



CHATTANOOGA
AREA CHAMBER OF COMMERCE

2009 Final Legislative Report

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The 2009 session of the 106th Tennessee General Assembly adjourned on June 18th. This year was unique in many respects. Not the least of which is that, for the first time since Reconstruction, both houses of the legislature were controlled by the GOP. Republicans held solid control of the Senate with 19-14 advantage, but the House was divided 50-49 with the Republican Speaker elected by Democrats. The new Speaker then assigned committees made up of equal numbers from both parties.

Delivery of the state budget was delayed due to several factors including the significant loss of state revenues, the economic downturn, and the incorporation of federal stimulus dollars. Consideration of all these items was especially important given the state's \$1.2 billion deficit and the fact that very little latitude is permitted in the use of stimulus funds. Those funds are one-time monies dedicated to specific purposes. Because of the fiscal situation, significant budget reductions were required this year with even deeper cuts expected in the next two fiscal years.

Despite the dismal fiscal situation facing the state overall, the Chattanooga and Hamilton County region still managed to emerge successful in many areas. Funding and other commitments to the Volkswagen, Wacker Chemie, and Alstom projects were maintained; UTC will have a new library complex; and road projects cut in other parts of the state did not include Southeast Tennessee.

Chamber Member-Investors provide input that guides our plan of work in every legislative session. Your feedback matters to the legislative leadership and makes a difference in the outcome of many key matters affecting you and the entire state.

Below is a comprehensive report on several important issue areas impacting the business community locally and statewide. These are not listed in any particular order of priority.

State Budget

The legislature passed a \$29.6 billion budget which included \$2.2 billion of federal stimulus money and a 10% reduction from last year's budget. The reduction included the elimination of approximately 1,400 state positions (656 vacant and 717 filled). The Pre-K program was maintained at \$22 million and moved lottery funds into the state's core budget.

Some tax and fee increases are included in the budget, but several recommended increases were not enacted. Not passing were a higher tax rate for businesses on long distance phone service, and application of a surtax on cable television boxes.

- The original budget called for an increase in the HMO premium tax to 5.5% which would generate \$138 million. Those revenues will be directed to TennCare, and when combined with federal stimulus fund's increased federal matching rate, would offset any cuts to the program. It made some one-time state TennCare dollars available for use in other areas of the budget
- Clearly supported by the Administration is repealing the Family Owned Non-Corporate Entity (FONCE) exemption from state franchise and excise taxes. As passed, FONCE's may now only exempt only a portion of the appraised value of their business. This is expected to generate approximately \$22 million

A very important item for our area which was funded in the budget is a new library for UTC. This project was originally authorized and understood to be funded in 2007, but its inclusion in a bond issue for capital projects now virtually guarantees its construction.

Charter Schools

The issue of charter schools was hotly contested this year. A compromise was reached which eases restrictions on charter schools in Tennessee. The bill appeared to be off the table in the days leading up to adjournment, but negotiations continued until a deal was struck. One key item not included was to allow charter school organizers to bypass local school boards and apply directly to the State Board of Education. Currently, local boards must decide the matter, but organizers can appeal to the State Board. These reforms will apply to systems with over 14,000 students – Memphis City, Metro Nashville, and Knox, Hamilton, Williamson, Madison, and Sumner Counties. Provisions include:

- At-risk students (defined as those qualified for free or reduced lunch) are now permitted to attend a charter school
- Charter schools must still give first priority to failing students or students from failing schools, with at-risk students eligible to fill remaining slots
- Charter schools must be renewed every ten years, instead of every five years
- No more than 90 charter schools may operate in Tennessee, which is an increase from the previous 50. No more than 35 may open in Memphis, and 20 in Nashville

Tennessee Small Business Investment Company Credit Act

Legislation to establish "The Tennessee Small Business Investment Company Credit Act (TSBIA)" passed on the last day of session. The Chamber has worked on this and similar bills

for a number of years to provide benefits to small, medium, and start-up businesses that do not qualify for the same economic development incentives available to larger companies making significant investments in Tennessee. The legislation creates a venture capital fund of \$120 million, which will be backed by the State of Tennessee and large insurance companies with large capital pools.

The law stipulates:

- Six venture capital funds will be awarded \$20 million of the tax credits – \$3 million per year from 2012-2015 and \$2 million per year from 2016-2019
- The deferred tax credits can be offered to insurance companies in exchange for investment capital commitments.
- Participating venture capital funds will be required to secure not less than \$14 million of investment capital for a \$20 million tax credit allocation.

Venture capital firms applying for the program will be required to meet criteria established by the state's Capital Formation Board, the Tennessee Department of Economic and Community Development, the Tennessee Department of Revenue, and the Tennessee Technology Development Corporation. The firms must meet various milestones during the investment period.

More details as to eligibility requirements and rules and regulations are forthcoming.

State Unemployment Trust Fund

We have worked extensively with our partners to find solutions to Tennessee Unemployment Insurance Trust Fund solvency issue. The fund balance stands near \$150 million, and continues to dwindle rapidly given increasing levels of unemployment. In any other circumstances, the business community would certainly oppose the increases but failure to pass a workable solution would have led to harsh results, including the unemployment fund going insolvent. Unfortunately, none of the available options were good, so the best had to be made of a bad situation.

Key points include:

- Employers would be taxed on the first \$9,000 in wages for each employee instead of the current \$7,000. The rate increases to 3.3% from 2.7%
- Once the fund balance reaches \$600 million, the rate will roll back to 2.7%. When the level reaches \$900 million, the taxable base will go back to \$7,000
- A federal government loan will not be required under this plan. If it was, the loan would have to re-paid within one year with the federal government mandating all rates and terms of repayment.
- Changes required under the stimulus are incorporated
- Stricter state oversight measures are being put in place.

Ethics Commission

Lawmakers agreed to merge the Tennessee Ethics Commission and Registry of Election Finance into a single entity they believe will be more streamlined and economical. The rationale behind this merger is to make the process more streamlined and economical. The ethics commission has been criticized for poor management, conflict among board members, and slow or confusing responses to information requests.

The new agency will be called the Bureau of Ethics and Campaign Finance and will be governed by a board consisting of the six current registry members and six members of the commission. The ethics law will remain intact, with a budget allocated to enforce it.

Education

Funding for K-12 public schools was protected from budget cuts, but the only new recurring funding came from inflationary increases. Some one-time monies are available to systems through the stimulus. Because of the state's fiscal situation, the likelihood of any increases to state K-12 funding is slim for at least the next two years.

The Governor recommended cuts of approximately \$180 million to higher education this year, but stabilization funds from the stimulus made that unnecessary for now. Capital improvement projects for higher education were funded through a bond issue which includes funding for a new library at UTC.

Other education related policy items include:

- The Governor will appoint a task force to study the governance structure of higher education in Tennessee and is expected to present a proposal next year
- A bill calling for the election of local school superintendents was defeated
- There were no changes to the funding formula for BEP 2.0

Market Regulation Act of 2009 for Telephone Service Providers

The Chamber continued to advocate for modernizing state telecommunications policy that promotes more competition and choice for consumers. The "Market Regulation Act of 2009" allows existing traditional telephone providers to opt into "Market Regulation" of in-state phone services so they will be treated on the same terms as their competitors using cable, wireless and internet telecommunications.

Since Tennessee rewrote the state's telecommunications law in 1995, new telecommunications companies have emerged using technologies that did not exist when the law was written and that are not under the same regulations as traditional phone companies. Traditional telecom companies such as AT&T and Sprint remained regulated service providers.

Under this new law, the Tennessee Regulatory Authority will continue to regulate wholesale telecommunications in Tennessee for market regulated companies. It also keeps in place government support programs to assist seniors and low income consumers. Consumers would

continue to have a variety of alternatives for resolving complaints regarding phone rates. In addition, it includes language to assure there will be no rate hikes in rural areas for at least one year.

Economic Development

Chamber members consistently identify incentives for economic development as a priority issue. Over the past several years, we've successfully crafted and sought passage of many tax and financial incentives, and worked to ease many regulatory processes. In most cases, changes to state law were necessary. These efforts have positioned our region and state to be even more competitive in attracting new industry, and expanding and retaining existing businesses. Without these tools, projects such as Volkswagen, Wacker Chemie, Alstom Power, Chattem, and many others would have been much more difficult to secure.

New changes occurred this session as well. While these don't necessarily apply to every company, they are important to keep our edge sharp:

- The base jobs tax credit is increased from \$2,000 to \$4,500 per job, with the previously required minimum of \$500,000 in capital investment and 25 jobs. Offset may not exceed 50% of combined F&E tax liability, and unused credit may be carried forward in any tax period until credit is taken
- The additional credit remains at \$5,000 per job provided that the jobs remain filled during the year in which the credit is taken
- Integrated suppliers qualify for the jobs tax credit available under the \$250 million threshold regardless of investment or number of jobs
- The industrial machinery tax credit taken by companies investing over \$1 billion may be carried forward past the current limit at the discretion of the Commissioners of Revenue and ECD

***See also page 3 for the "Tennessee Small Business Investment Company Credit Act" for new opportunities for small, medium, and start-up companies.*

Natural Gas Conservation and Annual Rate Review Act

The Tennessee Regulatory Authority (TRA) regulates natural gas utilities and fixes their rates, charges, tolls, etc. This includes privately held natural gas companies such as AGL Resources, Atmos Energy, and Piedmont Natural Gas. Regulated companies can seek rate adjustments by applying to the TRA and undergoing an examination by the agency to justify whether the request is just and reasonable. These "general rate cases" can be contested.

Without getting into very complicated details, a measure was introduced which would have permitted a natural gas utility to file a decoupling mechanism or an annual rate review plan (or both) together with a natural gas conservation plan. The annual rate review would permit the company to file updated rate schedules and financial statements. As long as the updated rate schedule did not exceed an increase of 4% since their last general rate case, the review would essentially be uncontested.

The Chamber did not take a position on this bill, but the Chattanooga Manufacturers Association did lead opposition. The bill did not pass this session, but it is expected to be reintroduced next year with support from natural gas distributors.

Judicial Selection

Highly debated reform of the judicial selection system was accomplished before the close of the session. Merit selection of appellate court judges and Supreme Court Justices will remain with a new judicial nominating commission appointment process. Members of the commission will continue to be appointed by the Senate and House Speakers, but the Speakers will no longer be bound by the names submitted by legal interest groups. Appellate judges will continue to be elected by retention elections, but voters will be asked on the ballot whether to "replace" or "retain" judges, instead of casting a "yes" or "no" retention vote. A constitutional convention to put the issue before the voters will not take place.

Employer/Employee Relations

Tennessee is often recognized as one of the most business friendly states. Companies thrive in an environment where government regulations are kept reasonable and minimal, with the marketplace driving the economy. Unnecessary encroachments on the employer/employee relationship do nothing to improve a company's ability to manage through the current economic situation.

Measures in this session that preserve Tennessee's pro-business climate include:

- Efforts to weaken Tennessee's tradition as a right to work state was not harmed, and attempts to impose mandatory collective bargaining for private or public employees failed
- Reforms made to Tennessee's workers compensation laws in 2004 were strengthened by removing existing employers' liability for pre-existing medical conditions and outside of the workplace injuries as it relates to workers comp
- Efforts to establish a state minimum wage were unsuccessful

Other Issues

Solar Farm Initiative: The General Assembly approved funding for a \$30 million "solar farm" in one 20-acre section of a Haywood County's megasite in West Tennessee.

Mail-order Wine: Out-of-state wineries that register with Tennessee may ship up to one case of wine per month and three cases a year to any Tennessean at least 21 years old. But lawmakers killed a bill to let grocery stores sell wine.

Toll Roads: A bill to expand the number of proposed toll road and bridge project studies to two each passed.

Foreclosure Protection: Legislation passed making it a violation to engage in unfair or deceptive practices in advertising, marketing, selling or contracting for foreclosure-related services. This is part of the state's "truth in lending" measure.

Clean Energy Act: A broad program was approved to improve energy efficiency in government buildings and private homes, including energy-efficient building codes.

Menu Labeling: A bill prohibiting "non-elected" government boards or commissions from requiring chain restaurants to include calorie or nutritional information on menus including (drive-thru) passed the General Assembly, but was vetoed by the Governor. A vote to override the veto would have to wait until January when the legislature reconvenes in January 2010.

The 2010 Session will commence on January 12, 2010 at the Capitol in Nashville. Again, revenue projections are not encouraging and the necessity of additional budgetary reductions is all but certain. Additional stimulus dollars will be part of next year's budget, but those are only one-time funds. That session will also be the last for Governor Phil Bredesen who cannot seek reelection after two consecutive terms in office.

The Chattanooga Area Chamber of Commerce thanks all of Hamilton County's and Southeast Tennessee's legislators for their leadership and hard work. We also thank our local and statewide allies who are tremendous partners in building a strong Tennessee business climate.