

TENNESSEE GOVERNMENT

Update

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

LOBBYING EXPENDITURE REPORTS ARE DUE TO THE TENNESSEE ETHICS COMMISSION BY MAY 14, 2007

Each employer of a lobbyist should have received by e-mail on April 26, a memorandum with the report form attached. If this has not happened, please check the Tennessee Ethics Commission's Web site at <http://state.tn.us/sos/tec/>. This is the first expenditure report required by the 2006 ethics reform statute. If you have any difficulty, please let us know.

The Beginning of the End?

As May Day approaches, the question posed most frequently is, "When will the General Assembly wrap up its business?" In each of the past four years, Memorial Day weekend proved to be the finish line. But this year, confidence over stop date is quivering. Whispers in the halls warn of a push into June as festering partisanship is exacerbated by the tension of budget decisions.

As demonstrated on the Senate floor this week, even long-standing, never before debated deadlines for filing amendments to the budget are reasons to lock horns with the other side of the aisle. Senator Jim Kyle (D- Memphis) questioned the need for a cut off date for setting fiscal priorities. He challenged the chairman of the finance committee to defend the decision to limit fellow Senators in participating in the budget building process. Within minutes, the debate turned nasty with Republicans referring to "pork projects" and Democrats standing up for the merits of one-time infusions of dollars into cash-strapped communities. Is this discussion an omen of things to come in the next month?

Meanwhile, the Tennessee General Assembly accelerated its consideration of legislation. With approximately a month remaining until adjournment, House subcommittees are beginning to close, and some full committees have announced last meetings this week or the next. Work on the state budget will begin in earnest following the next meeting of the state Funding Board, scheduled for Monday, May 7.

Illegal Immigrant Hiring

Legislation proposed by Representative John Hood (D-Murfreesboro) in the House Consumer and Employee Affairs Committee would create a state felony offense for knowingly employing illegal immigrants or encouraging immigrants to enter the state for employment. A fine of up to \$10,000 would be levied for hiring an illegal immigrant knowingly and up to \$50,000 for inducing them to immigrate here for employment reasons. Several committee members expressed concern that federal immigration law would pre-empt state legislation such as this and result in court action by the federal government, but Representative Gary Moore (D-Joelton) did not find that problematic, saying, “We go a long way towards solving some of our illegal immigration problem by the time it makes its way through the court system.” The measure goes next to the House Budget Subcommittee due to the fiscal note.

Property Tax Freeze for Seniors

A property tax freeze for seniors, as part of a constitutional amendment, passed in a referendum in November’s election. Implementation has been slow due to confusion and disagreement with respect to how such a freeze should be implemented. The precise income ceiling has been the focus of subsequent discussions. The Senate State and Local Government Committee approved a bill that would set the income limit at whatever a county’s median income is for home-owning seniors between 65 and 74 years of age. Senator Mark Norris (R-Collierville), the sponsor of the amendment, explained that seniors under the income ceiling will continue to pay a tax on the property that they own, but that any increase – due to either a tax increase or reappraisal – will not be applied.

Individual counties do not have to opt into the tax freeze program but some local officials believe that the pressure to do so will be irresistible. There is concern that one effect of the amendment and its implementation will be to shift the tax burden to younger homeowners.

Toll Roads in Tennessee

The “Tennessee Tollway Act” is a proposal that sponsor Representative Phillip Pinion (D-Union City), chairman of the Transportation Committee, characterizes as “another tool in the toolbox” when it comes to funding roads. The House Transportation Committee approved the bill this week by a vote of 11-4. The proposal would only affect new roads; the current highways could not be converted to toll roads. On the Senate side of the chamber, Doug Jackson (D-Dickson) voiced concern that the current legislation does not require TDOT to consult with the legislature with respect to the scope of any new road projects.

In Brief

Representative Mike Turner’s (D-Old Hickory) legislation to establish gender pay equity has continued winding its way through committees and moves next week to the House Finance Committee.

This year’s major healthcare liability reform bill, which already passed on the Senate floor, advanced in the House to the Judiciary Committee. The House version includes a

provision to eliminate the “locality rule” for expert testimony, which was not contained in the Senate version.

The “Credit Security Act of 2007” passed in final action in the Senate and was later conformed to the comparable House bill. In addition, the “Tennessee Identification and Personal Information Protection Act” advanced to the full Consumer and Employee Committee of the House. The measure would expand current law to prohibit the sale of personal information, including financial documents and personal identification information.

Two bills on government purchasing were adopted on the Senate floor this week. Legislation by Senator Douglas Henry (D-Nashville) would allow the Department of General Services to use a “best value” procurement method for purchasing goods and services. This bill has now passed both chambers. A measure by Senator Jim Kyle (D-Memphis) would authorize the Department of General Services to purchase goods and services through a competitive reverse auction process. Suppliers would place bids on specified goods or services electronically and could adjust their bid prices during a specified period of time.

The Nashville Zoo was interested in buying an annual liquor license instead of having to apply for one for each special occasion. Legislation sponsored by Senator Douglas Henry (D-Nashville) in the Senate would have enabled this. Then the Knoxville Zoo and Chattanooga Zoo were added with amendments. This generated some resistance, and a final vote has been delayed.

The Senate delayed a vote on a bill that would prevent the Registry of Election Finance from acting on any complaints within 30 days of an election. The bill emerged as the result of Senator Bill Ketron (R-Murfreesboro) responding to such complaints just prior to last November’s general election. The Registry ultimately dismissed the complaints against Senator Ketron.

Tennessee Education Lottery Scholarship Update

The legislature received a report from the Tennessee Higher Education Commission recommending that the GPA requirement for retaining the scholarships be lowered from the current 3.0 to either 2.75 or 2.5. Three out of four of the first batch of scholarship recipients lost their awards before graduating. A high school student must have either a 3.0 or score a 21 on the ACT in order to be eligible for the scholarship. Currently, a student must maintain a 3.0 in college to retain the scholarship (2.75 after the first year), which is worth \$3,800. Governor Bredesen’s budget seeks to increase that to \$4,000.

Developers Fined

Tennessee Deputy Commissioner of Environment and Conservation Paul Sloan indicated that his department has become more aggressive with respect to punishing builders in the state. The state has issued record fines, up to \$1 million, for storm-water pollution that did not involve road construction. The president of one of the companies cited insists that the state “went too far,” saying, “It’s not toxic waste. It’s dirt.” He pointed out that

property prices would rise as companies attempt to conform to the strict enforcement regime. Authorities counter that chemical-laden silt washing into waterways is a big problem. It drives up the cost for the provision of clean drinking water and chokes out aquatic life. Michael Stagg, a Nashville attorney who represents one of the builders, said that the fines issued last week are “unheard of” and that it is a “new day” if you’re a developer of residential property in Tennessee.

The materials contained herein have been abridged from the statutory sources and should not be construed or relied upon for legal advice.

Readers are urged to consult legal counsel concerning particular situations and specific legal questions.

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