



# CITY OF MEMPHIS, TENNESSEE

## 2011 State Legislative Agenda

Legislative Item	Division
<p><b>PILOT Indemnification</b> - Request an amendment to the statute (or through a Private Act) to grant to the Health, Educational and Housing Facility Board explicit immunity from suit and legal liability for any claim or loss to any property that is participating in the Board's payment in lieu of tax program ("PILOT Program").</p>	Health, Educational and Housing Facility Board
<p><b>Illegal Dumping</b> - Repeat offenders of illegal dumping. In Section 39-14-505 the City wants to create an aggravated criminal offense (Class E felony) to dumped on private or public property after being found guilty of the same offense once and/or when the area has public or private signage posted that prohibits dumping in the zone and is posted by the private owner and/or municipality.</p>	Community Enhancement



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### HEALTH, EDUCATION, AND HOUSING FACILITIES BOARD PILOT INDEMNIFICATION SUMMARY SHEET

As presently structured, the implementation of the PILOT Program under TCA 48-101-312 requires the Owner of the property to transfer legal title to the property directly to the Board for the term of the PILOT Agreement. This transfer allows the Property to be taken off of the tax rolls. Thereupon, the Board enters into (i) a Lease Agreement leasing the Property back to the Owner and (ii) a PILOT Agreement with the Owner setting forth the annual payment in lieu of tax amount, insurance requirements, indemnity provisions, etc. Even though the Board holds legal title to the Property, it holds legal title as a nominee only, specifically to comply with the PILOT Program pursuant to TCA 48-101-312. All other property rights, responsibilities and incidences of ownership remain with, and are controlled by, the Owner at all times. For example, the Owner enters into and controls all work, improvements, leasing, management, etc. on the property as any owner would do.

Through the Board's experience with the PILOT Program, as Tennessee is a title state, and the property title is in the name of the Board, whenever there is a loss or claim, since the Board is in the chain of legal title, the Board is sued and is made a defendant for all claims against all properties in its PILOT Program. It does not matter if the claim or lawsuit is for mechanics and materialment liens, personal injury claims, fire claims, etc. the Board is made a defendant. Whenever, there is a loss or claim against the Property, the Board is being sued along with the Owner, and even though there may be insurance and indemnities from the Owner, being in the chain of title and being sued, is causing the Board to incur legal expenses and potential liability for all properties participating in the PILOT Program. The Board must take this defensive action on each occasion to insure that no default or other adverse action is taken against it, thereby reducing the public benefits of the PILOT Program and increasing the costs and legal exposure for the Board. Moreover, if the Owner's casualty insurance is reduced or terminated at the time of the loss, and/or the Owner's indemnity covenant is inadequate based on the amount of the loss, the Board is currently legally exposed and may be held liable. We believe that this is not the legislative intent of TCA 48-101-312.

It is clear that TCA 48-101-312 requires the Board to hold legal title for the purpose of administering the PILOT Program and taking the Property off the tax rolls. Further, it is clear that the Board receives no other benefit, and has no control whatsoever over the operations of the Property or the Owner. As a result, not only should the Board be immune, by express language in the statute from having any liability whatsoever, but also, the Board should by express language, be excluded from being a party to any litigation, so long as the Board is merely performing its public function by holding legal title to the Property as a nominee only under TCA 48-101-312 to facilitate the PILOT Program.

We believe that the best solution to remedy the above issues is for TCA 48-101-312 to be amended, or a Private Act be enacted, clearly insulating the Board from liability in these matters by (i) specifically granting immunity to the Board from liability from any claim, and (ii) specifically granting immunity from being made a party to the lawsuit, under all circumstances wherein the Board holds legal title to the Property, as a nominee only, and is merely performing a public function under TCA 48-101-312.