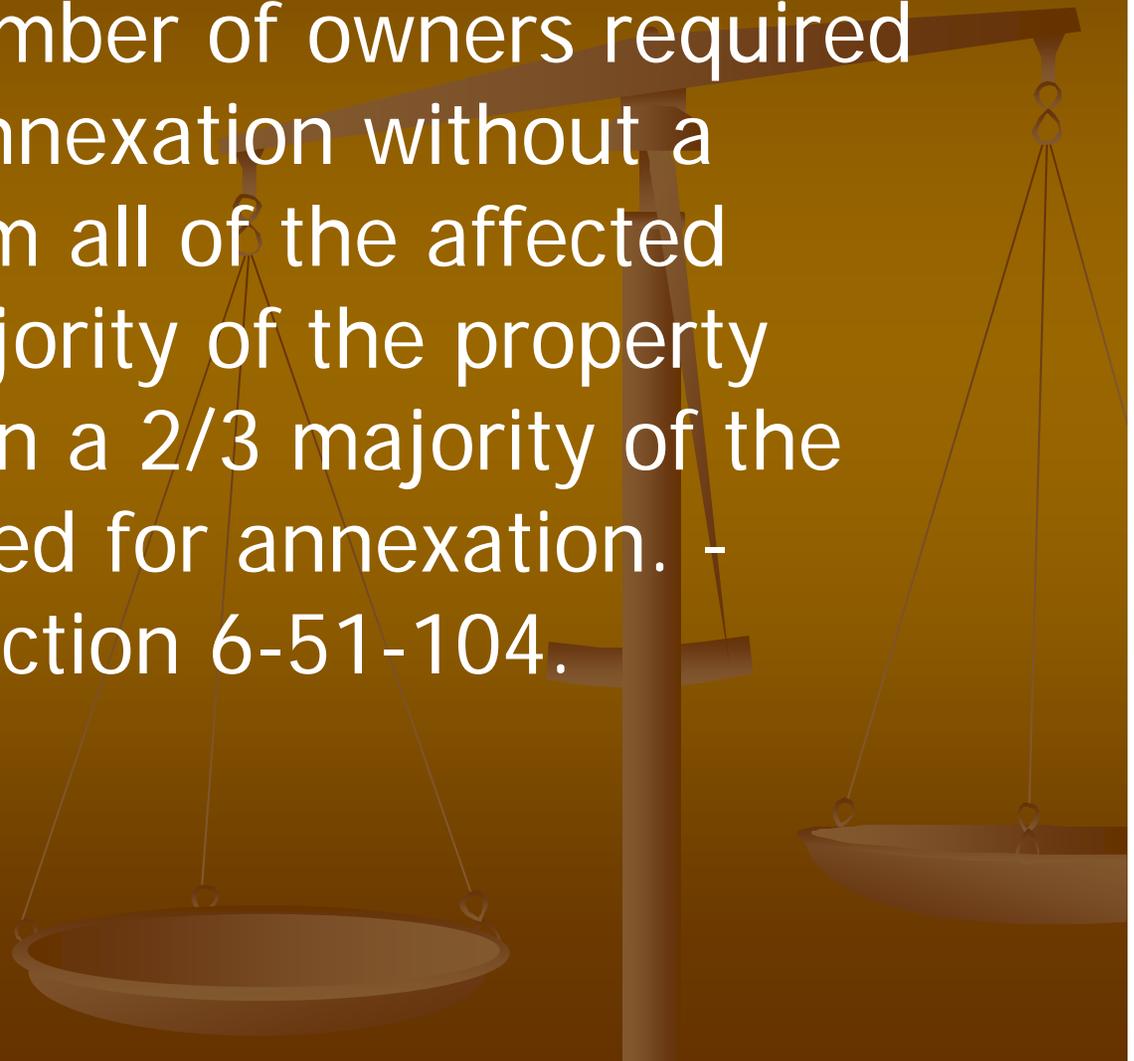
- Also limits the maximum size to be regulated to 32 square feet in commercial areas; 16 square feet in residential.
  - The bill also applies to developments with homeowners associations.
  - Any restrictions must authorize an owner or resident to place at least one poster or sign on the property per candidate, issue, or subject.
  - Constitutional problems....*Reed v. Gilbert*. If one has to read a sign in order to determine what kind of sign it is, then that is content based, and *Reed* says that the regulation is unconstitutional.
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# SB 0641 by Watson / HB 0943 by Carter

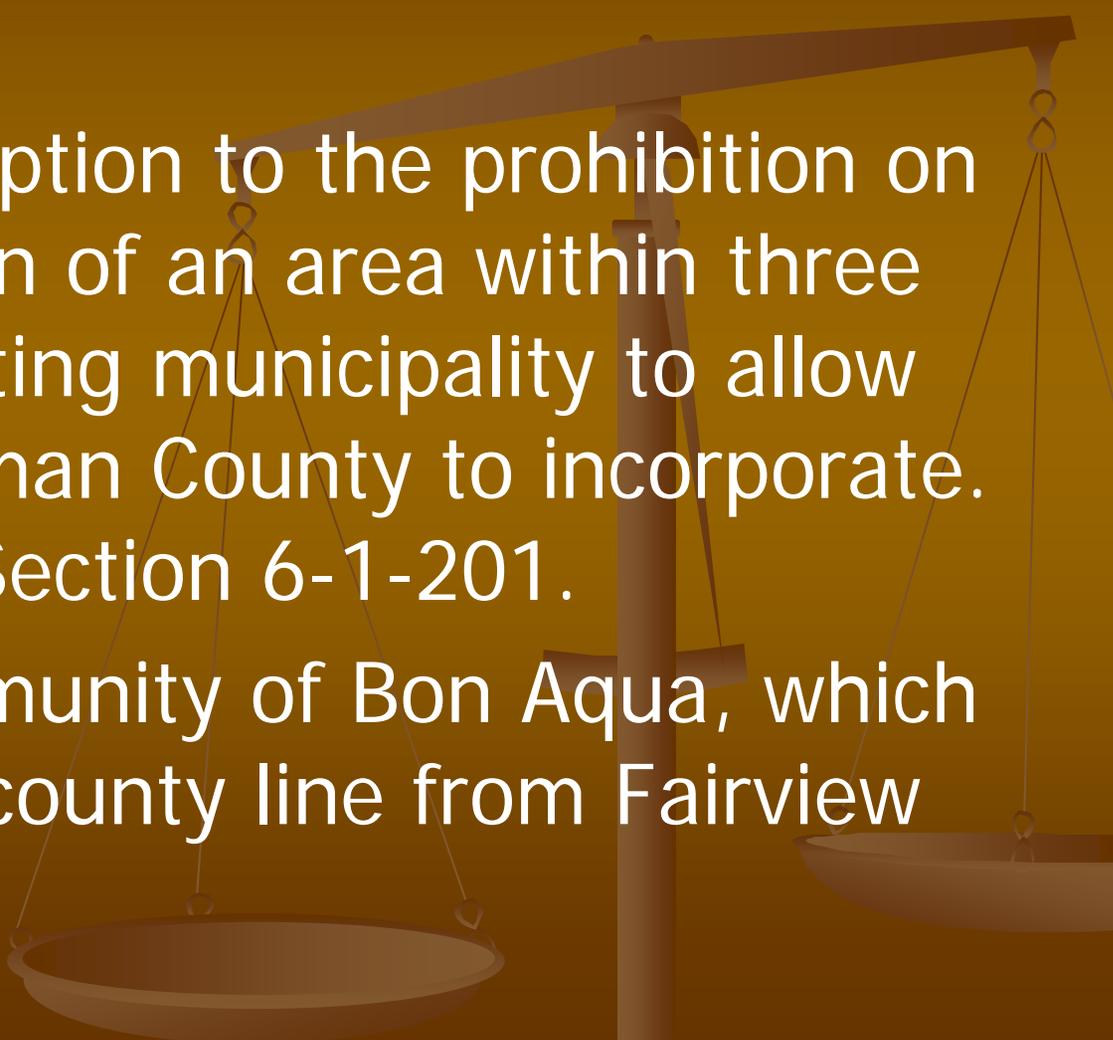
- Allows voters residing within an area annexed by a municipality to petition the county election commission to hold an election to deannex such territory; specifies the taxes that may continue to be levied on a deannexed area; prohibits the extension or continuation of utility services outside municipal boundaries to obtain consent to annexation. - Amends TCA Title 6, Chapter 51 and Title 54, Chapter 4, Part 2.

# SB 2680 by \*Bailey (HB 2125) by \*Williams

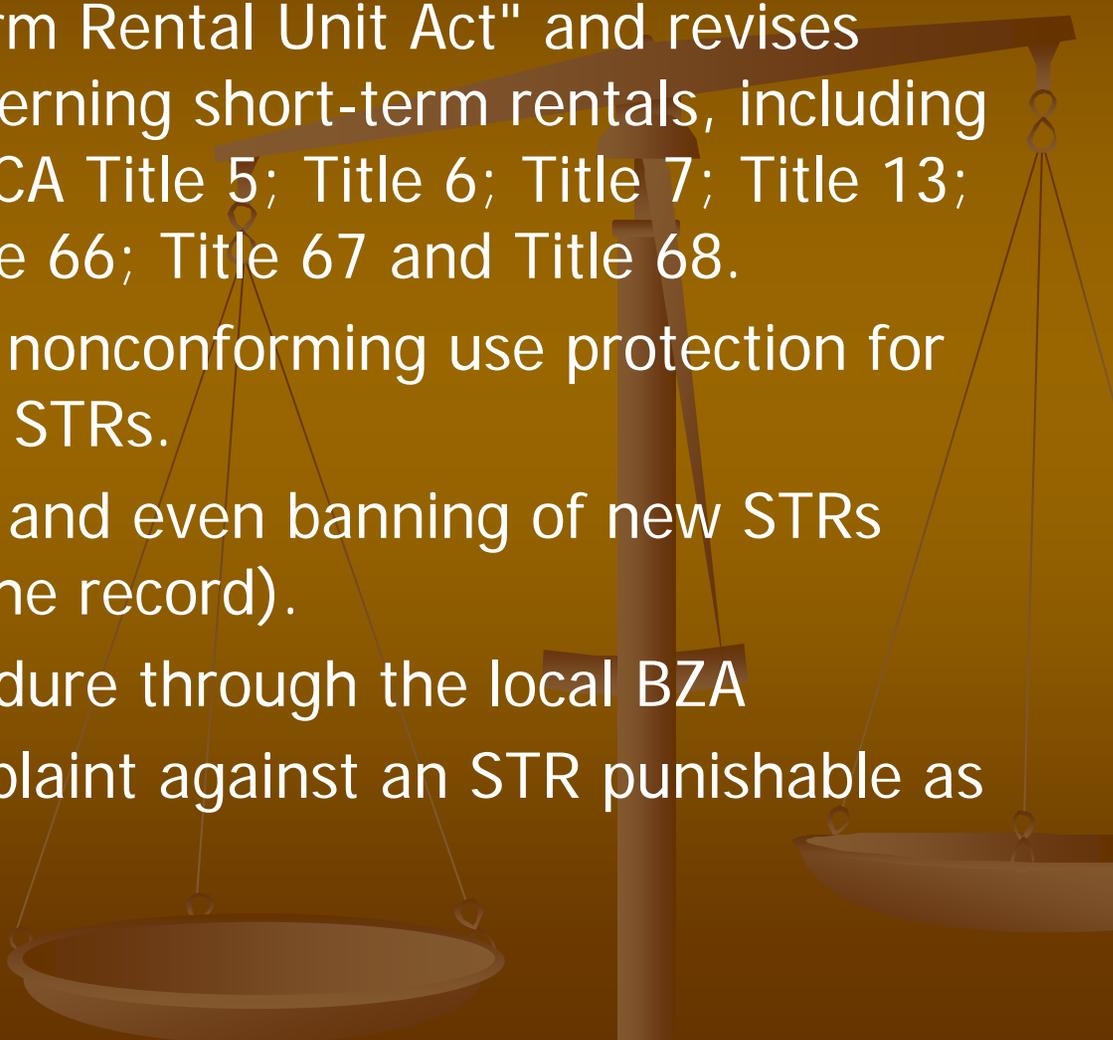
- Reduces the number of owners required to consent to annexation without a referendum from all of the affected owners to a majority of the property owners who own a 2/3 majority of the territory proposed for annexation. - Amends TCA Section 6-51-104.



# SB 1470 by \*Roberts (HB 1473) by \*Curcio

- Creates an exception to the prohibition on the incorporation of an area within three miles of an existing municipality to allow an area in Hickman County to incorporate.
    - Amends TCA Section 6-1-201.
  - Allows the community of Bon Aqua, which sits just across county line from Fairview to incorporate.
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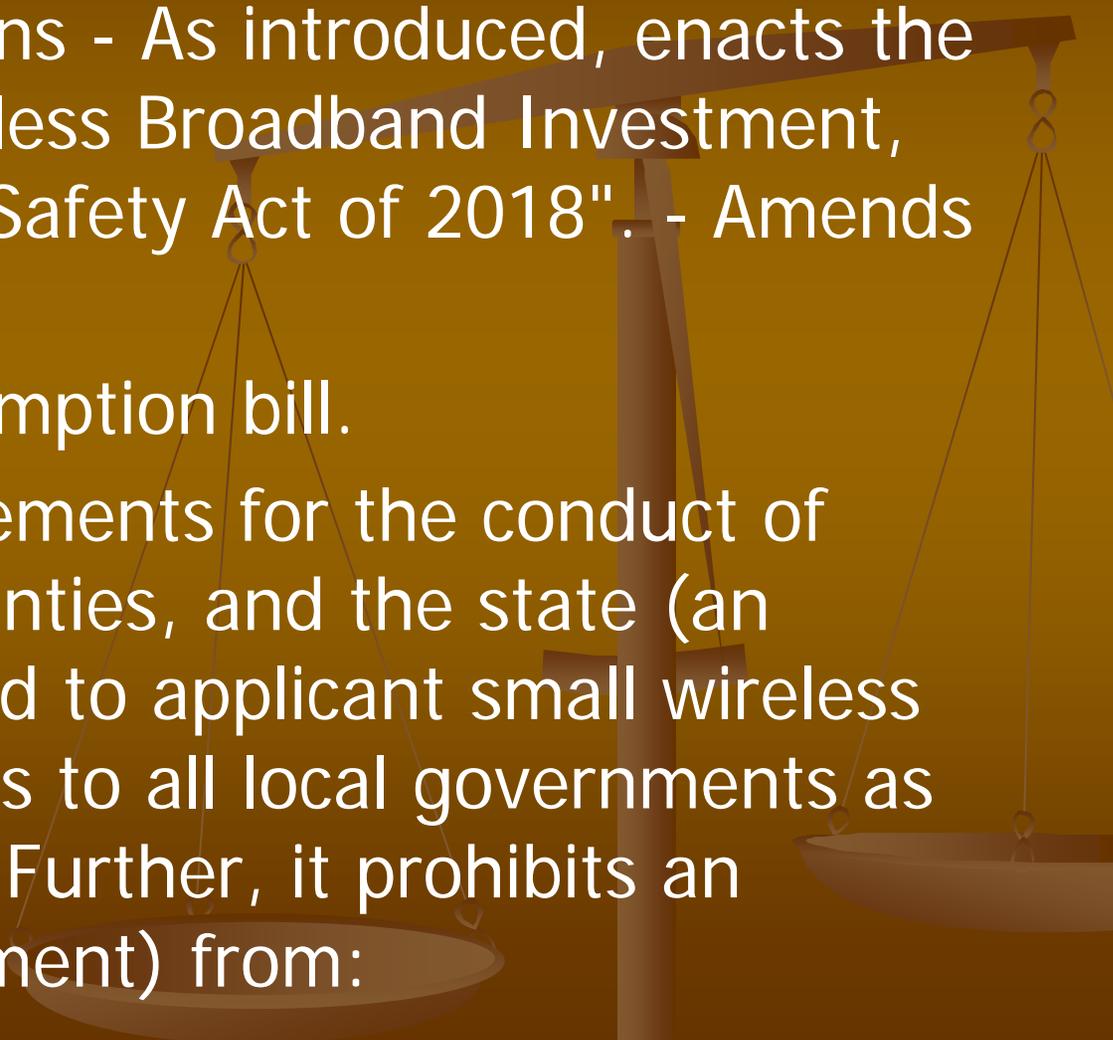
# SB 1086 by Stevens / HB 1020 by Sexton C

- Enacts the "Short-Term Rental Unit Act" and revises other provisions concerning short-term rentals, including taxation. - Amends TCA Title 5; Title 6; Title 7; Title 13; Title 56; Title 62; Title 66; Title 67 and Title 68.
  - As amended, creates nonconforming use protection for all legally established STRs.
  - Allows the regulation and even banning of new STRs (sponsor said so on the record).
  - Creates appeal procedure through the local BZA
  - Makes any false complaint against an STR punishable as perjury in court.
  - Passed committee.
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# SB 0363 by Haile / HB 1143 by Casada

- Clarifies that no local government has the authority to enact a law that would place requirements regarding inclusionary, affordable, or below market value housing when entitlements, variances, or any other form of permit or authorization is sought from the local government. - Amends TCA Title 7; Title 13 and Title 66
- Passed House last year; just passed Senate last week.

# SB 2504 by \*Ketron (HB 2279) by \*Lamberth

- Telecommunications - As introduced, enacts the "Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018". - Amends TCA Title 13.
  - Yep, another preemption bill.
  - Establishes requirements for the conduct of municipalities, counties, and the state (an authority) in regard to applicant small wireless facilities. It applies to all local governments as well as the state. Further, it prohibits an authority (government) from:
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# Telecommunications

- Promulgating limits, permitting requirements, zoning requirements, approval policies, or processes relative to deployment of small wireless facilities that are more restrictive than requirements, policies, or processes set forth in this bill; in excess of that which is granted by this bill; or otherwise in conflict with this bill. Any limits, ... that are more restrictive, in conflict with, or in excess of that which is granted by this bill will be void, regardless of the date on which the requirement, policy, or process was enacted or became law;

- Some Recent Court Cases

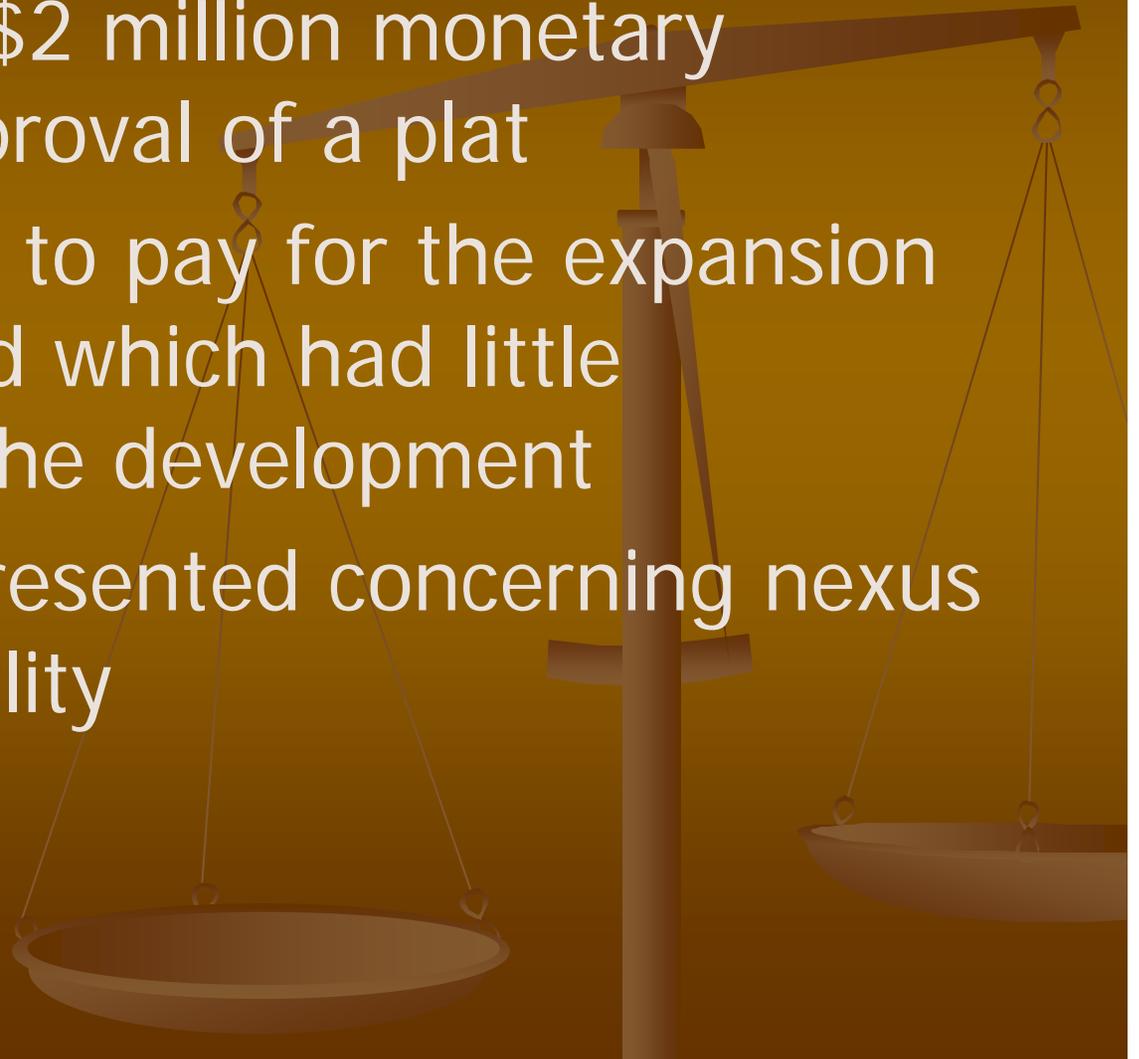


# Ward v Metro Board of Zoning Appeals

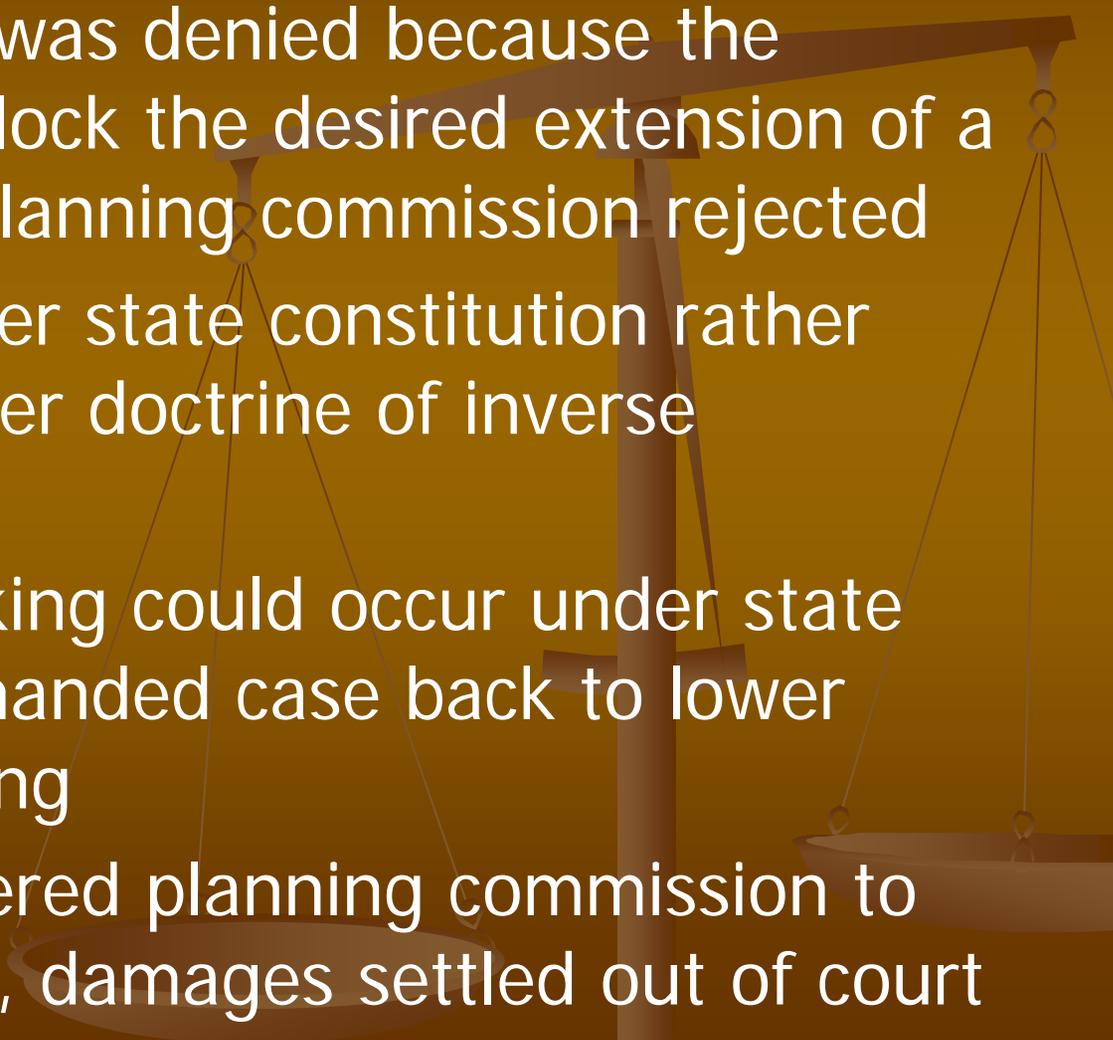
- First zoning case in court based on the religious freedom act.
  - Church requested approval of 22 tiny homes for the homeless on the church property.
  - Zoning administrator granted approval; neighbors objected and appealed.
  - BZA upheld administrator.
  - Neighbors sued BZA; court found for BZA.
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# Drees v City of Brentwood

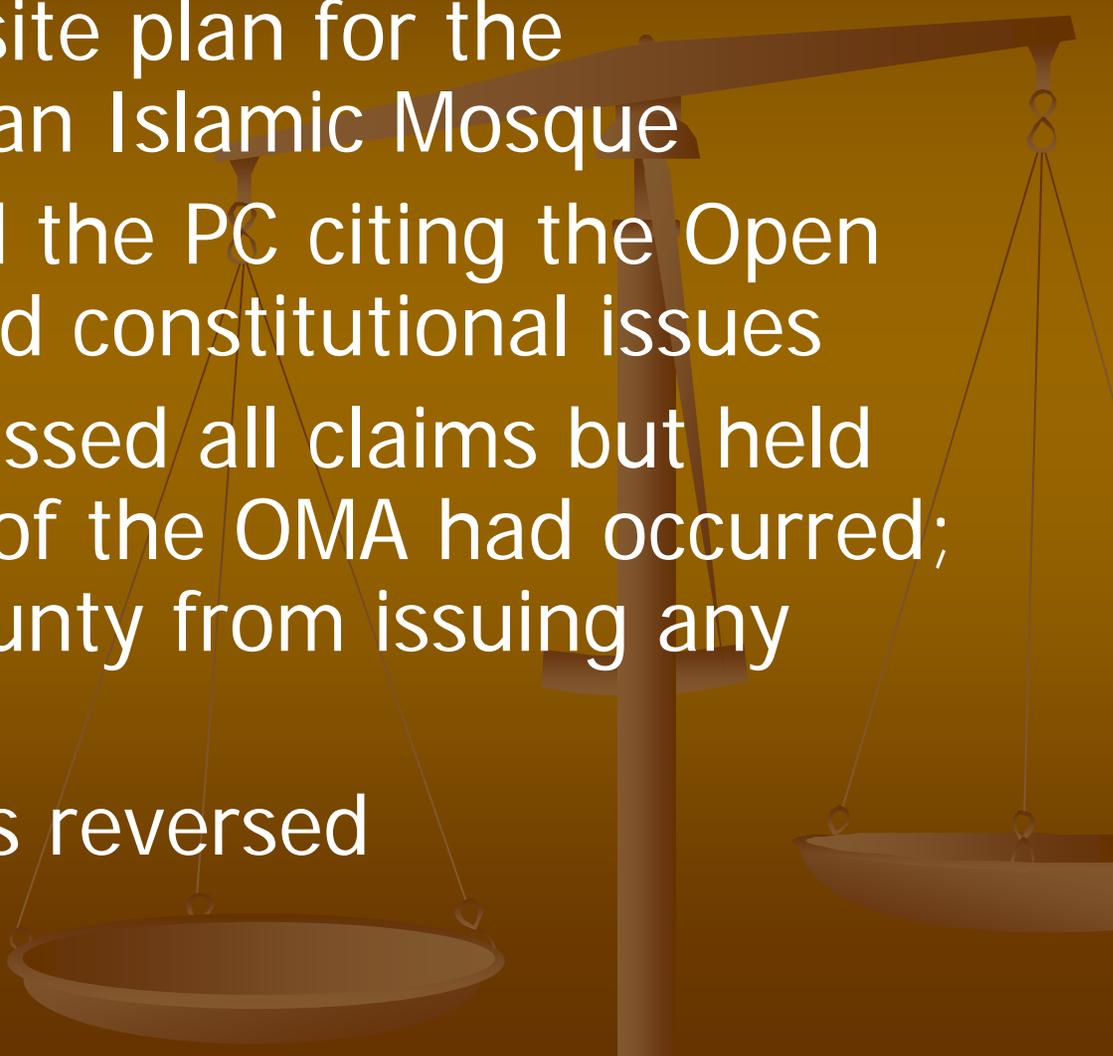
- City required a \$2 million monetary exaction for approval of a plat
- The money was to pay for the expansion of a nearby road which had little relationship to the development
- No proof was presented concerning nexus and proportionality
- City lost



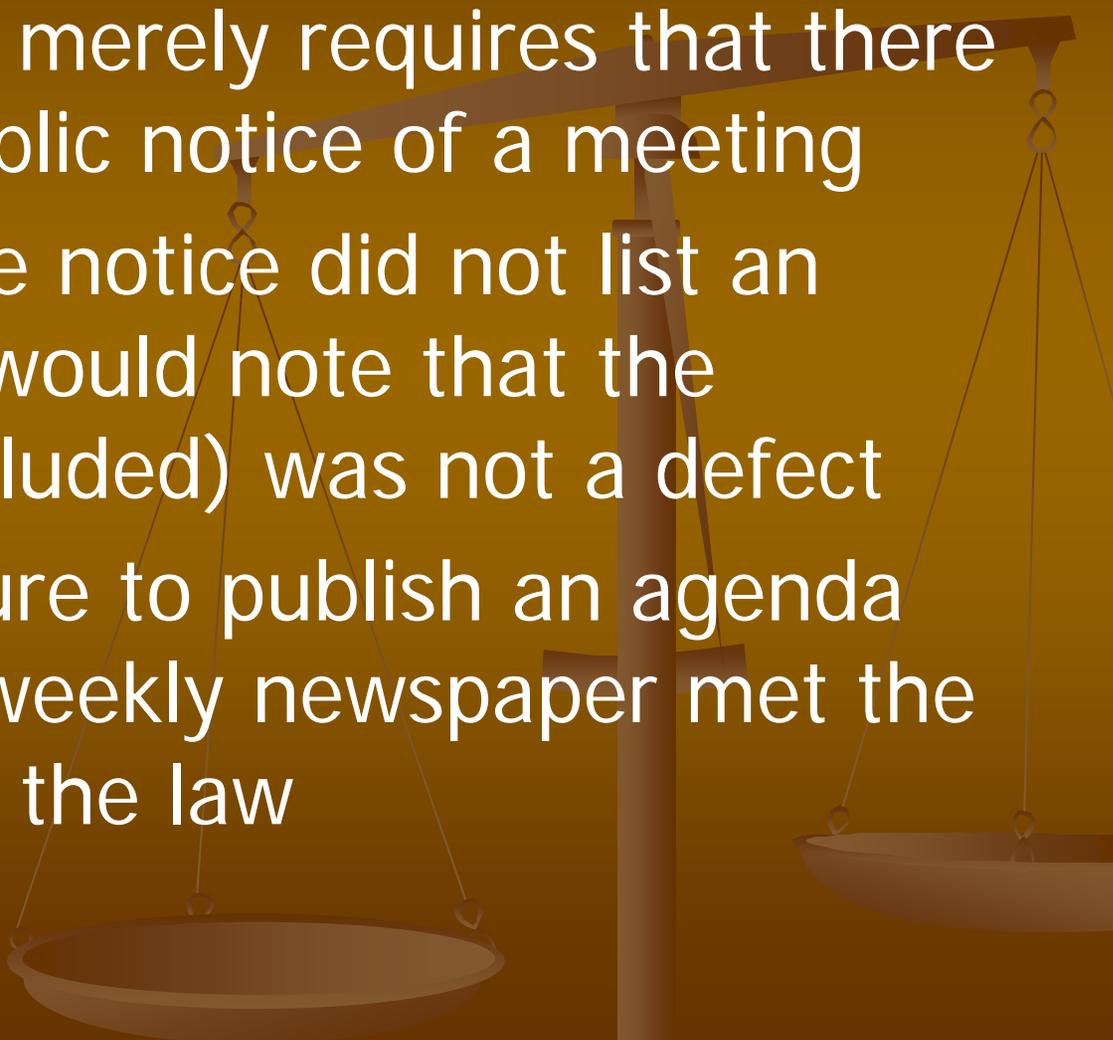
# Phillips v Montgomery County

- Subdivision plat was denied because the location would block the desired extension of a state highway, planning commission rejected
  - Owner sued under state constitution rather than federal under doctrine of inverse condemnation
  - Court ruled a taking could occur under state constitution, remanded case back to lower court for rehearing
  - Lower court ordered planning commission to approve the plat, damages settled out of court
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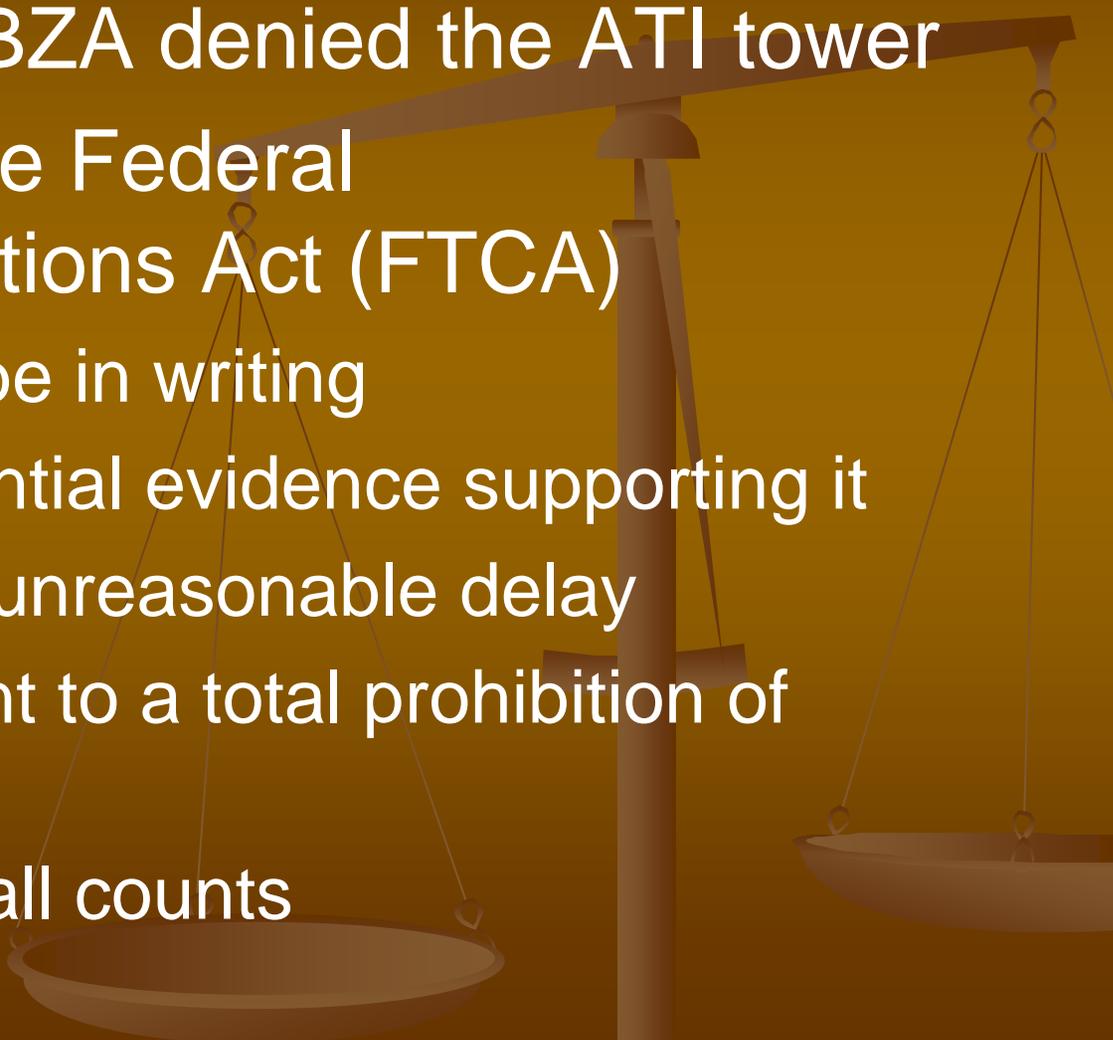
# Fisher v Rutherford County Regional Planning Commission

- PC approved a site plan for the construction of an Islamic Mosque
  - Opponents sued the PC citing the Open Meetings Act and constitutional issues
  - Trial court dismissed all claims but held that a violation of the OMA had occurred; enjoined the county from issuing any further permits
  - Court of Appeals reversed
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# Fisher cont'd

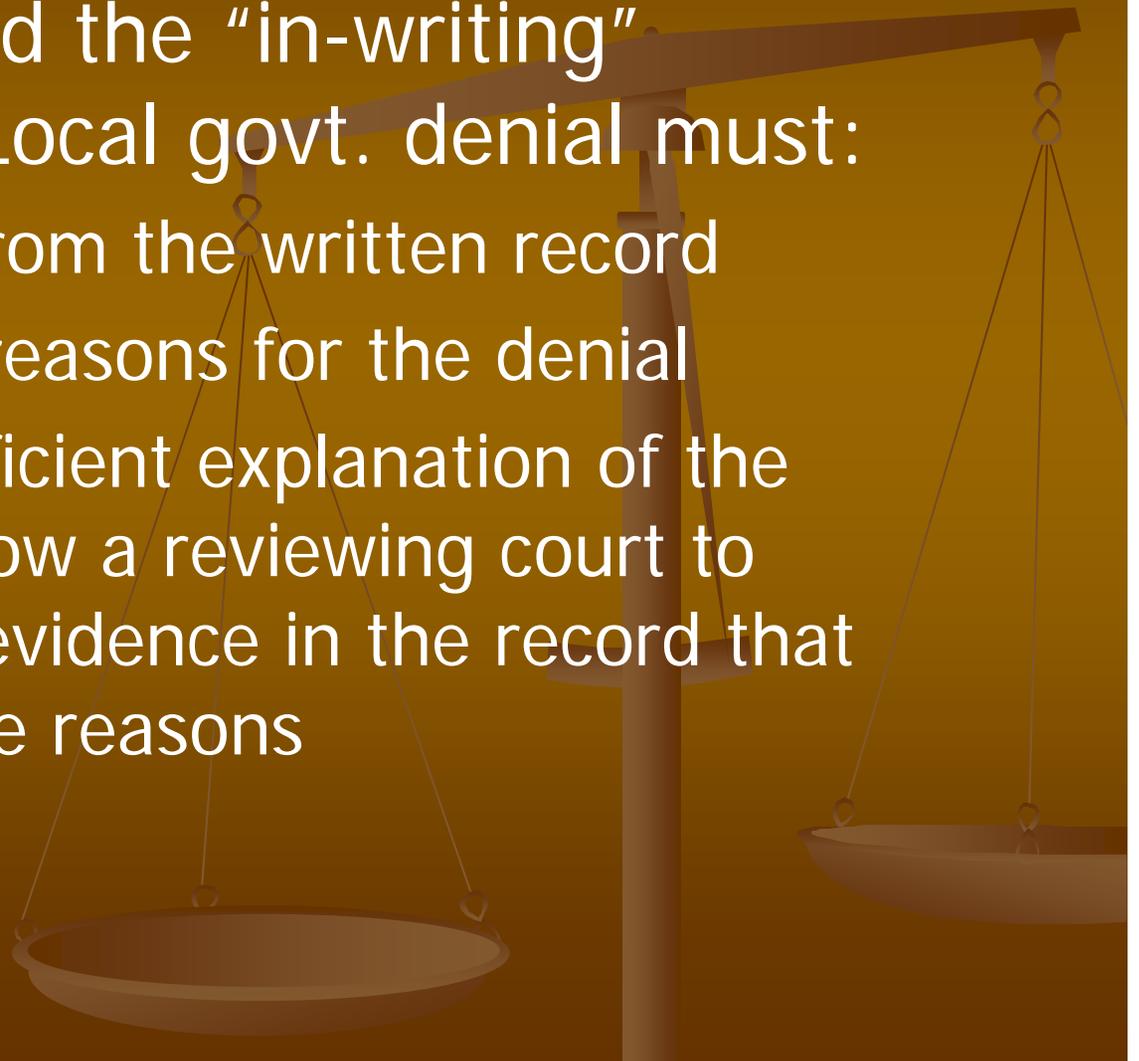
- TCA § 8-44-101 merely requires that there be adequate public notice of a meeting
  - The fact that the notice did not list an agenda (which would note that the mosque was included) was not a defect
  - Conclusion: failure to publish an agenda and the use of weekly newspaper met the requirements of the law
- 

# American Towers Inc. v Wilson County

- Wilson County BZA denied the ATI tower
  - Court applied the Federal Telecommunications Act (FTCA)
    - Decision must be in writing
    - Must be substantial evidence supporting it
    - Cannot be any unreasonable delay
    - Must not amount to a total prohibition of service
    - County lost on all counts
- 

# ATI con't

- Court explained the “in-writing” requirement. Local govt. denial must:
  - Be separate from the written record
  - Describe the reasons for the denial
  - Contain a sufficient explanation of the reasons to allow a reviewing court to evaluate the evidence in the record that supports those reasons



# Reed v Town of Gilbert

- Affects most sign regulations in the country
  - Focuses on 3 types of signs
    - Political signs
    - Ideological signs
    - Temporary directional signs
  - Each type was regulated differently
  - Court said this was content-based
  - A real no no
- 

# Valid Regulations after Reed

- Size
- Location
- Lighted or unlighted
- Static display or electronic
- Public or private property
- Commercial or residential
- Basic time, place & manner regulations



# B & B Enterprises v. City of Lebanon

- Denied for failure to comply with imposed conditions
- Must have a reason to reject based on failure to meet the published regulations
- Must record those reasons in the official minutes
- Must provide the official records to the court
- City lost

