

TENNESSEE GOVERNMENT

Update

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

April 11, 2008

State Finances

On April 7, William Fox, an economist at the University of Tennessee's Center for Business and Economic Research and an advisor for the state, reported to the State Funding Board. He said that states that rely on sales tax revenue are particularly vulnerable in the current environment of slow (or negative) growth. Fox reported that sales, particularly houses and light vehicles, are slow. Fewer sales mean less sales tax revenue to the state and, also, less profit for businesses. The latter factor translates to lower franchise and excise tax revenue.

Figures reported just this week show corporate tax revenue at \$45 million below last year's projections, and for the year are off \$86.5 million. Sales tax revenue was \$13.2 million below projections – off \$117 million for the year.

Dave Goetz, State Finance Commissioner and member of the Funding Board, indicated the possibility of needing to make some cuts in the current budget year in order to achieve a balanced budget. The "rainy day" fund has \$750 million. Treasurer Dale Sims and Comptroller John Morgan also sit on the Funding Board.

Governor Bredesen told key legislators that he wants to wait until the State Funding Board meets sometime in the latter part of this month before fine-tuning his budget in response to weak tax revenue. Last year's budget projected tax revenue growth of 4 percent, but revenue has only grown 2 percent. Business tax revenue, from franchise and excise taxes, is due to be reported on April 15. Thus far, total tax revenue is \$276 million less than projections made last year and the shortfall is expected to reach \$300 million to \$400 million by the end of the fiscal year, June 30.

A pay increase for the state's 45,000 employees, currently proposed to be 2 percent with a cost of just over \$30 million, has become a target for the administration's effort to trim spending. Governor Bredesen said, "That would have to be one of the places we would have to do some trimming, I think, almost beyond any question." Last year state workers got a 3 percent pay raise that cost \$42 million. The Governor has also indicated that his proposed \$25 million expansion of pre-K education is on the table.

Nursing Home Litigation

Lawsuits against nursing homes in Tennessee have increased from seven per 1000 beds in 2001 to 12 per 1000 beds in 2006, according to data compiled by a market research firm hired

by the nursing homes. Also, they found that Tennessee nursing homes spend four times more than nursing homes in other states defending themselves against lawsuits.

The Tennessee Health Care Association is promoting legislation to limit non-economic damages. The bill is opposed by trial lawyers and the AARP.

This week the House Civil Practice and Procedures Subcommittee passed a bill that would form a study committee on the issue, after negotiations among the interested parties stalled.

Workers' Compensation

A bill designated as "The Employee Wellness Program Protection Act" was approved in the Senate Commerce Committee and the House Employee Affairs Subcommittee this week. Backed by the business community, the legislation seeks to address a recent court decision allowing workers with injuries sustained during voluntary recreational or fitness activities sponsored by employers to receive workers compensation as a result. The legislation specifies that workers' compensation cannot be applied to these injuries unless the employer either expressly requires participation or else derives a substantial direct benefit from the employee's participation beyond the health or morale of the employee.

A second workers' compensation bill, presented by Senator Doug Jackson (D-Dickson) in the Senate Commerce Committee, is now headed to the floor of both houses. Under current law, when an employee is injured, the employer provides a list of three physicians from which the employee chooses one by whom he or she is examined. The bill clarifies that the initial list must be comprised of general practitioners, and may not contain surgeons. If the determination is made that surgery is required, then the employer would provide a list of three potential surgeons from which the employee would choose.

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