

TENNESSEE GOVERNMENT

Update

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

Absent untoward circumstances, the 104th Tennessee General Assembly will adjourn in three or four weeks. Substantive work has been done to resolve complicated issues, such as predatory lending and eminent domain, though discussion and compromise are ongoing. With the bulk of committee work complete, the legislature is ready to turn its attention to the budget and Governor Bredesen's "Cover Tennessee" proposal.

Predatory Lending

This week, the key legislative developments in predatory lending legislation have been the moving forward and grouping of two measures (SB3800 Southerland/HB3807 Harmon and SB3989 Herron/HB3597 Turner, L.). In committee, there has been very little discussion. Between the interested parties, there have been numerous drafts, suggestions and conversations about the initiative. Currently, both senate bills are held in the Calendar Committee waiting for the consensus, and the house bill are waiting hearings in the Commerce Committee for Tuesday.

Eminent Domain

A bill to clarify eminent domain definitions and processes in the state (SB 3296/HB 3450) cleared the hurdle of Senate Judiciary Committee (9-0) this week with seven amendments. Senator David Fowler (R-Signal Mountain) sponsored amendments three through seven after being asked to join as co-prime sponsor by Senator Doug Jackson (D-Dickson). Below are Senator Fowler's amendments, as passed:

- Increase the notice of filing to institute condemnation proceedings to 30 days
- Condemned parcel shall be valued at a minimum of the assessor of property's assessment. Consideration is given to damages to the property or changes within the time of the last assessment and the condemnation notice
- Members of the Appraisal Institute will consider the highest and best offer
- Governmental entity shall deposit the amount determined by the required appraisal with the clerk of the circuit court having jurisdiction in the county
- Attorney damage fees are subjective only if the property owner abandons proceedings or a judge says condemnation proceedings should never have occurred.

The companion bill sitting on the house floor calendar, HB 3450 Fowlkes, was deferred to Thursday, May 4. House Majority Leader Kim McMillan (D-Clarksville) said the bill needs "more negotiation" in the senate.

Budget

The State Funding Board is expected to meet May 3 to make its last predictions of the flow of revenues for the end of this year and fiscal 2006-07. That meeting is expected to focus particularly on the behavior of franchise and excise taxes, which have tapered to about a 5.7% growth rate (eight months, year to date) as of the report of March revenues. The final delineation of what revenues the state can anticipate to collect is also expected to break loose the administration's "amendment" to the budget, allowing the two finance committees to move ahead with passing the 2006-07 spending document.

Cover Tennessee

Governor Phil Bredesen's "Cover Tennessee" insurance initiative was emerging from the administration's workrooms as the Tennessee state legislature began the countdown on what members hope is their final month in session.

Its movement in the Senate thus far has been a hearing and vote in the republican controlled Government Operations Committee – a committee on which gubernatorial hopeful Jim Bryson sits. After spirited debate, the bill received the required five votes to move forward to Commerce. Although no "nay" votes were called, four members of the committee opted to abstain.

Lawmakers questioned how enrollment caps will be applied and how TennCare reserve funds will be shifted to be used for the new, non-TennCare, insurance program.

Finance Commissioner Dave Goetz said that the projected \$100 million from TennCare reserves should be enough to fund the first three years of the program depending on the number of people who enroll. If there are only 5,000 to 10,000 people who enroll, there will be enough for the foreseeable future, he said.

The administration intends to set the available funds to pay the costs and bid the benefit package, rather than setting the benefit package and bidding the costs. The premium would be different depending on various health factors, Goetz said. This would be a way of encouraging people to change their habits and become healthier, such as not smoking or reducing weight, if those are factors that raise the premium for a person.

A criticism of the proposal has been that non-recurring state funds have been proposed as the funding source for three years. There is talk that the administration will find recurring dollars for the program and take the funding source issue off the table. Watch for proposals to raise cigarette taxes.

The measure's next stop is Monday, May 1, at 10 a.m. in the Commerce Committee.

Finally, Paul Summers, Tennessee's Attorney General since 1998, has informed the Tennessee Supreme Court that he will not seek another eight-year term when the court convenes on September 1. By that date, Governor Bredesen will have appointed three of the five justices in the last 12 months. Connie Clark was appointed in September 2005 to replace Frank Drowota upon his resignation. Riley Anderson and A. A. Birch will not seek re-election on the Yes-No ballot in August and the selection process is in motion to find their replacements by the new term beginning September 1.

J. Richard Lodge, Jr.

PHONE: (615) 742-6254

FAX: (615) 742-2754

E-MAIL: dlodge@bassberry.com



Leslie K. Hafner

PHONE: (615) 259-6342

FAX: (615) 742-2801

E-MAIL: lhafner@bassberry.com