

TENNESSEE GOVERNMENT

Update

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Last week we reported on the “University of Tennessee Day on the Hill” at Legislative Plaza and all of the activities and sights of that day. In the spirit of Southeastern Conference equal time, Vanderbilt held center stage this week with its annual breakfast, as dozens of black and gold balloons floated on the halls. The members of the Commodores' Sweet-Sixteen basketball team were in attendance, heads at balloon level. In addition, trauma surgeons, Life Flight helicopter crews and Vanderbilt's bow-tied Chancellor shook hands and spread the higher education message.

Bills, Bills, Bills

With consideration of bills in full swing, the pace has picked up even more at Tennessee's Legislative Plaza. In the House, almost 20 percent of the bills filed (close to 500 bills of the 2,400) are scheduled to be heard next week in committees and subcommittees. Currently, more House bills are in subcommittee than in full committee, a situation that will flip within the next few weeks as subcommittees begin to wind down. In fact, the Civil Practice Subcommittee of the House Judiciary Committee has announced its last meeting will be April 17. The annual question, “When will they finish?,” hangs in the air. Experienced observers predict adjournment either Memorial Day weekend (May 26-27) or the first weekend of June (June 2-3).

Tobacco Tax/Schools First!

Republican opposition to Governor Bredesen's proposed cigarette tax increase for funding education initiatives appears to be gaining momentum. The administration has responded with aggressive lobbying of legislators in key committees (Senate Finance and House Agriculture) and by taking the case to the public in town hall meetings in Cordova and Jackson. The Governor and Senate Speaker Ron Ramsey (R-Blountville) have framed the politics of the issue in comments to the press. Ramsey seems comfortable with the idea of Republicans running on the issue of blocking a \$200 million tax increase. Bredesen uses the title “SchoolsFirst!” when referring to the proposal and insists that people will not be happy when they realize how much money it could mean for local school districts.

The proposed tax would triple the tax on cigarettes from 20 cents to 60 cents per pack. The projected revenue, nearly \$220 million, is earmarked for various K-12 and higher education programs, including expanded pre-K initiatives and state funding of at-risk students, and to help rapidly growing districts.

In the Senate Finance Committee (six Republicans to five Democrats), Senator Jim Kyle (D-Memphis) responded to Republican critics who wondered why a new tax is being proposed when

there appears to be a fair amount of “growth money” in the budget. Senator Kyle defended the proposal by reiterating that the Governor has presented a balanced budget with no new taxes and that a cigarette tax is not needed to fund the government. He claimed, however, that standing committees have already approved \$53 million in new spending for the 60 percent of departments that have presented their budgets, swallowing up much of the budget surplus. Thus, he feels a second “bucket” is needed to fund the education initiative, which is only possible with the earmarked revenue from the cigarette tax increase. Senator Kyle asked to postpone consideration of the bill for two weeks.

In the House Agriculture Committee, the opposition is bipartisan. Interestingly, and perhaps not coincidentally, the 16-member Agriculture Committee is the only House committee that has a majority of Republicans, 9-7. Most Republican members of the committee and at least two Democratic members seem to be leaning against any tax increase.

Governor Bredesen has accused those members who are not supportive of the plan of “caving to pressure from the tobacco lobby.”

Medical Malpractice Update

Medical liability reform legislation made some headway this week. Senator Mark Norris (R-Collierville) presented his compromise bill to the Senate Judiciary Committee. The bill as amended does not impose any caps on non-economic damages but does require early notification of all defendants that a claim will be filed, a Certificate of Good Faith signed by plaintiff or plaintiff's counsel that the claim has merit and streamlined disclosure of medical records to all parties. Senator Norris conceded that this bill is only a first step toward more comprehensive reform that he deems necessary, saying, “This has been a long road that we’ve been on, and I want to emphasize to the healthcare community that we’re still on the road.” The bill was passed out of the Committee unanimously and will be on the Senate floor Monday afternoon. It is not obvious whether or not the plaintiffs' lawyers agree with Norris. The bill is to be considered in the House Civil Practice Subcommittee next Tuesday. In that forum, the views of the plaintiffs' bar will likely become known.

Bredesen Open to Toll Roads

For the first time, Governor Bredesen signaled openness to the idea of allowing tolls to pay for road construction and maintenance. House Transportation Chairman Phillip Pinion (D-Union City) and Senator Diane Black (R-Gallatin) are sponsoring legislation that would allow tolls on newly built roads. Transportation Commissioner Gerald Nicely explained to the Senate Transportation Committee that reduced federal funding was having an impact on the ability to build new roads. Bredesen pointed out that tolls could help relieve pressure to increase the state's tax on gasoline, currently 21.4 cents per gallon.

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