

# The Tennessee Journal

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

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## Lee preps for third State of State, kicks re-election bid into gear

When Gov. Bill Lee delivers his third annual budget address to lawmakers on Monday, he's expected to make the case for why the state of the state should be more hopeful than sorrowful. While Tennessee recently crossed the grim threshold of 10,000 deaths from COVID-19, vaccines are becoming more plentiful, and the state's financial picture is improving dramatically.

The governor is coming off of a special session on education in which lawmakers gave quick approval to his proposals to boost teacher salaries and invest heavily in a phonics-based early childhood reading program. It was an unusually smooth process for the Lee administration compared with the thwarted effort to enact an earlier version of the literacy plan last year or the challenges faced by previous high-profile initiatives to enact a generous family leave policy and create a school voucher program (the former was abandoned while the latter was blocked in court).

As Lee seeks to build on a winning record, he should have the advantage of flush state coffers as several waves of federal stimulus money reach Tennessee. The nonpartisan Sycamore Institute estimates state revenues for the upcoming budget year could be a staggering \$3 billion more than originally projected. About half of those estimates would be in the form of recurring revenues, meaning they could be applied to year-over-year spending. The other half would be considered surplus, which can go toward one-time costs like capital projects.

The State Funding Board is known for its conservative approach to estimating state revenues, so it's likely the Lee administration will have less to spend than the Sycamore study projects, but the state will still likely have a vastly different outlook than the dire predictions of multi-year budget cuts approved last summer.

The state's general fund revenue surplus had already reached \$715 million through the first five months of the current budget year. And that was before Congress approved a second round of stimulus checks and an extension of unemployment enhancements, both of which tend to boost sales tax collections through increased spending. A third round of COVID-19 relief spending appears to be nearing congressional approval.

**Elections to come.** Lee's speech on Monday falls 21 months from Election Day for a second term in office. Given the diminished prospects of Democrats in state-wide contests, the governor is likely to be more concerned about a potential GOP primary challenge than one from across the aisle. The few murmurs so far about which Republicans might seek to run have centered on U.S. Rep. Mark Green of Ashland City and Maury County Mayor Andy Ogles, with the rationale being that either would have a better path toward the nomination in 2022 than in an open 2026 race that could feature the likes of House Speaker Cameron Sexton of Crossville and Knox County Mayor Glenn Jacobs.

Any challenger would likely try to outflank Lee from the right, for example hammering him for his decision to keep Tennessee in the federal resettlement program when former President Donald Trump offered to let states opt out. Lee in recent weeks has burnished his conservative credentials, throwing red meat to the base by criticizing liberal strongholds of Nashville and Memphis and trolling Democratic Vice President Kamala Harris on social media over their opposing views on abortion. He is also expected to reintroduce legislation to do away with permit requirements to carry firearms in public, a popular item with gun rights advocates.

Lee raised \$1.7 million in the second half of 2020, spent \$168,000, and had \$2.1 million remaining as his re-election efforts begin to ramp up in earnest.

### Legislative update

#### **Slatery seeks \$700,000 per year to pay for defense of high-profile laws**

A major role of the Tennessee attorney general used to be to warn legislators about potential legal problems their bills might face if they become law. Since Herbert Slatery took over in 2014, however, the practice of issuing legal opinions on pending legislation has been drastically curtailed while he has instead intensified efforts to defend even the most problematic laws in court.

The governor and lawmakers appear to love the new approach, but it's not without a cost. Slatery told the House Finance Committee last week that he is seeking

\$700,000 in new annual funding to pay for five attorneys to handle high-profile cases such as those related to abortion restrictions, school vouchers, election laws, gender issues, and emergency powers.

House Majority Leader William Lamberth (R-Portland) during the hearing lauded Slatery for “fighting the good fight for us in court,” while Rep. Charlie Baum (R-Murfreesboro) thanked him “for defending Tennessee legislation.” The attorney general has always had the responsibility of representing the state in legal challenges, though the legal opinions issued during the legislative process could create conflicts of interest.

In Slatery’s first full year at the helm in 2015, his office issued 81 legal opinions. The output dropped to about 50 each in the following three years, before plummeting to 20 in 2019 and just 17 in 2020.

During the debate over Gov. Bill Lee’s signature school voucher law in 2019, the AG’s office declined to issue an opinion about its constitutionality on the basis of what it called a “longstanding policy” of avoiding weighing in on matters that could involve litigation down the line. The law was later thrown out for violating the constitution’s “home rule” protections against having laws targeting specific jurisdictions — in this case, Nashville and Shelby County — without the approval of local voters or legislative bodies. The state Supreme Court agreed this week to consider an appeal.

The General Assembly also pressed ahead last year with a bill seeking to impose sweeping abortion restrictions despite widespread warnings its enactment wouldn’t survive a legal challenge. As it happened, a federal judge appointed by President Donald Trump froze its implementation within less than an hour of the governor signing the bill into law. Supporters say it’s worth taking on the legal fight in the hope the dispute will work its way to the U.S. Supreme Court, where newer conservative members could potentially tip the balance against the precedent set by *Roe v. Wade*.

Slatery defended the decision — and expense — of joining AGs from other Republican states in backing an effort to overturn the outcome of November’s general election on the basis that courts had improperly changed voting rules in states carried by Democrat Joe Biden. Slatery said he agreed to participate after ensuring the challenge wasn’t “overly partisan.” The U.S. Supreme Court ended up declining to hear the case.

**Pour the Gatorade.** Tennessee Lottery CEO Rebecca Hargrove is keen to stress that the state’s new sports wagering program makes up only a small percentage of the proceeds gathered by the organization she started up 17 years ago. Traditional lottery games generate far greater amounts for education programs in a single week than gaming has contributed over its first two months in operation, she told the House Finance Committee. And yet online gaming routinely dominates her discussions with policymakers, she said.

Despite Hargrove’s laments, outside analysts have lauded the performance of the state’s new online gambling program. About \$181 million worth of bets were

placed in December, a 38% increase over the first month of wagering. The state’s 20% tax on earnings netted \$3.1 million during the month and \$5.4 million since the program’s launch on Nov. 1.

Three more sportsbooks have gained approval to take bets in Tennessee in addition to the original four. They are William Hill, Wynn Sports, and a subsidiary of Churchill Downs that will operate as TwinSpires. The newest vendors won’t go live until after Sunday’s Super Bowl, which is traditionally the country’s top sports betting event of the year. One of the new operators couldn’t launch because its servers were located near the site of the downtown bomb explosion on Christmas Day.

The Lottery doesn’t have control over sportsbooks’ offerings other than ensuring they fall under the statute approved by lawmakers in 2019, Hargrove said. For example, a sportsbook asked whether it could offer proposition bets on which color Gatorade would be poured over the winning coach at the end of the Super Bowl. The law allows only for betting on sports themselves, Hargrove said, meaning that the Gatorade wager — along with those on events like the Oscars or election outcomes — doesn’t make the cut.

Rep. Brandon Ogles (R-Franklin) expressed unhappiness at the heavy amount of advertising for sports betting he’s seen on roadside billboards and on his phone. He said the state should consider increasing the level of earnings required of sportsbook operators subject to the state’s privilege tax. Hargrove said since the Lottery doesn’t have an insight into private betting companies’ operating costs, she can’t say whether they can afford their ad spending or to return more money to the state.

**News you can booze.** As part of the effort to lessen the blow to restaurants caused by the pandemic, the governor through executive orders allowed them to offer carryout and delivery of alcoholic beverages. Rep. Bob Ramsey (R-Maryville) has introduced legislation to extend relaxed liquor rules by at least three years. The bill doesn’t yet have a Senate sponsor.

Under existing law, only retailers can sell alcohol for off-premise consumption — an exclusive arrangement that package, convenience, and grocery stores are eager not to lose. Russell Thomas, the executive director of the state Alcoholic Beverage Commission, said his agency hasn’t seen many restaurants offer delivery of alcohol. But it is grappling with an “explosion” in online retailers offering to ship booze to Tennessee without a license.

### **Forming constitutionals**

## **After dearth of amendments in 2018, up to 5 could go before 2022 voters**

Under Tennessee’s drawn-out process for putting constitutional amendments before the voters, proposals must be passed by both chambers during consecutive general assemblies (the first time by a majority, the second by at least a two-thirds vote). Only then can they go on the ballot during the next gubernatorial election, when they must receive the equivalent of a majority of the votes cast for the governor’s race to be ratified.

# Tennessee News Digest

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● The Tennessee Bureau of Investigation logged 740,580 gun transactions in the state in 2020, a 53% jump over the previous year. The biggest monthly increase occurred at the start of the COVID-19 pandemic in March.

● Sun Entertainment Corp. sold the rights to 6,000 recordings made by the studio founded by Sam Phillips in Memphis in 1952 to Primary Wave Music of New York. They include Johnny Cash's "I

Walk the Line," Jerry Lee Lewis' "Great Balls of Fire," and Carl Perkins' "Blue Suede Shoes." Songs by Elvis Presley, who got his start at Sun, are not part of the deal as they are owned by Sony.

● The Mule Day celebration in Maury County has been canceled for the second straight year due to COVID-19.

● Amazon announced it will build a fulfillment center in Alcoa, creating 800 jobs. The retailer also has warehouses in

Charleston, Chattanooga, Lebanon, Memphis, Murfreesboro, and Nashville.

● A lodge on the campus of Maryville College leased to Ruby Tuesday through 2070 is the subject of a legal dispute after the restaurant company filed for Chapter 11 bankruptcy in October. As part of the reorganization, Goldman Sachs wants to take over the lease of the RT Lodge. The college wants Nashville-based Oliver Hospitality run the facility.

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No amendments made the cut before the 2018 election, meaning voters didn't get to decide on a constitutional amendment for the first time in 20 years. But going into the 2022 gubernatorial cycle, there are five proposals that could make the ballot if they clear the two-thirds threshold this year or next.

**Confirming the AG.** Senate Republican Caucus Chair Ken Yager of Kingston has led the charge to give the General Assembly veto power over the appointment of the attorney general. Tennessee is the only state in which its Supreme Court names the attorney general, and Yager contends the change would give the public more say over the state's top lawyer. Critics worry the change could either politicize the office too much, or not enough — with the latter group arguing the people should directly elect the AG in a statewide race.

The amendment's timing presents a bit of a conundrum. The next attorney general is scheduled to be appointed following judicial elections in August 2022, while the proposal to change the constitution wouldn't appear on the ballot until three months later. So unless the high court deigns to wait until the voters decide on the matter, there's a chance the next eight-year term could already be filled before the new rules go into effect. (Incumbent Attorney General Herbert Slatery, for example, was sworn in on Oct. 1, 2014.)

**Incapacitation remedies.** While the speaker of the Senate also carries the title of lieutenant governor, the latter designation carries few official duties other than taking over in the event of a governor's death. The constitution doesn't provide for a temporary takeover should a governor become too ill to do the job, an issue that came into focus when then-Gov. Phil Bredesen was hospitalized in 2006 following an apparent tick bite.

Earlier versions of a proposed amendment floundered over concerns about the Senate speaker having to give up a prime job to serve as governor for what could be as little as a few weeks. The measure would have allowed for the head of the upper chamber and the House speaker, who is next in the line of succession, to decline the temporary move to the governor's office, but the secretary of state, comptroller, and treasurer, who followed in the replacement order, would not have been allowed to beg off.

Under the current version sponsored by Sen. Becky Massey (R-Knoxville), the Senate speaker would hold on to his position while also serving as acting governor.

Similar arrangements in other states have raised concerns about the same person holding leadership roles in two separate branches of government.

**Right to work.** Tennessee is already among the states where employees don't have to pay union dues to benefit from collective bargaining agreements. Sen. Brian Kelsey (R-Germantown) wants to guarantee what supporters call "right-to-work" rules by enshrining them in the Tennessee Constitution. Union leaders say the move would hurt state workers, but they aren't losing too much sleep over it because they have been living under those rules in Tennessee since 1947.

The push to amend the state constitution originated when political forecasters were expecting vast Democratic gains in both chambers of Congress last year, which could have resulted in an effort to rewrite national labor laws to make them more favorable to unions. The GOP ultimately did lose control of the Senate, but it was by only the narrowest of margins (in the form of a tie-breaking vote from Vice President Kamala Harris), and the Democratic majority in the House shrank to the smallest in modern history.

So while Democrats now technically run the show in Washington, it's unlikely major changes will be coming down the pike that could affect state-level labor rules. But don't expect those political developments to lead supporters to abandon their efforts to enshrine the right-to-work change.

**Inmates, not slaves.** A rare Democratic proposal to make it this far in the amendment process would declare that slavery and involuntary servitude "are forever prohibited." The current language bans slavery — "except as a punishment for crime." The revision would state that nothing in the Tennessee Constitution "shall prohibit an inmate from working." The proposal is sponsored by Sen. Raumesh Akbari and Rep. Joe Towns, both Memphis Democrats.

**Lawmakers of the cloth.** Tennessee's ban on "ministers of the Gospel" from serving in the General Assembly was thrown out by a U.S. Supreme Court ruling in 1978. Now, Sen. Mark Pody (R-Lebanon) and Jay Reedy (R-Erin) want the obsolete language stripped from the Tennessee Constitution. The proposal would not affect the ensuing article, which states "no person who denies the being of God" can hold office, though a 1961 ruling by the nation's highest court explicitly bars religious tests to determine eligibility.

## Tennessee Notes & Quotes

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■ “The former mayor refused to answer questions related to streamlining environmental reviews for projects or other deregulation efforts, which is very concerning for communities across Tennessee, especially rural ones, hoping to benefit from such projects. He also pledged to raise fuel economy standards, which would make automobiles more expensive, and to use the department for social, racial, and environmental justice causes.” — *Freshman U.S. Sen. **Bill Hagerty** (R-Nashville) about his vote against the confirmation of **Pete Buttigieg** as transportation secretary.*

■ **Hagerty**, a former U.S. ambassador to Japan, landed plum assignments to the Senate committees on appropriations, banking, foreign relations, and rules.

■ A news crew for Chattanooga-based WRCB-TV was threatened with arrest for trying to ask a question of Republican U.S. Rep. **Marjorie Taylor Greene** in Dalton, Ga. The journalists had been invited to the event and issued credentials, but were told not to speak to the controversial congresswoman or attendees.

■ “Inciting a riot – anything of that nature? No. I didn’t see that.” — *Freshman U.S. Rep. **Diana Harshbarger** (R-Kingsport) to WJHL-TV about her enduring support for former President **Donald Trump**.*

■ Belmont University announced **L. Gregory Jones** will succeed retiring President **Bob Fisher** on June 1. Jones comes from Duke, where he currently serves as dean of the divinity school. He was previously provost of Baylor University in Texas. Belmont was the site of presidential debates in 2008 and 2020. The Nashville school has also hosted forums for state and local races.

■ **John Schroer**, who left his position as Franklin mayor in 2011 to serve as state transportation commissioner during both of Gov. **Bill Haslam’s** terms, has been named an interim alderman in his hometown. He fills the vacancy caused by the death of Alderman **Pearl Bransford** until an October special election.

■ **Martha Cooper**, the wife of U.S. Rep. **Jim Cooper** (D-Nashville), died Thursday at age 66.

■ The Tennessee Higher Education Commission has named **Emily House** as its new executive director. House previously helped implement the Tennessee Promise free community college program.

■ Knox County Mayor **Glenn Jacobs** assumed his pro-wrestling alter ego of Kane to take part in a record 20th WWE Royal Rumble over the weekend. He said he would donate his earnings to a scholarship fund for the Tennessee College of Applied Technology in Knoxville, though the exact amount is considered a trade secret.

■ “I couldn’t accept it because my husband was ill, and then they asked me again about it and I wouldn’t travel because of the COVID.... Now I feel like if I take it, I’ll be doing politics, so I’m not sure.” — ***Dolly Parton** on NBC’s Today show about turning down the Presidential Medal of Freedom from **Trump** and a subsequent offer from his Democratic successor, **Joe Biden**.*

■ Former state Rep. **David Shepard** (D-Dickson) died Thursday after a long fight with cancer and then COVID-19. He was 73. The pharmacist served in the General Assembly for 16 years, winning his last race in 2014 by just 16 votes over Republican **Michael Curcio**, who would succeed Shepard following his retirement two years later. Shepard, a Vietnam veteran who was awarded a Bronze Star, was an early sponsor of a bill to allow wine to be sold in Tennessee supermarkets when the prospects for the measure seemed near impossible. In his first race for an open House seat in 2000, Shepard defeated **Bo Mitchell** for the Democratic nomination. Mitchell was later elected to a Nashville seat. Shepard was one of the last House Democrats representing predominantly rural areas.

■ The lobbying firm headed by former state Senate Speaker **Ron Ramsey** and **Russell Farrar** has promoted **Addison Russell**, **Matt Russell**, and **Ross Smith** to principals and will now be rebranded as Ramsey, Farrar, Russell & Smith LLC.

■ General Motors, which is spending \$2 billion overhauling its Spring Hill plant to make electric Cadillacs, announced this week it will sell only zero-emissions cars and trucks by 2035. Similarly, Nissan said all “new vehicle offerings” will be electric by the early 2030s. The Japanese company operates a massive assembly plant in Smyrna and builds internal combustion engines in Decherd. Volkswagen is nearing completion of an \$800 million upgrade to its Chattanooga plant to start producing the ID.4 electric crossover by next year.

■ The automakers’ moves toward electric vehicles come as **Biden** has signed a series of executive orders aimed at combating climate change, including placing a moratorium on new federal oil leases and calling for government vehicles to be electric. Sens. **Marsha Blackburn** of Brentwood and **Bill Hagerty** were among 29 Republicans signing a letter calling the moves “counter to the desires of the American people.”

■ “The former president decided it needed to be in Alabama to help his political cronies.... We need a decision on the merits, and we need to be as thrifty as we can.” — *U.S. Rep. **Jim Cooper** during a recent Politico forum about his support for revisiting **Trump’s** decision to locate a \$1 billion headquarters for the new U.S. Space Command in Huntsville, Ala.*

■ **Blackburn** and **Hagerty** have praised the choice of Huntsville for the Space Command as drawing hundreds of high-quality jobs to the Tennessee Valley region. **Cooper**, who has backed the idea behind a Space Force since before **Trump** was elected, last year denounced the HQ competition as a “moondoggle.”

■ “We are setting a bar that hasn’t been seen before.” — ***Marie-Laure Frère**, sales director for the Four Seasons Private Residences in Nashville, which is listing a penthouse in its new building for a record \$25 million.*

■ A Nashville boomdoggle?