

# The Tennessee Journal

The weekly insiders newsletter on Tennessee government, politics, and business

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## Virus fallout fears cause Lee to slash \$900M from spending plan

In less than a week, Republican leadership in the General Assembly went from downplaying the need to take drastic steps in response to the spreading coronavirus, to jamming through a bare-bones annual spending plan and leaving on a recess of at least 75 days.

A week earlier, there were 18 confirmed COVID-19 cases in the state. As lawmakers rushed to wrap up business late Thursday, that number had jumped to 154 people and was rising. Gov. Bill Lee and several mayors declared states of emergency, schools were told to shut down, and Tennesseans were urged to engage in social distancing to slow the spread of the virus.

House Speaker Cameron Sexton (R-Crossville) and Senate Speaker Randy McNally (R-Oak Ridge) announced the Capitol complex would be closed to the public — including to lobbyists — and that the General Assembly would focus on legislation critical to passing the budget. That meant consideration of other high-profile proposals like getting rid of handgun carry permit requirements, enacting sweeping restrictions on abortions, or even making the Bible the official book of Tennessee would fall by the wayside.

After some initial disagreement over whether to adjourn the session following the budget's passage (the preference of Senate leadership), a deal was struck to instead call a recess until June 1. The move allows lawmakers to cling to the hope that some of their pet bills could yet be heard before this summer's campaign season gets going in earnest.

By not adjourning *sine die*, lawmakers will be bound by an in-session fundraising ban until May 15, though that restriction is less stinging for incumbents as the dicey economic outlook likely means campaign donations won't exactly be flowing freely this spring.

**The budget.** Finance Commissioner Stuart McWhorter warned lawmakers this week the economic fallout from the coronavirus will likely have Tennessee's economy sliding into recession in the budget year starting July 1. The administration reduced the growth rate for the current budget year from 3.45% to 2.5% and the growth for the upcoming fiscal year from 3.1% to zero.

At those projections, no major cuts were required to close out the books through the end of this budget year, and the governor's office directed \$350 million in surplus collections to the rainy day fund and other emergency reserves. The plan for the 2020-2021 budget year involved dialing back or eliminating most of the proposals Lee had outlined in his State of the State address, including \$454 million in recurring programs and \$399 million in one-time spending.

Gone are Lee's plans to deposit \$250 million into a new mental health trust fund, about \$70 million for a literacy initiative aimed at students in kindergarten through second grade, and \$58 million to fund half of what had been planned to be a 4% raise for teachers. Lee did add another \$100 million in grants to be split up between cities and counties across the state, doubling the amount he had initially proposed.

House Republicans are keen to describe the new spending plan as a "preliminary" budget as they hold out hope the economic and health fallout won't be as bad as feared so they will be able to return in June and restore some of the reductions. Their Senate counterparts appear more pessimistic, with some warning that a return later this year would more likely be accompanied by a need to make deeper cuts.

**Vouchers versus teacher pay.** Public school teachers were upset at Lee's insistence on retaining \$40 million in funding for the first year of his controversial school voucher program instead of dedicating the money to mitigate the cuts in public school salaries. The House Republican Caucus met behind closed doors for 75 minutes on Thursday, in part to urge members not to have a repeat of the floor fight over school vouchers that roiled the chamber last year.

Majority Leader William Lamberth (R-Portland) insisted afterward that no decisions were made during the closed-door meeting. He noted the funds in question are earmarked for reimbursing public schools in Nashville and Shelby County for students taking the voucher to go to private schools, meaning a redirection of the money would only mean a loss in funding for those school districts and not a cancellation of the voucher

program. An effort to amend the budget bill to remove the voucher funding was defeated in the House while the governor watched the debate from the gallery.

**School's out for the summer?** The governor this week encouraged public schools around the state to close until at least the end of the month. Several districts have already announced they will remain shuttered into April and faced the possibility they won't be able to re-open at all before the academic year ends in May.

Lawmakers passed sweeping changes to ease the potential burden on the education system. They include waiving the requirement for schools to administer the state's assessment tests, eliminating the condition that districts provide at least 180 days of instruction to qualify for state funding (most were about 120 days into the year before closing), and exempting seniors from passing a civics exam as a prerequisite for graduation.

Schools will still be able to voluntarily conduct standardized testing, but only results that improve the averages of schools, teachers, or students will be counted.

**Electronic meetings.** The crisis didn't completely undo inter-chamber discord. A bill to allow local government entities to hold electronic meetings during the pandemic failed amid disagreements about how strict the guidelines should be. The Senate wanted to limit such meetings to times when the governor has declared a state of emergency and require a reasonable effort to be made to allow public access. The House wanted to have local governing bodies decide when electronic meetings were needed and didn't specify whether a stream of proceedings had to be live. The governor will now try to sort it all out through an executive order.

**Marketplace facilitators.** Both chambers quickly approved legislation to expand the state's online sales tax to cover goods sold through so-called marketplace facilitators like Amazon. The measure scheduled to go into effect on Oct. 1 is projected to generate \$85 million in state revenues for the remainder of the upcoming budget year, and \$113 million annually after that. Local-option sales taxes will be collected on the basis of the address from where the items were ordered, netting an estimated annual gain of \$38 million per year for cities or county governments.

**Assessment fees.** Lawmakers also approved annual assessment fees aimed at drawing down Medicaid money to cover healthcare costs. They include a renewal of the 4.87% tax on hospital revenues, which generates \$603 million in state money to secure a \$1.12 billion match in federal funds. A similar assessment on nursing homes raises \$135 million to draw down \$260 million in federal funds. Another \$11 million paid by ambulance service companies is projected to bring in \$21 million in federal money.

**Busting the cap.** Despite dire predictions about the economy, Tennessee's revenue growth to date has been strong enough to require lawmakers to bust the Copeland cap. Under a constitutional amendment adopted in 1978, whenever growth in spending exceeds the rate of the state's economic growth (as defined in

terms of per capita income), the legislature must acknowledge that fact in a separate bill addressing no other subject. Skittish House Republicans held a closed-door caucus meeting about the prospects of busting the cap earlier this session, but political concerns appeared to have waned by Thursday when it passed 89-1.

**All things being equalized.** The Tennessee Chamber of Commerce and the state chapter of the National Federation of Independent Business pushed back hard against an effort to pass a bill to declare property assessments under appeal would no longer be eligible for equalization. About 5,000 such appeals occur across the state each year, according to the comptroller.

Sen. Kerry Roberts (R-Springfield) said the change was necessary because a Memphis law firm (not identified by the lawmaker, but widely understood to be Evans Petree PC) in recent years "has upset the way things were being done." Opponents argued the change would undo a 1984 ruling by the State Board of Equalization that "property in Tennessee is required to be valued and equalized according to 'Market Value Theory.'"

The business groups also questioned the urgency of trying to make the change without hearing from critics as part of the slate of "mission critical" bills to get the General Assembly in a posture to quickly pass the budget and leave town. Roberts argued the change is necessary to prevent a loss of revenues for local governments through the appeals process, the brief window for which opens in June.

Despite being barred from the Cordell Hull Building, the business lobbies were able to turn up the heat on lawmakers, with the NFIB vowing to place the floor votes on its annual report to members. When the bill came up for a vote on the Senate floor on Wednesday, Roberts blasted what he called a "tremendous amount of misinformation" circulated about the bill. But he agreed to withdraw the measure until after the recess so he could better explain his reasoning to colleagues.

### Legislative races

## **Conservative hardliners Daniel, Holt won't seek re-election to state House**

State Reps. Martin Daniel of Knoxville and Andy Holt of Dresden announced this week they won't seek re-election to the House this fall. Both have earned reputations over the years as conservative ideologues who haven't been afraid to alienate fellow Republicans in the name of the causes and bills they have held dear.

Holt's retirement is likely a wash, politically speaking, as Republicans hold a firm grasp on rural northwestern Tennessee. But Democrats have been making inroads in Daniel's suburban Knoxville district and are hoping to build on those gains with President Donald Trump on the ballot in November. Daniel carried the district by just 3 percentage points in 2018, though it's unclear just how much of the tightness of that race can be ascribed to the incumbent's abrasive personality.

Potential Republican candidates include former Rep. Steve Hall (whom Daniel famously shoved during a

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● General Motors suspended manufacturing operations in North America, including at its Spring Hill plant, until at least March 30 due to market conditions and the coronavirus. Nissan planned to halt production in Smyrna and Decherd through April 6. Volkswagen planned to close its Chattanooga plant from Saturday through March 29. The German automaker previously shut down for one day this week for deep cleaning.

● Demolition of the old exposition center at the Nashville fairgrounds began this week, signaling the formal end of an impasse over the construction of a 30,000-seat stadium for the city's new Major League Soccer team. Mayor John Cooper had balked at allowing the work to begin until hammering out a new deal over the private funding of the project.

● Information obtained by police following an East Tennessee car crash led

federal agents to a cache of methamphetamine worth about \$13 million, U.S. Attorney Doug Overbey announced.

● The Tennessee Wars Commission awarded \$900,000 in grants to preserve 111 acres of Civil War battlefield sites in Hamilton, Hardin, Henderson, and Rutherford counties. Another \$109,000 is going toward military heritage sites in Davidson, Humphreys, Henderson, Lincoln, Sumner, and Shelby counties.

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2016 radio forum, two years after narrowly ousting him from office) and attorney James Corcoran. The Knoxville *Compass* reports that former mayoral candidate Eddie Mannis is mulling a bid after receiving a flurry of phone calls urging him to run. Attorney Virginia Couch is seeking the Democratic nomination.

**Who else?** Daniel and Holt join fellow Republican Reps. Bill Dunn of Knoxville and Jim Coley of Bartlett in retiring from the House this year. Dunn's district is not believed to be in play, though Democrats have long had designs on winning over the Shelby County district Coley has represented since 2006.

**Battle of the ex-commissioners.** Two Republicans have jumped into the race to succeed retiring Dolores Gresham (R-Somerville) in Senate District 26: Jai Templeton of Stantonville and former Rep. Page Walley of Bolivar. Templeton was Gov. Bill Haslam's agriculture commissioner, and Walley was commissioner of children's services under Gov. Don Sundquist.

**Challenging the Powers that be.** Republican Doug Englen, a retired Army chief warrant officer who served 34 combat tours, announced his bid for the Republican nomination in Senate District 22. The seat is currently held by auto dealer Bill Powers (R-Clarksville), who won a special election to serve out former state Sen. Mark Green's term after he won a seat in Congress.

Newly elected Powers was rushed to be sworn into office a week earlier than planned last year to ensure he would be on hand to support Gov. Bill Lee's school voucher bill amid concerns it might be in trouble in the Senate (though it ended up passing with three votes to spare). Powers' favorable vote came despite his saying during the campaign he opposed vouchers.

Englen said he supports educational choices for parents, but worried the voucher law could take "critical resources" from public schools. He added he would review all legislation to "avoid overlooking drawbacks in a hasty situation." A preview of things to come?

**Two for one?** Reps. Timothy Hill (R-Blountville) and David Hawk (R-Greeneville) are still mulling over whether to join the crowded field hoping to succeed retiring U.S. Rep. Phil Roe (R-Johnson City) in the 1st Congressional District. The latest speculation is that they could file petitions to run for both the state House and Congress, leaving them something to fall back on if their federal bids don't pan out.

## Returning to the fold

### **Alliance of not-for-profit hospitals to fold operations into umbrella group**

The board of the Hospital Alliance of Tennessee, an association representing non-profit hospitals since 1982, is winding down independent operations and merging programs and activities into the larger Tennessee Hospital Association. Founded in response to the rapid growth of the private Hospital Corporation of America, the Non-profit Hospitals of Tennessee (as the association was first called) originally attracted 39 members. That number grew to a high of 72 members by the end of the 1990s amid legislative efforts to remove their tax-exempt status.

The fight over tax exemptions came as public opinion had begun turning against the nonprofits after a series of news accounts chronicled questionable spending, including by the alliance's founding member, Baptist Hospital in Nashville, for leasing a suite at what was to become the city's professional football stadium.

In an effort to bolster accountability and highlight altruism (especially when compared with their for-profit counterparts), the Hospital Alliance in 1996 pursued legislation to require all hospitals to report their unreimbursed contributions to their communities. The legislation was opposed by HCA, which engineered an 11th-hour parliamentary maneuver to kill the bill by having an amendment added on the House floor to require an audit of the hospitals' reports. The change added a \$100,000 price tag to the bill, requiring it to be sent back to the "black hole" of the House Budget Subcommittee from whence it never returned.

More recently, the Hospital Alliance has fought attempts to dial back certificate-of-need rules — a major priority of new House Speaker Cameron Sexton (R-Crossville) — and backed efforts to expand Medicaid. Membership had fallen to 43 as of the decision to shutter the association. All are also members in the THA, which represents 140 hospitals and health systems.

Paige Kisber has been the Hospital Alliance president for 17 years. Bill Young, the Bureau of Ethics and Campaign Finance's executive director, was president from 1998 until 2000, when he left to become general counsel for the THA. Peaches Blank was the alliance's first executive director, a position she held for eight years. She later served as deputy to Gov. Don Sundquist.

## Tennessee Notes & Quotes

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■ Members of the Tennessee delegation made up 10% of the 40 votes against a \$100 billion coronavirus relief bill in the U.S. House and one of the eight no votes in the Senate. Voting against were Sen. **Marsha Blackburn** and Reps. **Tim Burchett**, **Scott DesJarlais**, **John Rose**, and **Mark Green** of Ashland City. Voting in favor were Sen. **Lamar Alexander** and fellow GOP Reps. **Phil Roe**, **Chuck Fleischmann**, and **David Kustoff** of Memphis, along with Democratic Reps. **Jim Cooper** and **Steve Cohen**.

■ “Congress worked with President **Trump** to address the coronavirus crisis. Through increased testing and emergency economic support, this bill will provide families, communities, and businesses the protections they need. It is vital we put politics aside and come together to overcome this challenge.” — **Kustoff**.

■ “It’s a nightmare. I want the folks to get help that have it, but this isn’t the right way to do it. Not in the middle of night, not at 12:40 at night.” — **Burchett**.

■ Former U.S. Sen. **Bill Frist** is chairing the advisory committee of a new COVID-19 Response Fund in partnership with the United Way and Nashville Mayor **John Cooper’s** office. The group will direct funding to community-based organizations helping residents who lose income or become ill from the coronavirus.

■ “We are in a critical phase of our campaign: collecting signatures from Tennessee voters to get on the ballot. Can you add your name?” — *An email blast from U.S. Senate candidate **Bill Hagerty’s** campaign.*

■ It takes 25 voters’ signatures to get on the ballot.

■ A U.S. Air Force plane carrying 500,000 coronavirus testing swabs from Europe was processed through Memphis International Airport with the help of FedEx Corp., which also moved the materials onward to other distribution points around the country.

■ “I called up the CEO of FedEx [**Fred Smith**], he picked up on the first ring, I said, ‘Fred we’ve got a problem, can you get me a couple of planes to get these things to the people where we need them in **Trump** time?’ He said ‘sure.’” — *U.S. Trade Representative **Peter Navarro** to CNBC.*

■ **Bill Young**, the executive director of Bureau of Ethics and Campaign Finance, on Wednesday postponed a March 27 hearing on former state Rep. **Jeremy Durham’s** record \$465,000 penalty for campaign finance violations. The proceedings will be reset once the coronavirus crisis subsides.

■ “People out of these districts that are contacting me don’t have any trust in their elected officials, and that’s kind of bothersome.” — *Rep. **Jay Reedy** (R-Erin) on efforts to add safeguards for public access to a bill to dial back open meetings requirements for local governments seeking to hold electronic gatherings in response to the coronavirus pandemic.*

■ “If you legislate in haste, you repent at leisure.” — *State Sen. **Steve Dickerson** (R-Nashville).*

■ Germantown’s **Cindy Parlow Cone** became the first female president of the U.S. Soccer Federation following the resignation of **Carlos Cordeiro** amid a backlash over sexist legal arguments in a gender discrimination lawsuit filed by the women’s national team.

■ Vanderbilt University has the 18th best law school in the country, according to *U.S. News & World Report’s* latest rankings. The University of Tennessee College of Law is ranked 70th, Belmont is 129th, and Memphis comes in at No. 141. Lincoln Memorial is included in an unranked bottom tier of 46 schools.

■ “If a state legislature cannot vindicate its rights in court when the federal government picks the state’s pocket and threatens the state if it dare stop providing funds, then federalism is a dead letter.” — *A petition for a U.S. Supreme Court appeal filed by the Thomas More Law Center, the Christian rights advocacy group representing the Tennessee General Assembly in a lawsuit seeking to block the federal refugee program. The case was thrown out in federal court in Memphis, a decision upheld by the 6th Circuit U.S. Court of Appeals.*

■ Gannett newsrooms have been shut down in an effort to slow the spread of the coronavirus, meaning journalists for state papers including the *Commercial Appeal* of Memphis, *The Tennessean* of Nashville, the *Knoxville News Sentinel* are working from home or the field.

■ “We applaud Gov. **Bill Lee**, Lt. Gov. **Randy McNally** and House Speaker **Cameron Sexton** for their wise leadership.... We are grateful they have come together to model important behavior for all government bodies across the state. There must be a combination of compassion, transparency, decisive action and respect for liberty.” — *An editorial appearing on the front pages of statewide Gannett newspapers on Wednesday. The fawning nature of the editorial was the source of much mockery on social media.*

■ An epidemiological investigation by local and federal public health officials found staffers spread the coronavirus from the Life Care Center of Kirkland, Wash., to eight other Seattle-area nursing homes, leading to 129 cases and 35 deaths in 11 days. The report (which refers to “Facility A,” though it is easily identified as Life Care by context of the findings) cites poor infection-control procedures and employees who came to work despite feeling sick. Parent company Life Care Centers of America, the country’s largest private nursing home operator, is based in Cleveland, Tenn.

■ “No one saw this national calamity at this scale and at this speed when I left last week. We were in long-term planning mode. The worst-case scenario was what if we close down a school.” — *Shelby County Mayor **Lee Harris** in a Daily Memphian interview expressing regret about deciding to travel to Ghana as part of a Memphis in May International Festival delegation.*

■ The way things have been going with the coronavirus, **Harris** may yet regret the decision to come back.