

# TENNESSEE GOVERNMENT

## *Update*

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

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*April 4, 2008*

### **The State Budget and Legislative Schedule**

Governor Bredesen proposed a budget in January that assumed a shortfall of \$165 million from current year revenue projections. To date, the actual shortfall for the current fiscal year ending June 30, 2008, is \$212 million. About 60 percent of state tax revenue comes from the sales tax, and roughly 15 percent is generated by corporate franchise and excise taxes. Governor Bredesen is urging the Legislature to remain flexible and patient. The State Funding Board will not provide its next report on revenues until after April 15, the date on which franchise and excise tax returns must be filed.

Because of the need to wait until after the April 15 filings to project fiscal year 2009 revenue, legislative leadership seems resigned to the session running into May. In fact, the Senate will meet only once next week, on Thursday. Senate committees will continue trying to clear the decks for budget work in May. The first "last" meeting of the Senate Commerce Committee is next Tuesday.

### **Studying the Sale of Alcohol**

As many expected, the proposal to allow retail food stores to sell wine does not have sufficient support in either committee of jurisdiction and will be studied further. The House Local Government Subcommittee voted to create a summer study committee, and the Senate State and Local Committee is expected to agree to form a joint study committee.

### **Border Protection and Water**

Georgia's legislature proposed a commission to consider moving Georgia's border with Tennessee to correct the border survey conducted in 1818. The United States Congress established the 35th parallel as the border in 1796 but the 1818 survey missed that mark by just over a mile to the south. As a result, Georgia's border does not include any part of the Tennessee River, and dry-mouthed Georgians do not have access to Tennessee River water. The Tennessee Senate's State and Local Government Committee followed their colleagues in the Tennessee House by voting not to participate in any such commission.

### **Cockfighting**

The House Criminal Practice Subcommittee voted 4 to 3 to increase the penalty for conviction of cockfighting from a misdemeanor to a Class E felony punishable by up to six years in prison and a fine of \$3,000. Spectators would be charged with a Class A misdemeanor. The bill will now go to the full House Judiciary Committee. Opponents noted that DUI and petty theft are only misdemeanors and seem more serious and that the bill would lead to a misallocation of resources. Proponents, led by the Humane Society of the United States, argue that cockfighting, in addition

to constituting animal cruelty, is part of organized criminal activity that includes money laundering and drug trafficking. Currently, 37 states classify the practice as a felony.

### **Nursing Home Tort Reform**

The Nursing Home Patient Protection Act of 2008 was proposed with the intention of reining in what the industry considers frivolous and expensive lawsuits against nursing homes. It has met with strong opposition from plaintiffs' lawyers working through the Tennessee Association for Justice (formerly the Tennessee Trial Lawyers Association) and the AARP. The nursing home industry has modified the bill in an effort to make it more palatable. The proposed \$300,000 cap on punitive damages has been raised to \$500,000. A provision that would have required incoming patients to sign arbitration agreements, strongly opposed by the AARP, was removed altogether.

The nursing homes insist that the costs associated with responding to lawsuits are diverting funds that should be used for patient care. They claim that the average nursing home spends \$500,000 per year – the equivalent of hiring 10 nurses – to defend against lawsuits. The bill awaits action in the Civil Practice Subcommittee, a body that is known not to be friendly to such proposals. In fact, the chair, Representative Henry Fincher (D-Cookeville), has called the bill the “Kill Old People Cheap Act of 2008.” Republican Senate Speaker Ron Ramsey, a co-sponsor, has indicated support for legislation that would help the nursing homes. “I do believe that we’re getting to the point of a crisis here in the state of Tennessee,” Ramsey offered.

### **General Medical Liability Reform**

Over the lone dissenting vote of Rep. Fincher, the House passed the Senate version of the long-debated medical liability reform legislation. The bill, sponsored by Senator Mark Norris (R-Collierville) and Representative Doug Overbey (R-Maryville), was portrayed as a compromise by and a compilation of the best suggestions made by all parties. It requires prior written notice that a complaint will be filed, copies of complete medical records within 30 days of a request and a signed certificate by competent medical experts who believe there is a good faith basis for proceeding with the complaint. "The amendment is a good compromise," said Representative Overbey.

Russ Miller, vice president of the Tennessee Medical Association, praised the legislation, pointing out that roughly 80 percent of malpractice lawsuits in Tennessee end in no payouts to the plaintiffs. The new policy would reduce the number of suits that providers must defend against. Senator Norris said that the measure would reduce healthcare costs because providers have to pass on the costs associated with defending against frivolous suits to “average Tennesseans.”

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#### **J. Richard Lodge, Jr.**

PHONE: (615) 742-6254

FAX: (615) 742-2754

E-MAIL: [dlodge@bassberry.com](mailto:dlodge@bassberry.com)



#### **Leslie K. Hafner**

PHONE: (615) 259-6342

FAX: (615) 742-2801

E-MAIL: [lhafner@bassberry.com](mailto:lhafner@bassberry.com)