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The Handling of Legislative Issues in the 105th Tennessee General Assembly: Scrap Copper and Gun Control

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Benjamin Signer

**The Handling of Legislative Issues in the 105th Tennessee
General Assembly: Scrap Copper and Gun Control**

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Chancellor's Honors Program

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Everyone knows the song from Schoolhouse Rock about a bill sitting on Capitol Hill. For most people a ditty performed by an anthropomorphized piece of paper is as far as their understanding of the legislative process reaches. That just goes for the federal government, the branch that most people are most familiar with. State legislative processes are an even greater mystery. The diagram that the state provides on their website is admittedly much more complex than the simple flowchart that is taught in elementary schools. It is a convoluted mess of arrows and titles and steps that even the most in depth civics class rarely covers.

The path that a bill takes is complicated and can even vary from bill to bill. There are numerous ways that a bill can be changed, influenced, held up, or defeated depending on who is interested in it. The treatment of a bill can even vary depending on the prevailing feelings of the stalwarts of the parties in control of the house it is passing through.

As the primary rule promulgating body for the state of Tennessee the General Assembly tackles a wide array of issues every year, large and small. Laws can range from simply changing a word to clear up legislative intent to correcting spelling and grammatical errors to massive shifts in the state code.

Other types of bills include caption bills. These are bills filed into a certain section of code to hold it open. Caption bills are a method of getting around the deadline for the filing of legislation. Once the deadline has passed new bills can not be filed, but new amendments can be. So when a member comes up with a new idea they can amend a law that is already dealing with the same section of

the code that they want to deal with. In order to ensure that every section of code is opened for change, the leadership of each party will file a bill for every single section of the code and then do nothing with it unless it is needed. At the end of each session each caption bill will simply die on the desk unless it has been amended and brought through committee.

The way that a bill is treated depends on how controversial it is in the context of the public's opinions at that moment.

Gun Control

One of the main problems that have been a part of the public discourse recently is the issue of gun control. This issue has come to the forefront nationally thanks to the Virginia Tech massacre and the 2008 presidential election. It is an issue that is sparked locally whenever there is a particularly violent crime involving a gun.

The issue is fundamentally divided into two camps. The pro-gun control camp believes that guns provide a ready tool for people to commit unspeakable acts of violence. The anti-gun control camp believes that not only are guns a fundamentally guaranteed right in the constitution but that they reduce crime by providing the average citizens with a means to defend themselves. The problem at the heart of the issue is how does a free society protect the rights of its citizens while keeping them safe from themselves and criminals. The strength of the opinions on the matter and the media attention that they garner ensures that any bill involving gun control will carry with it at least some controversy.

While gun control has been debated since the times of the mafia it really became a major portion of the national dialogue after the assassination attempt on President Reagan. During this assassination attempt a mentally ill gunman was able to gravely wound the president and kill or wound several others. One of those people wounded was Reagan's press secretary James Brady. He was shot in the head and became permanently crippled. As a result of this Brady and his wife became ardent supporters of gun control legislation. The Brady Bill was passed in 1993 and proscribed a five day waiting period for all firearm purchases and required background checks on all buyers.¹

Other federal firearms legislation has included the so called "assault weapons ban." The law banned guns with a folding or retractable stock, a bayonet mount, certain magazine types, and flash suppressors.² While the law was allowed to expire in 2004 its renewal has been vehemently supported by congressional Democrats and gun control enthusiasts in general.

State approaches vary greatly depending on the state and some even vary depending on the city within the state. These laws range from an all out ban on handguns in Washington D.C. (which the U.S. Supreme Court will rule on soon) to Alaska where no license or permit is required beyond federal regulations. There is even a town in Georgia called Kennesaw where every household is required to keep and maintain at least one firearm. No member of the town has been involved in a fatal shooting since the law passed. In fact,

¹ Brady handgun violence prevention act. (2007). In *Wikipedia* [Web]. Retrieved May 15, 2007, from http://en.wikipedia.org/wiki/Brady_Handgun_Violence_Prevention_Act

² Federal Assault Weapons Ban. In *Wikipedia* [Web]. Retrieved May 15, 2007, from http://en.wikipedia.org/wiki/Federal_assault_weapons_ban

Kennesaw's crime rate is still lower today than when it passed the law in the early '80s and is the safest city in the metro-Atlanta area.¹

Tennessee is a fairly loose state when it comes to gun laws, but not quite as loose as Alaska. A background check is required to buy a gun except at a gun show. Guns are to be registered. No one can bring a gun on state property including parks (except for appropriate weapons during the appropriate hunting season.) Concealed carry permits are issued after a class by a certified instructor has been given to apprise the carrier of the laws and basic firearm safety and accuracy.²

In the 105th session there were over a hundred bills submitted that contained the words firearm or gun, though many of these are duplicates of the same bill or resolutions honoring individuals or groups. Two of these bills have become the most famous and the most popular or vilified. Each is a representative of one of the two main types of firearms legislation.

The first bill, HB2184 by Representative Frank Niceley, in its original incarnation simply allowed individuals with a valid permit to carry their handguns in a state park. The main reason given for the bill according to Niceley is to protect park patrons from wild animals and from the steady increase in crime that national and state parks have seen over the past few years. This is an example of a kind of bill designed to control having or buying a firearm. The bill simply adds the following to the list of exemptions:

¹ 25 years murder free in 'Gun Town USA'. (2007, April 19). *WorldNetDaily*

² Handgun carry permit issuance. Retrieved May 15, 2007, from Department of Safety Web site: <http://tennessee.gov/safety/handgunmain.htm>

Any resident in possession of a handgun while within the boundaries of any state park, if such resident is duly authorized to carry the handgun pursuant to §§ 39-17-1351 – 39-17-1358¹

The bill was introduced on February 15th and was assigned to the criminal practice subcommittee of the judicial affairs committee on March 7th. The bill was presented on April 18th where it was amended by Judicial committee chairman Rob Briley to allow permit holders to carry a firearm in all parks, playgrounds, and government buildings unless forbidden by federal law. Briley's amendment does not actually add these parts to the bill; rather it simply deletes the whole section of the code that excludes playgrounds and other government buildings from carry locations².

It is widely assumed that Briley's purpose in amending the bill was to try and make it so politically unsavory that it would be defeated. It seems logical that Briley did not vote against the amended bill because it would have made him look dirty and underhanded. However, it is unclear what would possess every single other member of the committee save one, including Democrats, to vote in favor of passage of the amended bill as it seems to be contrary to the standard Democratic stance.

When his first tactic failed, Briley attached another amendment to HB2184 in one last ditch effort to kill it. Knowing that any bill will move to Calendar and Rules and then the full House after it passes Judiciary Briley sought to divert the bill. Briley attached an amendment that stated:

¹ HB2184/SB2143 by Niceley/Burchett. Filed 2007

² HA0585 by Briley. Amendment 1 to HB2184. Filed 2007.

The appropriate government entity shall post visible signage informing any person entering a public park, playground, civic center, or other building, facility, area or property owned, used or operated by any municipal, county or state government, or instrumentality thereof, for recreational purposes that the carrying of handguns by persons who have been issued a handgun carry permit pursuant to § 39-17-1351 is permitted on such property.¹

The purpose of this amendment is to make sure that the bill will have an expense. Bills that have a cost generate a fiscal note. A bill which has a fiscal note must travel through the finance committee. The finance committee is often the killing ground for bills that are unpopular with the Democratic majority in the House.

Currently HB 2184 has been deferred by the budget subcommittee until next session. SB 2143, the senate companion bill, has fared much better than its lower brother. Despite similar amending tactics, the senate version passed on May 31st with only 5 dissenting votes. Senator Tim Burchett, the sponsor of the senate bill said that he wanted the bill to get through the senate this year even if it was temporarily dead in the house.²

There are several theories as to why even some Democrats initially supported a bill that is admittedly a huge step in the relaxation of gun control laws. First is that in the wake of the Virginia Tech massacre, which took place shortly before the meeting, the members were afraid of being seen as weak on self defense. They could also have been reassured that the amendment would

¹ HA0586 by Briley, Amendment 2 to HB2184. Filed 2007

² Humphrey, T (2007, June 3). Bill to ease limits on gun carry advances. *The Knoxville News Sentinel*

be removed in full committee or that the bill would simply fail there. Of course they could simply have supported the bill as amended.

Special interest groups have been amazingly silent on this bill. There were not any lobbyists for the National Rifle Association around the plaza and no one can remember anyone pressuring the legislators to vote against the bill. This does not mean that such groups have not been involved in the debate though. Some special interest groups who know that they have a strong supporter in a particular legislator will often work through that legislator so that they do not appear to be controlling legislation.

The press latched onto the story and has printed several pieces about it in the *Knoxville News Sentinel* and the *Tennessean*. Predictably there have been several letters-to-the-editor predicting all sorts of doomsday scenarios. Writers have foreseen toddlers settling scores on the playground with firearms while others believe that our parks will become some sort of lawless Wild West.¹ No matter the severity or implausibility of these fantasy worlds they all hinge on the premise that the availability of guns in and of themselves will cause violence.

Anti-gun faithful believe this despite the lack of any kind of correlation let alone causal relationship between the prevalence of legal firearms and violence. In fact there have been various studies conducted that prove the opposite. Joyce Lee Malcolm conducted a groundbreaking study into the patterns of violent crime rates in England in 2002. During the study she found that the per capita violent crime rate was much higher in England, a country that has banned handguns,

¹ Humphrey, T (2007, April 19). House vote permits guns in more places . *The Knoxville News Sentinel*

than in America. In fact the violent crime rate had increased since the English had banned firearms.¹ According to the *Washington Times* violent crimes involving guns have only become more prevalent as controls of guns have been tightened.²

Perhaps as an admission of defeat for the theory of gun control there are several legislatures that have begun looking at new places to allow people to carry guns. A Virginia proposal to allow guns to be carried at public universities was narrowly defeated just a few months before the Virginia Tech Massacre.³ Many who are calling for a more logical system of gun control have pointed to this bill and said if only this had passed, perhaps someone at Tech could have had the power to defend themselves. Maine has several bills that were filed prior to the massacre that would allow the governing bodies of their various university systems to decide for themselves whether they will allow guns on campus. Currently some of Maine's universities have policies similar to that of the University of Tennessee where students are allowed to bring guns to campus so long as they are stored with the campus police.⁴ Many other states allow picnickers and joggers to carry firearms for self defense in parks and other wilderness areas.⁵

Other legislative proposals that have been suggested in the wake of the Virginia Tech Massacre have sought to close some loopholes in the laws. In

¹ Malcolm, Joyce L. (2002). *Guns and Violence: The English Experience*

² Lemieux, Pierre (2007, April 24). Trail of Travail. *The Washington Times*

³ Medved, J.P. (2007, April 24). Looser gun laws may save lives. *The Hoya*

⁴ Carrier, Paul (2007, April 24). Virginia killings put focus on gun bill. *Portland Press Herald/ Maine Sunday Telegram*

⁵ Balloch, J (2007, May 1). Interest in handgun carry permits up. *Knoxville News Sentinel*

some states there are few controls on gun shows since sellers at gun shows are in a poor position to perform background checks and record keeping. In Tennessee when you buy a gun in a store you fill out a registration form and undergo an instant background check, while at a gun show where there is likely no internet access you will simply fill out a registration form.

The Virginia Tech gunman had previously been held for psychiatric observation and was declared a danger to himself and others, yet he had no problems when legally buying the weapons he used in the massacre. Many legislators have suggested trying to find some ways to keep the mentally ill from buying weapons, closing another loophole in the law. The most prevalent suggestion to do this is to include mental health records in the instant background checks already performed on criminal records.¹

Niceley's bill goes a long way towards achieving his stated goal of providing better protection for residents in state parks. The parks service is sorely lacking on adequate personnel to ensure the safety of Tennesseans in the vast state park system. There are two obvious solutions; either hire more rangers and set them to crime patrol duties or allow people the option to protect themselves. The state is extremely leery of creating too many new positions especially in an area that is not of critical importance; therefore allowing people to defend themselves is the best option.

The opposition's argument against HB 2184 has been weak. Most arguments seem to consist of the typical knee-jerk response that one might expect from the anti-gun crowd. They offer dire predictions of every day people

¹ Hammack, L (2007, April 24). Focus shifts to gun laws. *The Roanoke Times*

losing control and settling even the most petty of arguments with gunplay. The opponents of this bill have not offered a single fact in the case and opt to appeal for an emotional response. This bill has also not been treated fairly. It has not been argued on its merits but has been amended in ways that seek to make the bill unpalatable to all but the most ardent gun enthusiast.

The amendments are very bad ideas if they become laws. Allowing guns into the state capitol building is taking a needless risk that an angry citizen may seek to influence legislation in the most undemocratic way possible. It would also seem to be a bad idea to allow guns in civic centers which are frequently used as concert venues which have the potential to draw some rather unsavory crowds. Concerts are also frequently marked by the use of drugs and alcohol which would only serve to add to the violence that sometimes erupts there. Despite the relatively shaky nature of the amendments, it may still be a good idea to support the bill through the committee process simply because the amendments can be lifted off of the bill on the floor and to stick it to the dirty players who sought to kill the bill in this way.

The other gun control bill that has received extensive press coverage this session is HB 1907 by Representative Rinks. This bill extends circumstances under which there is a legal presumption that a person using deadly force in self defense had a reasonable belief of death and confers civil immunity upon person properly using self defense. This type of bill is also known as castle doctrine and it is an example of trying to regulate how guns are used.

The bill itself is five pages long and contains a lot of definitions such as “curtilage” which means the area surrounding a dwelling that is necessary, convenient and habitually used for the family purposes and for those activities associated with the sanctity of a person’s home. The actual law rewriting portion of the bill though states:

... (b)

(1) A person who is not engaged in unlawful activity and is in a place where such person has a right to be has no duty to retreat before threatening or using force against another person when and to the degree the person reasonably believes the force is immediately necessary to protect against the other's use or attempted use of unlawful force.

(2) A person who is not engaged in unlawful activity and is in a place where such person has a right to be has no duty to retreat before threatening or using force intended or likely to cause death or serious bodily injury if:

(A) The person has a reasonable belief that there is an imminent danger of death or serious bodily injury;

(B) The danger creating the belief of imminent death or serious bodily injury is real, or honestly believed to be real at the time; and

(C) The belief of danger is founded upon reasonable grounds.

(c)

(1) Any person using force intended or likely to cause death or serious bodily injury within a residence or dwelling is presumed to have held a reasonable belief of imminent death or serious bodily injury to self, family, a member of the household or a person visiting as an invited guest when that force is used against another person, who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence or dwelling, and the person using defensive force knew or had reason to believe that an unlawful and forcible entry occurred.

(2) Any person using force intended or likely to cause death or serious bodily injury within an occupied vehicle is presumed to have held a reasonable belief of imminent death or serious bodily injury to self, family, a member of the household or a person in the vehicle as an invited guest if:

(A) The force is used against another person, who unlawfully and forcibly enters or has unlawfully and forcibly entered the vehicle;

(B) The person using defensive force knew or had reason to believe that an unlawful and forcible entry occurred; ...

SECTION 3. Tennessee Code Annotated, Title 39, Chapter 11, Part 6, is amended by adding the following new § 39-11-622:

(a)

(1) A person who uses force as permitted in §§ 39-11-611--
39-11-614,
or § 29-34-201, is justified in using such force and is immune
from civil liability for
the use of such force ...¹

The bill is divided into two significant sections. The first provides indemnity against criminal prosecution for injuring someone in defense of your home. The second which is unfortunately of equal importance protects a person against being assessed a civil penalty for defending themselves.

The second portion of HB 1907 is necessary because of the overly litigious nature of society. This is demonstrated in a powerful scene in the Jim Carrey film about tort reform, *Liar Liar*. In the scene Jim's secretary is leaving him and she lists as one of her reasons a situation that one of her friends found herself in. A robber was breaking into her friend's house when he fell through her skylight and cut himself on a knife left out on a cutting board. A lawyer got the robber \$30,000 for his pain and suffering. Clearly this is not a just situation but it is unfortunately stereotypical of today's society.

HB 1907 was submitted by Representative Rinks on February 15th, 2007. It was passed on first and second consideration and assigned to the criminal practice subcommittee of the judicial affairs committee. It prevailed there on a voice vote with no one being recorded as opposed to the bill. It passed full judicial in a similar fashion. HB 1907 then moved to the budget subcommittee of

¹ HB1907/ SB0011 by Rinks/Jackson. Filed 2007

finance, ways, and means. It traveled through the finance committee because it had a fiscal note.

Not every bill that passes through finance costs more money. Finance also hears bills that would increase or decrease revenue or increase or decrease expenditures. HB 1907 is projected to decrease expenditures by the fiscal review committee. They arrived at this conclusion by considering the fact that HB 1907 will keep some people from going to jail who may otherwise have been incarcerated. Since it costs money to jail someone, HB 1907 will decrease state expenditures.

HB 1907 passed through budget sub and full finance ways and means by a voice vote with no one being recorded as voting no. It was calendared in calendar and rules and was brought up for a vote on the floor of the house on April 26th, 2007. The bill passed with 96 ayes and Barbara Cooper abstained. Two members were absent. On May 3rd HB 1907 passed the senate unanimously and was sent to the governor for his signature on May 10th.¹

There was limited lobbyist involvement on this bill. The trial lawyers believed that the law was too popular to attempt to fight. Support from the NRA further ensured HB 1907's passage. In general the actual influence of lobbyists is greatly overstated by the media and this has unfortunately colored public perception. A group of lobbyists speaking at the intern orientation joked, "Don't tell my mom that I'm a lobbyist. She thinks that I'm a piano player in a whore house." The actual role of most lobbyists is something akin to an auxiliary

¹ <http://www.legislature.state.tn.us/>. Accessed 5/20/07

researcher that provides information to the members to supplement their meager staffs.

HB 1907 received considerable play in newspapers and on local news statewide. Most of the stories painted the bill in a positive light. *The Tennessean* used this as an introduction to their story on the bill, "Law-abiding citizens will be able to use deadly force in self-defense in more places under legislation that unanimously passed the state Senate and is on its way to becoming law." Notice that the author uses the qualifier law-abiding to make sure that the readers know that this law can not be used by criminals to aide their enterprises.

This legislation did not receive very much national attention however; because despite its groundbreaking nature in Tennessee law, Tennessee is the fourteenth state to pass "castle doctrine" legislation. The others are Kentucky, Missouri, Mississippi, Alaska, Florida, Georgia, Idaho, Louisiana, Michigan, New Hampshire, Oklahoma, South Carolina and Virginia.¹

These other states did not pass their similar bills quite so easily. In Arizona their version of the bill was defeated at first on the floor and was even vetoed before quietly squeaking by on a 32-23 vote. The difficulty with the Arizona version may be attributed to the fact that their version is retroactive. Many prosecutors argued that making it retroactive would release far too many people.²

I think that Rinks' HB 1907 is more than adequate in achieving its goal of protecting people who are protecting themselves. The only thing that could

¹ Wissner, Sheila (2007, May 4). Bill expands self defense situations. *The Tennessean*

² House makes self-defense law retroactive. (2007, April 23). *The Associated Press*

possibly give more protection to the defender would be to give a person unlimited protection when they shoot someone in their homes, cars, etc. This might be going too far though as it would be too easy to take advantage of. Providing the civil indemnity goes the extra mile in protecting the person who has defended their home from all possible punitive actions. This type of legislation seems to continue the trend of an increased emphasis on the rights of the victim as opposed to the rights of the criminal.

Another recent trend in gun control is readily noticeable on television commercials and street side billboards. Legislatures across the country have begun to impose mandatory time to be served in addition to time to be served for the underlying crime whenever a gun is used. Laws such as these acknowledge the fact that most people who purchase guns legally do not use them illegally so there is no reason to punish the honest gun owner. Instead the best option is to punish those who use guns improperly. These laws are an example of laws that try to restrict how guns are used.

There is a third gun control bill that has received some buzz in the press. HB 1285 by Representative Dolores Gresham seeks to protect Tennesseans from being stripped of their firearms when they may need them most, during a widespread natural disaster or other catastrophe. HB 1285 states that:

SECTION 1. Tennessee Code Annotated, Section 58-2-107(e), is amended by deleting all the language in subdivision (4) and substituting instead the following language:
Subject to any applicable requirements for compensation, commandeered or utilize any private property, excluding

firearms and ammunition or firearm or ammunition components, if the governor finds this necessary to cope with the emergency;

SECTION 2. Tennessee Code Annotated, Section 58-2-107(e), is further amended by deleting all the language in subdivision (8) and substituting instead the following language:

Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles, excluding firearms and ammunition or firearm or ammunition components;

SECTION 3. Tennessee Code Annotated, Section 58-2-107, is amended by adding the following language as a new, appropriately designated subsection:

(m) During any state of emergency, major disaster or natural disaster, the state, a political subdivision or a public official may not impose additional restrictions on the lawful possession, transfer, sale, transport, carrying, storage, display or use of firearms and ammunition or firearm or ammunition components.¹

These sections of the law aim to prevent any from having their guns confiscated or otherwise restricted during emergencies. The restrictions also apply to all of the smaller political subdivisions i.e. towns and counties.

HB 1285 was amended when it passed through judiciary by chairman Rob Briley to only include the section that states, "During any state of emergency,

¹ HB 1285/ SB 1597 by Gresham/Norris. Filed 2007

major disaster or natural disaster, the state, a political subdivision or a public official shall not prohibit nor impose additional restrictions on the lawful possession, transfer, sale, transport, carrying, storage, display or use of firearms and ammunition or firearm and ammunition components.”¹ This removes the section of the bill that forbade the government from “commandeering” firearms.

Representative Gresham introduced HB 1285 on February 12, 2007. It was assigned to the criminal practice subcommittee of judicial affairs both of which it passed on voice votes with no one wishing to be recorded as opposed to the bill. The bill was calendared in calendar and rules and when previous question was called for it prevailed 51-40 and the bill itself was voted into law 93-0 on April 30, 2007. Governor Bredesen said that while he agrees with the basic concept of the bill he is wary of eroding executive power.²

Rep. Gresham has mentioned in her advocacy for HB 1285 that the reason for the bill is to prevent a situation similar to the one that occurred after Hurricane Katrina. In the aftermath of the flooding of New Orleans the governor of Louisiana decreed that the police and National Guard should seize all firearms that they came across to attempt to cut down on some of the rampant crime that plagued the region. The problem that arose when the authorities seized the weapons was that the disarmed citizens easily fell prey to those citizens that were not disarmed.³

¹ HA 0294 by Briley. Amends HB 1285. Filed 2007.

² House oks bond issue for kcs0 pensions. (2007, May 5). *Knoxville News Sentinel*

³ Wissner, Sheila (2007, May 4). Bill expands self defense situations. *The Tennessean*

The newspapers that covered this story generally discussed the bill in short blurbs as it was not very controversial. Most of the mentions were informative explaining what the bill does and the rationale behind it.

The job of the police is to protect the citizenry, unfortunately they can not be everywhere at once especially during times of great crises. It is during these times that the right to bear arms is most dearly treasured as people find it incumbent on themselves to enforce the law and seek justice. HB 1285 did a good job of achieving its intended goal. As amended it is significantly weaker. It is unfortunate that only half-hearted and gutted bills are capable of passing through the committee process.

The issue of gun control is a prime example of how many political arguments deal more with perception and emotion than with logic and fact. Anti-gun crusaders typically appeal to a fear of crime and argue that guns enable criminal behavior. Pro-gun people often play on the fear of being defenseless and unable to defend yourself. They argue that guns can prevent criminal behavior. The public's perception of the need and usefulness of guns is often driven by current events that have no actual effect on their lives.

For instance several months ago a Knoxville couple was carjacked, raped, and brutally murdered. The police found the killers, but the fear that it could happen to anyone remained. Since this occurrence the populace has become more open to the use of guns for personal protection. Since the incident enrollment numbers in the prerequisite class for handgun carry permits has

increased to the point that people are required to schedule classes weeks in advance.¹

When each side argues based on raw emotional appeal it creates a situation where bad public discourse is encouraged. A person who is so frightened by one scenario or the other digs their heels in on either side of the issue and is seldom budged or reasoned with. This prevents a rational discussion of what direction is correct for the country and can lead to bad public policy. To quote Dr. Michael Fitzgerald, "You can not have a good democracy with bad public discourse."

It is unlikely that either side will ever be able to fully come to terms with the other. It is for this reason that gun control in Tennessee and in the United States will rarely advance too far in either direction. This incremental approach to policymaking is simultaneously America's greatest strength and greatest weakness. By advancing slowly the problems that arise will be minor but if a great problem arises it will be harder to fix.

The controversial nature of some pieces of firearm legislation ensured greater media coverage for these bills than other bills that would perhaps have a much greater impact on the day to day lives of average Tennesseans. For instance there were no front page stories or special news segments of the changes made to worker's compensation laws or septic system regulation. The controversial firearm bills take a much more convoluted path through the legislative sub-structure before they come to the floor. This is both to allow more

¹ Balloch, J (2007, May 1). Interest in handgun carry permits up. *Knoxville News Sentinel*

politicians to have input and to allow for a greater chance that they will be stopped.

Scrap Copper Control

Currently scrap copper is worth \$3.12 per pound.¹ Over the past few years, however the price of scrap copper has risen to over four dollars per pound.² This high price coupled with the rise in development in Tennessee has given rise to an increase in the theft of copper from buildings around the state. If you want to think from the criminal's perspective stealing copper is a relatively easy crime. It can be taken from pipes inside relatively unguarded construction sites. It can be taken from the wiring of any building's air conditioner which is just sitting around outside the building.

Perhaps the greatest incentive to steal copper is its ease of resale. Other stolen property requires a shady pawn shop owner or selling something out of the back of a car. A copper thief can take his haul to the local scrap yard and have it weighed and bought no questions asked along with the many other legitimate scrap sellers. This is the bottleneck where most politicians are attempting to put a damper on the illegal trade.

Extensive media coverage of scrap-theft-motivated vandalisms during the fall and summer of 2006 led to a legislature chomping at the bit to do something

¹ Retrieved November 5, 2007, from Metal Prices .Com Web site: <http://www.metalprices.com/>

² Haughney, K (2007, July 13). Copper thefts trigger widespread crackdown. Retrieved November 10, 2007, from Stateline.org Web site: <http://www.stateline.org/>

come January. When the legislators filed their bills they discovered that several of them had been working on the problem concurrently over their absence.

There were far less bills submitted dealing with copper theft than were submitted dealing with gun control. The methods that the legislators came up with to help ease the problem all dealt with the issue in the same way, but to varying extents. The idea is that if you require some sort of identification from the people who are selling scrap copper then thieves will be much less likely to target copper as it will now be harder to sell. The extent of the record keeping proposed ranged from simply recording a driver's license or fingerprint (as many homeless people sell scrap metal that they salvage) to requiring the scrap dealer to keep his intake sorted by who sells it to him and making weekly reports to the police.

Other states have taken similar approaches in dealing with the same problem. Delaware simply requires all scrap metal dealers to keep a log of the name of the person that they buy any scrap precious metal from and make it available to police upon request. The dealers are only required to keep the records for one year.¹ This is probably due to the fact that investigations into the theft of metals usually occur shortly after the commission of the crime and the care and maintenance of long term records would be an unnecessary burden on the scrap dealers.

Michigan requires all scrap metal dealers to be licensed and inspected by the state. They also require dealers to fingerprint the people that they buy their scrap from and keep a log of where the person claims to have obtained it from.

¹ HB243 Delaware General Assembly

The police are also allowed to inspect scrap metal dealers whenever they want.¹ There are good and bad points to this law. Requiring the dealers to be licensed provides a useful stick to keep people operating above the board. The requirement that the original location of the scrap be recorded is slightly pointless. The scrap dealer has no idea where the person found the scrap so all they can do is take the seller's word for it.

Illinois requires dealers to photograph the scrap turned in and the license plate of the person that brought it. Texas requires make and model number of the seller's car to be recorded as well. In Washington State where scrap dealers are already required to identify their suppliers, legislators are considering making the theft of precious metals a special crime carrying additional time in prison.²

When the legislators who had authored scrap laws realized that they had all submitted virtually identical bills they all got together and signed on to the bill that they thought was best. That ended up being HB0314 by Representative Deberry. The bill requires scrap metal dealers to take the fingerprint of people who sell them scrap and keep a record of it for five years. The actual meat of the bill is:

SECTION 2. Tennessee Code Annotated, Section 38-1-203, is amended by designating the existing language as subsection (a) and by adding the following as a new subsection (b):
(b) In addition to the information required by subsection (a), every person or corporation dealing in copper as described in § 38-1-201 shall obtain the right thumbprint of each seller of copper, provided that if taking the right thumbprint is not possible the dealer shall take a fingerprint from the left thumb or another finger and shall identify on the log which finger has

¹ HB6599 by Waters. Filed 2006 Michigan General Assembly

² Haughney, K (2007, July 13). Copper thefts trigger widespread crackdown. Retrieved November 10, 2007, from Stateline.org Web site: <http://www.stateline.org/>

been used. A thumb or fingerprint taken pursuant to this subsection (b) must be clear and complete and contain no smears or smudges. A thumb or fingerprint taken pursuant to this subsection (b) shall be maintained by the dealer for a period of five (5) years from the date of the transaction.

SECTION 3. Tennessee Code Annotated, Section 62-9-106, is amended by designating all of the language in subsection (a) as subdivision (a)(1) and by adding the following as a new subdivision (a)(2):

(2) In addition to the information required by subdivision (a)(1), every dealer in copper shall obtain the right thumbprint of each seller of copper, provided that if taking the right thumbprint is not possible the dealer shall take a fingerprint from the left thumb

- 2 – 00216904 or another finger and shall identify on the record of purchase which finger has been used. A thumb or fingerprint taken pursuant to this subdivision (a)(2) must be clear and complete and contain no smears or smudges. A thumb or fingerprint taken pursuant to this subdivision (a)(2) shall be maintained by the dealer for a period of five (5) years from the date of the transaction.¹

This bill has the potential to be very useful. Requiring the dealer to maintain only the fingerprint does not create too much work and it could presumably be matched to a thumbprint obtained at the scene of a scrap metal theft. However without a way of identifying who the fingerprint belongs to this bill still requires to have already found a suspect in the theft.

HB0314 was introduced on February 6th, 2007 and after passing its second consideration it was sent to the civil practice subcommittee of the judicial affairs committee. After being on the committee's calendar for several weeks the bill was finally passed to the full judiciary committee on March 27th, 2007. On April 18th, 2007 HB0314 was passed out of the judiciary committee and referred to the calendar and rules committee for scheduling before the full House. On April 26th, 2007 the bill passed the House with 93 members voting aye and 3

¹ HB0314 by Deberry/Harper. Filed 2007 Tennessee General Assembly

nays and 1 present but not voting. It was engrossed by the clerk and transmitted to the Senate for their vote. The Senate version of the bill passed into the general subcommittee of the judiciary committee on May 16th, 2007, effectively killing it.¹

The senate decided that they would be more cautious in dealing with the issue. Senator Kyle introduced a joint resolution, SJR0357, to create a special joint study committee to examine how best to proceed with new scrap metal laws. The resolution was passed through both houses on the consent calendar and signed by the governor. The committee is supposed to conclude their study no later than February 1st, 2008.²

This scrap metal legislation received virtually no specific media attention. News reports on the subject simply mention that the legislature is tackling the problem and did not include any of the specifics of the various plans unlike the great detail that the gun control legislation went into. There were a few letters to the editor from people voicing their approval that the problem was finally being tackled.³

The scrap metal dealer lobby resigned themselves early on to having some kind of regulation thrust upon them so they had very little input with individual legislators. The president of the Scrap Retailer's Association serves on the special study committee that was created to address the issue though.⁴ Individual scrap dealers took the initiative though and researched the proposed

¹ <http://www.legislature.state.tn.us/>. Accessed 12/1/07

² SJR0357 by Kyle. Filed 2007 Tennessee General Assembly

³ (2007, October 16). Letters to the editor october 16. *Knoxville News Sentinel*

⁴ Locker, R (2007, September 27). Scrap metal players 'not tools'. *Memphis Commercial Appeal*

bills and called their state representatives. Many were significantly opposed to the idea of sorting their stock by who they bought it from.

Conclusions

The Tennessee General Assembly handled a lot of business during the 2007 legislative year. Some of the bills were controversial and spurred widespread public and media input. Some plodded along without much notice. If you take scrap copper laws as examples of non-controversial laws and gun control laws as examples of controversial laws you can see that they are treated very differently.

The more controversial gun control laws were subject to heated discourse both in and out of committee. They were subject to legislative tricks and dealings. These bills were amended and rewritten time and time again. Despite this only the most controversial of these controversial bills did not receive some kind of final action either up or down. Compare this to the less controversial scrap laws which wither in summer study committees or the general sub of their state and local committees.

Perhaps controversial bills are more likely to see action because the public is more aware of them. Legislators want to be seen as being active in a hot button issue that is sure to come into play come election time. Less controversial issues, while they are still important, will not be driving anyone's vote. This allows their legislation to be more methodical and less rushed.

However the lack of public input into these issues that work below the radar allows for the potential for seriously flawed legislation to sneak through.

This highlights the continuing and necessary role that lobbyists and departmental liaisons play in the legislative process. Without these industry wonks keeping an eye out for legislation that will affect their clients or bosses; who knows what the legislature could come up with. Maybe these legislative watchers are an unintended extra check against the legislature in our system of checks and balances.

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