

# The Tennessee Journal

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## High-growth counties struggle to find school funding sources

Finding money to build more schools in counties experiencing rapid population growth has been an issue that has vexed Tennessee officials at the state and local levels for decades.

Voters in usually tax-averse Williamson County last year overwhelmingly approved hiking the local option sales tax by half a percentage point to raise about \$60 million over the next three years to pay for school construction. But in Wilson County, a similar effort was rejected by 52% of the voters, leaving officials scratching their heads about how to meet demand for classrooms.

Some counties like Rutherford and Williamson have turned to fees imposed on new home construction to help cover the increased education costs associated with more people moving to those areas, but those are fought bitterly by home builders and Realtors, who argue the extra fees unfairly inflate prices.

Developers in Williamson County want a judge to throw out a \$2-per-square-foot educational impact fee in a case that had been headed for a summary judgment hearing last month. But Circuit Judge James Martin rescheduled those arguments until Feb. 25. Meanwhile, nearly \$10 million collected under the scheme has been held in escrow until the case is decided.

**Legislative fixes.** A bill last year seeking to redirect up to \$7 million in locally collected state sales taxes to school districts posting growth of at least 250 students annually since 2014 (that would be Montgomery, Rutherford, Williamson, and Wilson counties) failed to gain traction. A \$30 million fiscal note didn't help.

A new version introduced this year might not ordinarily merit a second look, but this time its Republican sponsors — Sen. Jack Johnson of Franklin and Rep. William Lamberth of Cottontown — have some additional clout: Both were elected majority leaders of their respective chambers before the start of the session.

Under the new proposal, a designated “rapid growth school district” would receive up to 2% state sales taxes collected in the county. The annual amount would be capped at \$7 million and earmarked for school-related debt service or capital improvements. Seeking that des-

ignation would require two-thirds approval by the county commission or city council.

It's unclear how much appetite lawmakers from other areas of the state would have for creating a special funding mechanism for just a handful of Middle Tennessee counties, so supporters may tweak the qualification threshold to let the bill apply to more districts.

The state's largest districts in Nashville and Shelby County, which are currently suing the state over what they call inadequate funding, would not be covered in the legislation as introduced, though that could change as well. The advantage of the sales tax approach is that the money wouldn't have to be funneled through the state's complex Basic Education Program formula, which tends to favor smaller school districts.

**Prickly politics.** Municipal and county governments trying to cope with growing education costs have limited options when it comes to generating new revenue. Tax bills requested by local officials were once considered routine in the General Assembly, and legislators from outside the affected city or county almost always approved what colleagues proposed on behalf of communities in their districts.

But that started to change in the mid-1990s, when ads began to be run against sitting lawmakers claiming they had voted hundreds of times to raise taxes. That count would invariably include the numerous routine votes authorizing city councils and county commissions to enact hikes. As such, lawmakers from one end of the state could find themselves under attack for voting to allow another town hundreds of miles away to decide whether to impose a hotel-motel or wheel tax.

Nervous incumbents began abstaining — or even voting against — local tax bills. And then newly-elected Republican Gov. Don Sundquist made it his policy to let local tax bills become law only without his signature (causing then-House Speaker Jimmy Naifeh and other Democratic leaders to go through the roof).

Sundquist uttered one of the most memorable lines of his eight-year tenure amid that dispute when he defended his hands-off approach by telling reporters he

was “irrelevant to the process” (a phrase that is now widely misremembered as describing his pariah status among fellow Republicans after he proposed the introduction of a state income tax in his second term).

The local tax issue has only become more prickly as Republicans began their march from being the bomb-throwing minority to the governing supermajority in both chambers of the General Assembly.

**Handing it off to locals.** Lawmakers in 2006 passed a bill enabling governing bodies in high-growth counties to impose an “adequate facilities tax,” which can only be used to pay for school construction, including debt. Previously, those taxes could be enacted only through private acts passed by the General Assembly.

That power was shifted to local governments under the new law, and restrictions on increases — no more than 10% every four years — were imposed on all adequate facilities taxes. The law was limited to counties that met population growth thresholds, and initial taxes were capped at \$1 per square foot of residential space.

**Too much, too soon.** The Bedford County Commission took a preliminary vote last month to increase its adequate facilities tax from the \$1 adopted when the new state law was enacted in 2006 to \$1.33 going forward, the *Times-Gazette* of Shelbyville reported. But the county’s financial management committee last week voted to call for that step to be rescinded after the Middle Tennessee Association of Realtors raised strong objections to the hike.

The group argued the county fell just short of population growth rates required to qualify for the increase and that state law allows for up to a 10% hike every four years — not the 33% increase the commission had envisioned implementing in one fell swoop.

**Now what?** While Lamberth and Johnson will carry Gov. Bill Lee’s legislative agenda in their roles as majority leaders, they are quick to stress their school funding proposal is not among the new governor’s initiatives. Though they hope to gain a sympathetic ear given Lee’s roots in Williamson County.

### **Legislative roundup**

## **A failure to communicate over live-streaming committee meetings**

During legislative debates last year about efforts to legalize medical marijuana and reform criminal justice laws, Rep. Antonio Parkinson (D-Memphis) kept his constituents informed by livestreaming committee meetings via his smartphone. Some Republican members didn’t like it, so this year House Speaker Glen Casada (R-Franklin) has given committee chairs the power to ban members from broadcasting meetings via apps like Facebook Live.

Several chairmen, many of them new to their positions of power, took the speaker up on his offer. But the rollout was mangled by a general lack of tech savviness that left many observers with the mistaken impression that all third-party recordings would be prohibited during committee hearings.

Casada’s office clarified that the rules apply only to legislators serving on the committees in question and that audiences (and the media) were not covered by the ban unless they are “disrupting the legislative process.”

The issue was further muddled when word came down that livestreaming could be banned from the public galleries in the House chamber. But when Rep. Terri Lynn Weaver (R-Lancaster) used the opportunity of leading the chamber in prayer on Thursday morning to break into song, several members lifted their phones to capture the moment. So apparently the recording ban doesn’t apply to the House floor. Stay tuned?

**Know when to furl ’em.** Gov. Bill Lee’s administration will no longer issue “flag letters” to raise objections about legislative proposals pending before the General Assembly. The letters have long chafed lawmakers, who found them heavy-handed. Sometimes they were also duplicative, as often more than one state agency would register concerns in separate letters, making sponsors feel like the executive branch was piling on.

Under the new policy, Lee administration liaisons plan to meet personally with sponsors to discuss concerns. Weekly lists of flagged bills will also be produced for legislative leadership in the interest of transparency.

**Heartbeat bill.** Lee campaigned for governor on a staunch pro-life platform, so it comes as little surprise that he agrees with the concept of a bill introduced by Rep. Micah Van Huss (R-Jonesborough) seeking to make it a crime to perform or obtain an abortion after a fetal heartbeat is detected.

The speakers of the House and Senate declared their support for the measure despite concerns about its constitutionality raised over previous versions of the bill by the attorney general’s office and similar state laws running into legal trouble elsewhere around the country.

Lee appeared undaunted by any legal challenges, telling reporters he will “support any bill that reduces the number of abortions in the state” and he will leave it to the courts to decide “whether it’s constitutional or not.”

**Attorney general.** Proposals to amend the Tennessee Constitution to change the way the attorney general is selected are back after failing last year. Senate Republican Caucus Chairman Ken Yager (R-Kingston) and Rep. Mike Carter (R-Chattanooga) want to give the General Assembly the power to reject the person the state Supreme Court nominates for the position.

Currently, the members of the state’s highest court (who are appointed by the governor) select whoever they want to serve as attorney general, a unique system nationally. The earliest a proposed constitutional amendment could make it on the ballot would be in 2022, the same year current state Attorney General Herbert Slatery’s eight-year term comes to an end.

Meanwhile, a bill filed by Rep. Bill Dunn (R-Knoxville) would give the speakers of the House and Senate — or a majority of the members of both chambers — the power to intervene in any legal proceeding defending the constitutionality of statutes challenged in court. The speakers would be considered to be acting as “an agent

# Tennessee News Digest

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- Electrolux plans to shutter its Memphis plant, which employs 530 people, in 2020 and combine all U.S. production at its Springfield facility in Robertson County. The appliance maker received an estimated \$188 million in incentives to build the Memphis plant in 2011.
- Gov. Bill Lee is weighing a proposal to build an \$18 million facility in McMinn County to house the Tennessee College of Applied Technology and Cleveland

State's operations in Athens, along with UT Extension services. The site is located across the street from the Denso auto parts plant in the city.

- Nashville's new Major League Soccer team will join the league in 2020 and play at Nissan Stadium, the home of the NFL's Tennessee Titans, until its 30,500-seat stadium is completed in 2021.
- Filmmaker Ken Burns' upcoming documentary series about country music is

being made with the help of \$1 million in incentives from the state of Tennessee. The series will include footage from Bristol, Knoxville, Memphis, and Nashville.

- Gov. Bill Lee issued an executive order Friday to halt all new regulations across state agencies for 90 days to assess their costs. The moratorium is twice the length of a similar freeze imposed by his predecessor, Bill Haslam, when he first took office in 2011.
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of the people," and the state would cover any legal costs they incur in the process.

Lawmakers hired outside counsel for a lawsuit seeking to block the federal refugee resettlement program. They lost the case last year and are now appealing.

**Proton therapy.** Former Gov. Bill Haslam last year vetoed legislation seeking to require the state employee health insurance program to cover hypofractionated proton therapy, an alternative cancer treatment. The bill had passed 82-13 in the House and 29-1 in the Senate, but Haslam said in his veto message that the bill circumvented the state's established process for deciding insurance coverage for state workers.

There's a new version of the bill on tap this year, sponsored by Sen. Becky Duncan Massey (R-Knoxville) and freshman Rep. Robin Smith (R-Hixson). The legislation would cover the therapy for state workers at no more than the cost of traditional radiation. Lee told reporters he's aware of the new effort and said he's working on learning "everything there is to know" about the issue before taking a position.

**Prisoner deaths.** Sen. Kerry Roberts (R-Springfield) filed legislation to require the state Department of Correction to report the death of any inmate to their state representative and senator within five days, down from the current 10-day limit.

**Scooter mania.** Dockless electric scooters have taken some areas of the state by storm. That doesn't mean everyone is happy about them being ridden and parked on city sidewalks. Senate Education Chairwoman Dolores Gresham (R-Somerville) has filed a bill to require school boards to provide instruction about scooter safety if they are used nearby.

**Small beer.** Brewers making less than 50,000 gallons (or about 1,600 barrels) of beer per year could distribute their own products within a 100-mile radius under legislation introduced by Sen. Jon Lundberg (R-Bristol), who says the bill is aimed at bringing craft brewers into parity with state wineries.

Craft brewers are already allowed to distribute up to 25,000 barrels of their products through their on-site taprooms and to retailers within their home counties. When they sell their products at the brewery, they avoid having to pay the \$35.60-per-barrel wholesale tax (the equivalent of \$2.58 per case) that is otherwise directed back to the city or county where the beer is sold.

**Judicial redistricting.** Lundberg is also taking another run at judicial redistricting, an effort the House killed in 2013 despite — or perhaps because of — the support of then-Senate Speaker Ron Ramsey. The legal establishment was wary about the earlier bid to overhaul judicial districts for the first time since 1984.

But after various concessions, Lundberg (then a member of the House) and Ramsey were able to secure endorsements from the Tennessee Judicial Council, Trial Judges Association, and Bar Association, though elected prosecutors and public defenders were opposed.

The plan would have combined two districts in northwestern Tennessee and added Cannon, Warren, and Van Buren counties to the tiny standalone district currently made up of just Coffee County. Fast-growing Rutherford and Williamson would have become their own single-county districts under that plan. Ramsey and Lundberg had originally hoped to give all 12 counties with populations of more than 100,000 their own judicial districts, but eventually backed off over concerns about the ripple effect of wholesale changes.

The House ultimately voted 66-28 against the 2013 judicial redistricting plan in a heated floor session. Those opposing the plan included 39 Republicans, all 26 Democrats, and one independent.

The Advisory Task Force on Composition of Judicial Districts was created last year, and Senate Speaker Randy McNally (R-Oak Ridge) and then-House Speaker Beth Harwell (R-Nashville) appointed its 11 members. The panel is chaired by Chancellor Telford E. Forgety of Dandridge, and its members include District Attorney General Russell Johnson of Loudon, a former Republican lawmaker; Shelby County Chancellor Jim Kyle, a former Democratic state senator; and fellow Memphian John Ryder, a prominent Republican lawyer.

Lundberg's legislation would require the judiciary committees of the House and Senate to hold at least one joint public hearing about proposed changes, and for the legislature to adopt or reject the plan before the end of the two-year session in 2020.

But even if lawmakers pass the bill, don't expect any action soon. The task force has four public meetings scheduled across the state starting in March and running through mid-June, meaning any recommendations won't likely be ready until the second session of the 111th General Assembly.

## Tennessee Notes & Quotes

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■ Former Gov. **Bill Haslam** was spotted in the U.S. Senate for meetings on Thursday. The Republican is in Washington as part of his fellowship at the Sine Institute of Policy & Politics at American University. Haslam has said he will make up his mind about a bid to succeed U.S. Sen. **Lamar Alexander** (R-Maryville) this spring.

■ “Memphis is to Nashville as Vietnam is to China.” — *FedEx Logistics CEO **Richard W. Smith** at a reception hosted by the Shelby County legislative delegation following **Bill Lee’s** inauguration as governor.*

■ The *Memphis Flyer’s* **Jackson Baker**, who was on hand for the event, noted it was a bit of an awkward analogy given that **Smith’s** father, FedEx founder **Fred Smith**, served in Vietnam as a Marine Corps officer. Presumably the younger **Smith** was referring to the more recent history of Vietnam’s rapid economic development in the shadow of its much larger neighbor (and certainly not to the longstanding suspicion and enmity between the two countries that endures to this day).

■ The FedEx board voted this week to change its retirement policy so **Fred Smith** can remain the company’s chairman and CEO beyond his 75th birthday this year.

■ “Supreme Court Rule 46 requires Century font, 14 point — applies to e-filed briefs, including footnotes. It’s cutting edge! Century 14 pt = Happy Judge.” — *State Supreme Court Justice **Sharon Lee** issuing a reminder on Twitter about formatting rules adopted by the state’s highest court last summer.*

■ This 10.3-pt text is printed in Georgia typeface. Hope we’re not making too many judges squint in anger.

■ Gov. **Bill Lee** has been invited by U.S. Rep. **Chuck Fleischmann** (R-Chattanooga) to be his guest at President **Donald Trump’s** State of the Union address. The speech scheduled for Wednesday had been put off because of the federal government shutdown.

■ “We’re going to run this like a benevolent dictatorship.” — *Chairman **Kevin Vaughan** (R-Collierville) at the first meeting of the new state House Facilities, Licensure & Regulations Subcommittee.*

■ House Speaker **Glen Casada** (R-Franklin) has named **Cade Cothren** as his chief of staff. **Scott Gilmer**, who held that position for former Speaker **Beth Harwell** (R-Nashville), will serve as director of operations. **Holt Whitt** is the director of legislation, and **Caroline Bonner** will be his deputy.

■ The release announcing the staff changes touts **Cothren**, 31, as being the “youngest person to serve in this role in modern history.” That may be true in the House, but those with longer memories will recall Senate Clerk **Russell Humphrey** was named chief of staff of the upper chamber by then-Speaker **John Wilder** (D-Mason) in 2002 — when Humphrey was 30.

■ “One time the GPS told me ... to go right down across the hay field and cross the river — where there’s no bridge — into Grainger County and get on Howell Road. So I’ve lost a lot of confidence in this stuff.” — *State Sen.*

***Frank Niceley** (R-Strawberry Plains) during a Senate Transportation Committee hearing.*

■ “Well, did you get your shoes wet walking out of the river?” — *TDOT Assistant Commissioner **Paul Deggs** in response to **Niceley’s** GPS misadventure.*

■ Shelby County Republican Party Chairman **Lee Mills** will not seek another term. The party suffered big losses in local elections in the state’s largest county last year amid a blue wave, which failed to materialize in other parts of the state. In one primary election curiosity, Shelby was one of just four counties carried by former U.S. Rep. **Diane Black** in her bid for the Republican gubernatorial nomination (albeit by just 55 votes over **Bill Lee**).

■ **Abbi Sigler**, communications director for Republican **Marsha Blackburn’s** successful U.S. Senate campaign against Democrat **Phil Bredesen** last year, has joined the Baker Group, the political and corporate consulting firm founded by **Ward Baker**.

■ **Annette McDermott**, a former **Bredesen** campaign staffer, has been named director of communications at Cooley Public Strategies, the public relations firm founded by **Dave Cooley**.

■ The Nashville Metro Council is scheduled to vote next week on whether to censure former Mayor **Megan Barry** more than a year after she stepped down in the wake of revelations she had an affair with her police bodyguard. A censure would be a largely symbolic gesture and carry no legal ramifications for Barry, whose political future remains a subject of great speculation.

■ “There’s absolutely no support for recreational use [of marijuana] in my district, which is a very rural East Tennessee and Upper Cumberland district, mind you.” — *State Sen. **Ken Yager** (R-Kingston).*

■ “I don’t know any pot smokers in Kingston.” — ***Yager**, when pressed whether opponents to legalization include current weed-consuming constituents.*

■ Reporter **Joey Garrison**, who has covered politics and government for the *The Tennessean* for six years (and for the defunct *City Paper* before that), has been hired as *USA Today’s* Boston correspondent.

■ “The trains have to run on time, as many subcommittees and full committees as we have right now in the House. I’m not the engineer of this train. That would be Speaker **Casada**. And I’m also not the conductor.” — *State Rep. **Andy Holt** (R-Dresden), the new chairman of the House Finance Subcommittee.*

■ **Holt** said he sees his role as a combination of brakeman and fireman (“the person on the train that supplies the fuel”), in which he can adjust the speed of committee proceedings as required. Regardless of the best analogy for his current role, at least Holt now sees himself as being on board the train.

■ In his previous incarnation as all-around provocateur and naysayer, **Holt** was more akin to cartoon villain **Dick Dastardly** — mostly getting run over by the train.