

TENNESSEE GOVERNMENT

Update

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

On Monday, February 19, 2007, Finance and Administration Commissioner Dave Goetz presented the administration's budget to the General Assembly. This presentation followed the governor's legislative package presentation on Thursday, February 15, 2007.

The Governor's Budget

The administration's proposed \$27.5 billion budget is \$1 billion more than the budget for 2006 and includes a 40 cent **tax increase on cigarettes** (from 20 cents to 60 cents per pack). The tax is projected to raise \$220 million in revenue that is earmarked for education initiatives. The governor continued to be firm in his criticism of proposals to phase out the tax on food.

- Of \$200 million raised through the cigarette tax hike, about \$120 million would go toward funding lower-income K-12 students and \$27 million to **rapidly growing school districts**. About \$48 million of the cigarette tax revenue would be used to keep tuition increases at state colleges and universities to about five percent to six percent.
- \$150 million in the budget would fund a one percent pay raise and two percent bonus for **state employees**, teachers and higher education officials.
- \$61 million would be spent on alternative fuels initiatives, including \$40 million to build a **biomass ethanol plant** in the Oak Ridge, Knoxville area.
- \$82 million would be used to acquire land and **preserve wilderness** in the North Cumberland Plateau area.

The Governor's Legislative Agenda

Governor Phil Bredesen's legislative agenda includes a workplace smoking ban, repealing driving certificates for non-U.S. citizens, and increasing the mandatory penalty for child sex crimes to 25 years. The driving certificate system would be replaced by a temporary driver's license program for foreigners with visas. The governor is also calling for: an increase in the penalty for abuse or neglect of the elderly to felony status; the establishment of new regulations for contractors blasting with dynamite; and an increase from 15 days to 20 days of military training for state employees.

Senate Speaker Ron Ramsey and House Speaker Jimmy Naifeh both indicated that they expect a **smoking ban to pass** with some exceptions, including bars and other venues that do not allow patrons less than 21 years of age.

Legislature

This week still finds relatively few bills being discussed in committee. Several chairpersons expressed a strong desire to start the process of working through bills soon.

In the Senate Commerce Committee, Eric Ellman of the Consumer Data Industry Association gave a presentation on the subject of **identity theft**. He cited statistics indicating a significant downward trend in the frequency of identity theft incidents in the past several years, including a decrease from 4.7 percent of adults in 2003 to 3.7 percent in 2006. Moreover, the amount of time it takes consumers to “clean up” their credit ratings after an identity theft has fallen from an average of 25 hours in 2004 to five hours in 2006. He also remarked that the occurrence of identity theft is lower among the elderly than among those under age 65.

Laws allowing consumers to place a “**security freeze**” on their credit have been passed in 26 states. However, Mr. Ellman’s analysis of California’s experience with credit freezes suggests that such freezes are rarely used by consumers, place a burden on businesses, and ultimately increase costs for consumers. Brian Maguire, state legislative director for the AARP, countered that security freezes would be more widely used if usage fees were lower. Senator Tim Burchett (R-Knoxville) was assigned as chair of a subcommittee to reconcile the seven identity theft bills into one.

Another subcommittee, chaired by Senator Paul Stanley (R–Memphis), was formed to work on a smoking ban bill.

Notes

Comptroller John Morgan and Representative Charles Curtiss (D-Sparta), chairman of the Joint Fiscal Review Committee, have suggested that the formula for K-12 school funding by the **Basic Education Program** (BEP) is fundamentally flawed and needs an overhaul, not just slight modifications. Urban school districts, which teach more lower-income children and children for whom English is not their first language, insist that there are equity problems in funding. BEP emerged in 1992 after a court ruling threw out the old funding regime that the court found shortchanged poor, rural schools. The BEP considers property and sales tax capacity, per capita income and school population when evaluating how much each county must pay. There are 95 counties and 136 K-12 school systems in Tennessee.

Representative Curtiss favors making school teachers state employees but acknowledges that the legislature would not support such a move now. Governor Bredesen is against revising the entire funding system but wants the state to assume greater responsibility for the education of at-risk students. His proposal to increase cigarette taxes is designed to increase funding by \$120 million for lower-income students.

Tennessee is one of 11 states that does not receive 3 percent, nearly \$60 million, of its annual allocation in federal transportation money because of particulars of the **open-container law**. About \$48.5 million of the “lost” federal money remains in the state for use in safety programs. The open container law, as it stands, applies only to the driver of the vehicle and not to any passengers. Representative Susan Lynn (R-Mt. Juliet) is sponsoring legislation, the fourth session in a row, to tighten the law to include any passengers.

Automakers in Tennessee exported \$1.9 billion worth of passenger vehicles in 2006, according to the U.S. Department of Commerce. This figure represents eight percent of **Tennessee’s export market**. From 1996 to 2000, automobile parts were the state’s top export, and automobiles have now passed raw cotton as the state’s top export. Nissan’s Smyrna plant exported 56,417 vehicles to dealerships in Canada, Mexico, Latin America, and

the Middle East. GM's Spring Hill plant exported 20,811 vehicles, all of which went to Canada. Tennessee's total exports increased 15 percent (\$22 billion) in 2006, making it the 15th largest exporter among states.

Though Canada was the nation that consumed the most of Tennessee exports (totaling one-third of Tennessee exports), Matt Kisber, commissioner of the Tennessee Department of Economic and Community Development, said that, "We've opened new markets." Exports to China increased 33 percent in 2006.

The Tennessee Hospital Association reported that the number of **uninsured visits to emergency rooms** in the state increased 62 percent between 2004 and 2006. The cost to hospitals increased from \$43.8 million to \$116.2 million. Nationally, about 42 percent of emergency room visits are for non-emergency treatment. The data for Tennessee are comparable to national data.

The state Supreme Court, in a unanimous ruling, laid out the process by which the **Judicial Selection Commission**, the body that nominates applicants to the governor, must proceed. The ruling is a win for Governor Bredesen. Under The Tennessee Plan, the selection committee takes applications, conducts interviews and submits three nominations for Supreme Court vacancies to the governor. The governor has the right to reject the first set of nominees and select from a second set of nominees. However, the court ruled that if applicants from the first panel of applicants are rejected they may not be included in the second panel. The Commission must send Governor Bredesen three new nominees, and he must choose from the second set.

This new process will affect the upcoming appointment of the Supreme Court seat that has been vacant since September 1, 2006.

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