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Lee unveils plan to bridge \$2 billion budget gap over three years

Lawmakers got a first detailed look this week at the heavy damage the coronavirus pandemic is incurring to the state's budget plans. It wasn't pretty.

Finance Commissioner Butch Eley outlined a three-year plan to bridge a projected \$2 billion budget gap. About \$684 million, or one-third, would come in the form of reductions in recurring spending, while the remainder would be drawn from various reserves. While the state has long avoided using nonrecurring money to fund ongoing expenses, the plan to do so over the next three budget years is billed as the best way to avoid the most devastating short-term cuts when it's not clear how long it will take the state economy to recover.

Even with the multi-year approach, the cuts will be deep. For the fiscal year starting on July 1, Lee proposes cutting \$283 million in recurring and \$63 million in non-recurring funding. That includes about \$150 million in pay raises for teachers and state employees, \$38 million from the higher education funding formula, \$30 million in economic development grants, and \$20 million from TennCare programs.

The administration is also crafting a \$50 million pool to fund buyouts for state employees. Eley said the program is roughly on par, when adjusted for inflation, with the \$35 million in buyouts then-Gov. Phil Bredesen's administration offered to government workers during the Great Recession, which he said resulted in about \$65 million in recurring savings.

State officials are keeping about \$1 billion in federal coronavirus relief funds in reserve in the hope Congress will change spending guidelines that currently prevent the money from being used to backfill revenues lost because of the pandemic. If there's no movement on that front, the state will look for other ways to distribute the money, potentially along the lines of a \$200 million program the governor announced earlier this week to send funds to about 28,000 small businesses affected by stay-at-home orders this spring.

Vouchers. Democrats have heavily criticized the governor for his insistence on funding an accelerated start to his school voucher program despite the bleak

budget outlook. Under the spending plan released Thursday morning, the first year of the Education Savings Accounts program would have been trimmed by \$22 million — a reflection of enrollment coming in at less than half of the projected 5,000 students.

But later in the day, the state Supreme Court announced it would not lift an injunction ordered by Nashville Chancellor Anne Martin. She had halted the voucher program after finding the law violated the state constitution's home rule amendment because it was limited to public schools in Nashville and Shelby County without giving a say to local elected officials or residents.

Attorney General Herbert Slatery's office and other voucher supporters also wanted the state's highest court to directly take up the appeal lodged against the ruling. But the high court said the circumstances didn't warrant the "extraordinary action" of reaching down and pulling the case from the intermediate Court of Appeals.

Oral arguments have been set for early August, which coincides with the start of the school year. Given that the losing side of an appeal will be all but certain to challenge the case to the Supreme Court, the best-case scenario for the governor's signature proposal is to get underway now appears to be the academic year starting in August 2021 — a timeline even supporters of the voucher bill had expected when the controversial measure was approved last year.

Because of the high court's refusal to jump-start the appeal, the approximately \$15 million the Lee administration had planned to keep in the upcoming budget to fund the first year of the voucher program can now go toward plugging other budget holes.

Online sales tax. For all the wailing and gnashing of teeth that occurred over the years as the state inched toward requiring online retailers to collect state sales taxes, a major expansion was approved by the Senate this week with little fanfare. Under rules that went into effect in October, any retailer with annual Tennessee sales of more than \$500,000 must collect state and local sales taxes. The administration bill approved by the Senate on a 31-0 vote on Thursday lowers that

threshold to \$100,000, a change estimated to generate about \$32 million per year for the general fund and \$12 million for local governments.

The new revenue would be a welcome addition to state coffers as budget planners are looking for every spare penny to offset deep decreases in other collections. But the finish line has yet to be crossed as the companion bill isn't scheduled to be taken up until next week in the House, where arguments that the change represents a tax hike on consumers tends to carry more sway. While sales taxes are technically owed on all internet purchases, few people actually pay them unless the retailer collects them up front.

Convention fever. State Republicans could barely contain their excitement at the news that Nashville was among the cities being considered to replace Charlotte, N.C., as the site of the GOP presidential convention. Lee quickly endorsed the idea, calling Nashville "the best place in America to have a convention." Hosting the event scheduled to begin on Aug. 24 would be a "great opportunity" to build on the economic recovery in the region and state, he said.

President Donald Trump called for the Republican National Committee to abandon Charlotte after North Carolina Gov. Roy Cooper, a Democrat, suggested a scaled-down event and insisted convention attendees wear face coverings and engage in social distancing. Lee's office did not immediately say how the state's efforts to land the convention would square with his "Tennessee Pledge" plan for reopening the state.

Legislative Republicans supporting the move argued a lot can change regarding the pandemic between now and late August, though it's unclear whether the state would be willing to make assurances to the RNC today that the event would be allowed to proceed in an unfettered way if conditions worsen. While Nashville Mayor John Cooper said the city has no money to host an event of the scale of the convention, Republican lawmakers said they'd be willing to tap into state resources despite facing deep cuts to the state budget.

The pandemic isn't the only concern about bringing the convention to town. The event could also make the city the focal point of national protests along the lines of the racial upheaval experienced around the country this week following George Floyd's killing in Minnesota.

From the courts

Judge rules state can't limit access to voting by mail amid pandemic

Nashville Chancellor Ellen Hobbs Lyle ordered state officials to suspend eligibility restrictions for casting absentee ballots, rejecting what she called "oddly skewed" calculations about the costs and unsubstantiated claims about the heightened risk of voter fraud.

Existing law allows for voters too ill to appear at the polls in person to request an absentee ballot, but State Election Coordinator Mark Goins had declared that fear of being infected with the coronavirus alone wouldn't be considered a sufficient reason to vote by mail. Other

accepted reasons for obtaining absentee ballots include being over age 59 or away from home during the early voting period and on Election Day.

Lyle in her ruling noted other Southern states like Alabama, Arkansas, Kentucky, South Carolina, and West Virginia have expanded voting by mail in response to COVID-19 without major difficulty. She found state election officials based arguments against the feasibility of expanded voting by mail on "incredible assumptions" that 100% of registered voters would cast absentee ballots, a rate never achieved in state history.

Information provided by the state indicated it was already printing 1.4 million ballots — more than the total number of votes cast in the 2018 primary, which saw record turnout. The state also has \$1 million remaining from \$10 million in federal funds to cover the costs of the 2020 election that could be used to enhance voting by mail, Lyle said. The order does not require the state to send absentee ballots to all registered voters, but rather only to those who specifically request them.

State Attorney General Herbert Slatery blasted the court for replacing the will of elected officials with its own judgment and "ignoring the practicalities of implementing such a decision, and doing so in the midst of a pandemic and budget crisis." The statement did not say whether he will seek to challenge the ruling.

The issue of increasing absentee voting has become heavily politicized as President Donald Trump has railed against the practice and his Republican allies have followed suit. State House Majority Leader William Lamberth (R-Portland) caused howls of protest among Democrats on the House floor when he appeared to suggest they were trying to "stuff the ballot" and "steal elections" by pushing for more voting by mail.

From the campaign trail

Hagerty and Sethi differ on active military role in response to protests

Republican U.S. Senate candidates Bill Hagerty and Manny Sethi are at odds about whether the military should be mobilized to respond to civil unrest around the country. Hagerty was quick to call on President Trump this week to invoke the Insurrection Act to call up active-duty soldiers to crack down on violence and "domestic terrorism." Sethi in a statement to *The Tennessee Journal* said the National Guard was "more than capable of dealing with these rioters and looters." The military, on the other hand, "exists to kill bad guys, not do police work," according to Sethi.

Trump this week criticized governors for being "weak" and failing to "dominate the streets." He floated the idea of using the Insurrection Act to send the military into states where governors hadn't called in the National Guard. Gov. Bill Lee did authorize the Guard to intervene when Nashville protesters clashed with police and set fire to the Metro Courthouse. The Guard was also called in to augment security at the state Capitol, though the governor heaped praise on soldiers for laying down their shields during a peaceful protest.

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- About 1,000 members of Tennessee Army National Guard's 278th Armored Cavalry Regiment are headed to Washington, D.C., to help quell protests there.
- The endowment for the Tennessee Promise program offering free community college tuition to high school graduates is down 5.5% during the pandemic.
- The Tennessee Department of Education announced the next phase of its partnership with all six state Public

Broadcasting Service stations to air daily programming targeted at children in kindergarten through third grade.

- Volkswagen produced its 1 millionth vehicle at its Chattanooga plant since opening the facility in 2011.
- The owner of the Nashville Super-speedway in Gladeville plans to reopen the facility and host a NASCAR Cup Series race in June 2021. The track has been largely mothballed since 2011.

- Dolly Parton's Dollywood theme park in Pigeon Forge announced plans to reopen in phases starting with season pass holders on June 15.
 - The state paused the distribution of face masks produced by North Carolina-based sock maker Renfro Corp. after WTVF-TV raised questions about whether they were treated with a pesticide called Silvadur. Renfro said its chemicals are harmless.
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Campaign finance

House votes to eliminate fundraising reports totaling \$14M in 2018 races

The House voted this week to get rid of the final campaign finance disclosures due just before the primary and general elections. Rep. Tim Rudd (R-Murfreesboro) said his bill would eliminate what he described as "unwarranted, unneeded, cumbersome" filing requirements, a statement that went unchallenged as the chamber passed the bill 87-5 without debate.

The current filing schedule requires candidates to submit quarterly campaign finance reports in election years. They must also file disclosures covering the roughly three weeks between the end of the previous quarter and 10 days before the primary and general elections, respectively. The Senate has not yet signaled whether it will consider the companion bill this year under the category of "time-sensitive" legislation. The proposal wouldn't apply until the 2022 election cycle.

Under Rudd's bill, spending made in the final weeks before the August primary wouldn't be revealed until 3rd Quarter reports are filed in mid-October, and the bulk of the final fundraising drive for the November general election wouldn't come into focus until the year-end reports are submitted in late January.

The amounts disclosed in those pre-election reports are hardly inconsequential. Two years ago, candidates for state office reported receiving \$10 million in their pre-primary reports and \$4 million during the pre-general period. More than three-quarters of the pre-primary money came in the form of contributions from gubernatorial candidates to their own campaigns. Among Republicans, Randy Boyd gave his effort \$5.25 million, and Diane Black poured in \$2 million of her own money. Bill Lee's growing momentum in the GOP nomination fight was reflected by the \$169,000 he raised from outside sources in the period, compared with Boyd's \$12,000 and Black's \$11,000.

Current House members reported raising \$754,000 in their pre-primary reports in 2018. The top recipients were Republican Reps. Robin Smith of Hixson (\$31,425), Glen Casada of Franklin (\$27,600), Rick Tillis of Lewisburg (\$24,033), Clark Boyd of Lebanon (\$17,200), and Kevin Vaughan of Collierville (\$16,900). Rudd raised \$11,250 during the pre-primary period. Sitting Senate members raked in \$203,000 in the pre-pri-

mary period, led by the \$40,450 collected by Brian Kelsey (R-Germantown), \$29,200 for Brenda Gilmore (D-Nashville), \$22,050 for Kerry Roberts (R-Springfield), and \$21,600 by Art Swann (R-Maryville).

One step forward, two steps back? Supporters touted another element of the bill that would no longer allow unitemized disclosures for contributions and expenditures of less than \$100. The lack of detailed disclosures for those smaller items has made them an area for potential abuse or sloppy record keeping. For example, an audit of Rep. Harold Love's disclosures last year found the Nashville Democrat had improperly reported 211 unitemized expenditures worth \$12,800, though the Tennessee Registry of Campaign Finance deemed that he hadn't engaged in systematic wrongdoing.

The 10-day mark. The final 10 days before the election carried extra significance until a 2018 court ruling threw out a provision of state law mandating a blackout on donations from most political action committees during that period. Tennesseans for Sensible Election Laws challenged the law on by on the basis that it represented an unconstitutional limit on political speech by independent PACs while allowing committees controlled by political parties or caucuses to make donations all the way up until the election itself.

The state argued the 10-day blackout on outside PAC giving was "a crucial part of the disclosure scheme" devised by state lawmakers in 1995 to coincide with when the pre-primary and pre-general reports were due. The intent was to use the "smallest window possible" while "ensuring a fully informed electorate and preventing corruption or its appearance."

Nashville Chancellor Ellen Hobbs Lyle ruled in favor of the plaintiffs because the state Attorney General's office had "inexplicably failed" to supply the plaintiffs' attorneys fair notice about what proof its experts planned to present at trial. The decision was upheld in a 3-0 decision authored by Appeals Judge Carma Dennis McGhee in August 2019.

Registry returns. The Registry of Campaign Finance is scheduled to meet on Wednesday for the first time since mid-March. The agenda includes a hearing over ousted state Rep. Jeremy Durham's challenge of his \$465,000 civil penalty for an assortment of violations, the results of an audit of former House Speaker Glen Casada's campaign account and PAC, and questions about Rep. Rick Staples' expenditures.

Tennessee Notes & Quotes

■ “We had rioters and looters and criminals that decided they’d try to take over our cities. I’m proud to say that based on our law enforcement response... those elements that tried to take over our cities failed, and failed miserably. So they caused a little property damage, but they got swept out like the rest of the trash.” — *House Majority Leader William Lamberth (R-Portland) during a House Republican Caucus meeting.*

■ “At some point we have to come to the table of reason and look at each other as equals. If not, the very thing that we fight for in this General Assembly, the very thing we fight for as a country, the very thing we fight for mankind will be burned to the ground. And it will be burned to the ground because we will be the ones carrying the matches. Some of the people in this room will be the ones carrying the gasoline.” — *Rep. Jesse Chism (D-Memphis) speaking on the House floor on Monday, drawing angry gesticulations from Lamberth.*

■ “Even with social unrest, and widespread rioting and looting in some of our major cities, the idea of bringing in the military to restore order is extremely troubling.” — *Knox County Mayor Glenn Jacobs on Twitter.*

■ The public comment period for the Nashville Metro Council’s budget deliberations turned into a marathon. The 40-member body, which had convened on Tuesday evening, didn’t wrap up its business until 5:30 a.m. the following day. More than 200 people spoke, many calling for money earmarked for the city’s police force to instead be designated for schools or affordable housing. The drumbeat of similar comments led to frustration among Council members grappling with Mayor **John Cooper’s** proposal to hike property taxes by 32%.

■ Rep. **John DeBerry** (D-Memphis) told the *Daily Memphian* he’s “inclined” to run as an independent under legislation passed by the House to reopen the filing deadline for candidates booted from the ballot by their parties. The Senate is expected to follow suit.

■ **Johnny Majors**, the University of Tennessee’s head football coach from 1977 to 1992, died this week at age 85. Majors won three Southeastern Conference championships during his time at the helm. He was twice named SEC player of the year as a tailback for the Vols in the 1950s. Replaced at Tennessee by former assistant **Phillip Fulmer**, Majors concluded his coaching career at Pittsburgh, where he had previously won the 1976 national championship with a 12-0 record.

■ **Majors**, a Lynchburg native, was an unabashed Democrat. In 2016, he called the Republican-led state legislature “a confederacy of dunces and of fools” and described then-presidential candidate **Donald Trump** as a “present-day Dr. Strangelove.” Two years earlier, Majors cut an ad for incumbent Rep. **Gloria Johnson** (D-Knoxville) in her 2014 race against Republican challenger **Eddie Smith**. The pro-voucher Tennessee Federation for Children sent out a mailer comparing her to a far less popular former coach, **Lane Kiffin**. Smith ended up defeating Johnson that year, but she returned

the favor in 2018. Majors’ late brother **Joe** served one term in the state House from 1968 to 1970 before embarking on a prominent lobbying career.

■ “I’m the only person from Memphis here — that matters.” — *Rep. G.A. Hardaway (D-Memphis) during a House Commerce Committee hearing.*

■ “Out of order.” — *Commerce Chairman Timothy Hill (R-Blountville) in response. Other Shelby County members on the panel include Democrat Jesse Chism and Republican Tom Leatherwood.*

■ “I’ve never exercised in my life. I don’t think it’s good for you.” — *Sen. Frank Niceley (R-Strawberry Plains), the sponsor of a bill seeking to allow gyms and health clubs to collect prepaid annual dues.*

■ Nashville Chancellor **Ellen Hobbs Lyle** granted the state an extension to reply to a lawsuit claiming the Tennessee Registry of Campaign Finance violated open meetings laws by holding an email vote to approve cutting Rep. **Joe Towns’** \$65,000 civil penalty for a series of reporting violations to \$22,000. According to the Tuesday order, the state must now respond by June 15.

■ “For [habitual] offenders, there should be an increased penalty to let them know that we’re serious about collecting money.” — *Towns (D-Memphis) speaking about a bill to allow the state to go after employers who change the name of their companies to try to avoid paying workers’ compensation fines.*

■ The zeal of a convert?

■ Former state Sen. **David Fowler** (R-Signal Mountain), the president of the state chapter of the Family Action Council, filed a lawsuit on behalf of a group of pastors claiming the U.S. Supreme Court’s ruling on same-sex marriage had caused all Tennessee marriage licenses to become “invalid and unenforceable.” The case was thrown out for lack of standing by Williamson County Circuit Judge **Woody Woodruff** in 2017. The Court of Appeals upheld the ruling, and the Supreme Court denied cert. Fowler went back to the trial court to argue the opinion authored by Appeals Judge **Neil McBrayer** was void. Woodruff ruled against the motion, and Fowler again appealed. In an opinion issued this week, McBrayer ruled against Fowler’s motion to nullify the previous ruling. The unanimous decision also found the appeal to be frivolous and ordered the plaintiffs to pay for defendants’ legal fees.

■ “Why the idea came to me, only God knows. All I can take comfort in is that he says ‘I pick the stupid and the weak and the ignorant to confound the wise.’” — *Fowler in a House subcommittee hearing last week, explaining his latest novel legal theory about how to undo U.S. Supreme Court rulings on abortion rights.*

■ That’s a New Testament reversal of Proverbs 14:3, which says a fool’s proud talk is a rod for his back, but the lips of the wise preserve them. Or as The Message translates it, “Frivolous talk provokes a derisive smile.”

■ And sometimes attorneys’ fees.