

# The Tennessee Journal

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## Eleventh-hour FedEx tax break soars out of committees

In the same week a bill to increase gasoline tax revenue was officially grounded, a surprise proposal to slash the aviation fuel tax burden of a major Tennessee employer achieved liftoff in the House and Senate transportation committees.

The measure in effect would reduce FedEx's fuel tax payments to the state, in phases, by at least \$20 million through the imposition of an annual cap per taxpayer. It does not come without controversy. Tennessee airports depend on the tax revenue to draw down federal funds for construction and maintenance projects.

The Haslam administration is backing the cap on grounds that the tax is out of line with those of other states and puts FedEx at a competitive disadvantage. Tennessee's levy generates about \$48 million. The closest to that among surrounding states is North Carolina's \$20 million, which at least doubles any of the others.

FedEx, which approached the administration about the issue several weeks ago, is in a position to save money by shifting operations to Indianapolis, where it maintains a national hub.

The timing of the tax break isn't ideal, as state officials are trying to wrap up negotiations with business interests on the Revenue Modernization Act, which is budgeted to raise \$17.2 million in 2015-16 and eventually \$45.5 million, according to still-evolving estimates. So far, though, the two issues haven't become entangled.

At least two legislators professed initial "shock" at the FedEx proposal, though after weighing the circumstances they voted in favor of it. Rep. David Alexander (R-Winchester), the only member of either committee to vote no, said he was unwilling to "turn tail and run because of these scare tactics."

The House and Senate committee action came only days after the plan was unveiled as an amendment to a broadly captioned bill that originally did nothing of significance. It phases in over three years an eventual \$10.5 million annual cap on what any company pays.

The state's 4.5% sales tax on aviation fuel hits Memphis-based FedEx to the tune of \$32 million to \$38 million a year, depending on oil price fluctuations. This

accounts for two-thirds of all collections. The second-largest payer, Southwest Airlines, contributes roughly \$6 million a year.

FedEx, which is awaiting European Union regulatory approval of a \$4.8 billion deal to buy the Dutch package delivery company TNT Express, employs more than 34,000 people in Tennessee. The company, founded in Little Rock, Ark., in 1971, moved its headquarters to Memphis two years later for better airport support.

The administration and state lawmakers have moved on the tax issue amid concern that otherwise FedEx would shift a substantial portion of operations from its global "super hub" in Memphis to Indiana, which imposes no aviation fuel tax. The company also has a facility in Greensboro, N.C., where the aviation fuel tax is capped at \$2.5 million a year on any single payer.

The bill sponsors, Rep. Mark White (R-Memphis) and Senate Majority Leader Mark Norris (R-Collierville), pointed out in meetings Tuesday and Wednesday that FedEx's main competitor, UPS, with a worldwide air hub in Louisville, Ky., pays only \$1 million a year in Kentucky aviation fuel taxes.

Norris told senators he had not heard FedEx give an ultimatum and that for nearly three decades the company, which he described as a "good corporate citizen," has been "proud to underwrite" the Transportation Equity Fund for the state's airports. But it's a public company, Norris said, and when a shareholder asks why it pays an aviation fuel tax many times greater than its competitor's, the answer isn't easy.

The bill would establish a cap of \$21.37 million in the 2015-16 fiscal year, then drop to \$17.75 million and \$14.12 million, respectively, in the following two years before hitting the final cap of \$10.5 million.

**Airport fund.** According to a memorandum issued by the legislature's Fiscal Review Committee, Tennessee ranks in the upper echelon of states in amount of state funding provided to airports. That's because of the fuel tax established in 1987 to fund the Transportation Equity Fund. Initially, the memo states, expenditures on airport projects from the fund may not change "notice-

ably” because of untapped balances. According to Norris, fund reserves exceed \$140 million, though much of that is for approved projects that have not yet drawn down their full allotments.

Money from the fund is split 50-50 between 65 general aviation airports and the state’s commercial, or air carrier, airports in Memphis, Jackson, Nashville, Chattanooga, Knoxville, and Tri-Cities.

Both the Tennessee Association of Air Carrier Airports, which noted that Memphis International holds a different view, and the Tennessee Aviation Association expressed concern about the tax cap. Rep. White and others argued that under the circumstances, the state will see its aviation fuel tax receipts drop whether the bill passes or not. The Senate Transportation Committee tacked on an amendment Wednesday creating a 15-member task force to study airport revenues and funding needs and report to the legislature by next February.

The legislation, which now goes to the House and Senate finance committees, caught the airport groups by surprise. It first popped up as an amendment in the House Transportation Subcommittee April 1. A day after the meeting, Transportation Commissioner John Schroer sent a letter to airport authorities alerting them to the measure. Schroer declared that the “current aviation tax structure could hinder us in the future as we continue to encourage companies to grow in our state.”

**Gasoline tax.** The state’s gasoline tax, at 21.4 cents per gallon, and diesel fuel tax, at 18.4 cents per gallon, have not been raised since 1989. In the meantime, with population and traffic increasing, highway funding needs have grown, but revenue from the per-gallon levy has suffered as gas mileage has improved. The problem is serious, and virtually everyone agrees action must be taken in the next year or two. Gov. Bill Haslam and other leaders have called for a “long-term solution” to the problem, whether that means restructuring or indexing the tax or something else. But with Insure Tennessee, education standards, and other major issues on his plate this year, Haslam chose not to push for it in 2015.

But some key lawmakers, with encouragement from the Tennessee Road Builders Association, toyed with the idea of advancing a bill in this session. A caption bill that would have accommodated the plan — which never quite materialized — was carried by House Finance Subcommittee Chairman Mike Harrison (R-Rogersville) and Senate Transportation Chairman Jim Tracy (R-Shelbyville). Harrison moved the bill to 2016 in his subcommittee Wednesday, then read a statement on the importance of addressing the issue as soon as possible. A plan likely will be taken up next year.

Besides the need for more state revenue, the Tennessee Department of Transportation has been dealing with year-to-year uncertainty about federal funding. The department, which operates on a pay-as-you-go basis, released its three-year highway program Thursday. Because federal funding is in doubt, the program includes only two new projects.

**Modernization.** The Revenue Modernization Act, which seeks, among other things, to broaden the appli-

cation of Tennessee taxes to companies with an “economic nexus” in the state and to capture sales of software and video used on Internet “clouds” without downloading, has drawn concern from trade groups ranging from the NFIB to the Motion Picture Association. Revenue Commissioner Richard Roberts met with a stream of business lobbyists Monday, and the state likely will come back with some sort of amendment next week to address as many concerns as it can.

An amendment was tacked on in the House Finance Committee and the Senate Tax Subcommittee last week that clarifies the intent of certain provisions, makes some technical changes, and delays the effective date for market-based sourcing from the original Jan. 1, 2016, to July 1, 2016. But the House Finance Committee did not vote on the bill itself, which is set for consideration Tuesday. The bill is not yet on notice in Senate Finance but will be presented next week.

**Coverage assessment.** The biggest pending tax measure is the 4.52% hospital “coverage assessment” on net revenues, which is renewed year by year. It pulls in \$450 million, which combined with \$825.5 million in matching federal funds produces a total of \$1.275 billion that ultimately goes into the TennCare program.

The bill will be on the House floor Monday and is on the Senate Finance calendar for the same day.

The Tennessee Hospital Association had agreed to restructure distributions from the Maintenance of Coverage Trust Fund, into which assessment proceeds flow, or increase the assessment itself to fund all eventual state costs under Insure Tennessee, Haslam’s proposed alternative to a straight Medicaid expansion under the Affordable Care Act. But the legislature did not approve the expansion plan.

A bill serving as the vehicle for a similar levy and trust fund established last year for nursing homes is scheduled next week in the House Finance Subcommittee and the Senate Finance Committee.

**HMO tax hike.** The House Finance Subcommittee approved Wednesday a bill increasing from 5.5% to 6% the tax on premiums collected by HMOs — for the most part, TennCare’s managed care organizations. The measure, which ultimately would increase federal matching funds for TennCare by \$17.4 million, is part of the administration’s legislation package. The bill is scheduled in both finance committees next week.

**Budget time.** Both the HMO tax increase, which hasn’t stirred controversy, and the modernization act, which has, are factored into the governor’s budget. The Senate Finance Appropriations Subcommittee is scheduled to meet Monday afternoon as lawmakers enter the home stretch of the legislative session, with the aim of moving the appropriations bill next week.

Although there has been some discussion of attempting to complete the session itself next week, it likely will not conclude until the week of April 20. The annual Tennessee Waltz fundraiser for the state museum, which takes place in the Capitol and requires time for decoration, is set for next weekend.

# Tennessee News Digest

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● Rutherford County's last Democratic elected officeholder, property assessor Rob Mitchell, formally switched parties Thursday, taking an oath of allegiance to the Republican Party in a ceremony held at the county Republican headquarters in Murfreesboro.

● Former longtime Memphis City Council member Jack Sammons was confirmed by the council Tuesday to serve as the city's chief administrative officer.

Sammons, drafted for the post by Mayor A C Wharton, was required by state law to resign as chairman of the Shelby County Airport Authority to accept it.

● Former Shelby County commissioner and state representative Henri Brooks was sentenced to two years' probation and 80 hours of public service by Criminal Court Judge Paula Skahan Thursday for falsifying her address on a petition to run for Juvenile Court clerk. The judge,

who said Brooks had given the wrong address in other elections as well, also ordered a mental health assessment. Brooks, 66, who was not fined, said she plans to appeal.

● Wisconsin Gov. Scott Walker, a likely presidential candidate in town for the NRA convention, met with Republican legislators at the state Capitol Thursday in an event arranged by Sen. Mark Green (R-Clarksville), a supporter.

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## ***Political roundup***

### **House shoots down Senate gun plan**

The House voted 72-14 Monday not to concur in a Senate amendment that would allow persons with gun-carry permits to go armed "on the grounds of the state capitol and the surrounding capitol complex." The bill now goes back to the Senate, which has yet to place it on the message calendar but is expected to refuse to recede from its action in order to set up a conference committee.

Lt. Gov. Ron Ramsey, while indicating he would not be disturbed if the amendment comes off, or if it stays on, told reporters this week he wants to use the conference to clarify a provision in the original bill.

Under current law, city and county governing bodies have the option to ban guns in local parks. The purpose of the bill was to repeal the option so that permit holders could worry less about where they may and may not take their guns. The effective date was to have been this week, prior to the arrival of more than 70,000 people in Nashville for the National Rifle Association national convention. But it got sidetracked last week when Sen. Jeff Yarbro (D-Nashville), attempting to illustrate hypocrisy, offered the Capitol grounds amendment.

Undaunted, the Senate adopted the amendment, alarming state security officials and creating potential for a veto by Gov. Bill Haslam.

In the meantime, considerable confusion and disagreement has arisen over whether guns could be carried in parks used by schools. House Republican Caucus Chairman Glen Casada (R-Thompson Station), a proponent of the bill, has argued that by law if a park is used by a school even once during the year, guns are banned year-round. This conflicts with a past attorney general's opinion. Ramsey wants the matter cleared up.

There is also some dispute about the meaning of Yarbro's amendment. Under one reading, it may not apply to the interior of the Capitol. Regardless, the language is likely to be taken out of the bill.

**Tuition.** A bill allowing undocumented students who graduate from Tennessee high schools to attend state colleges at in-state tuition rates, under specified conditions, cleared major committee hurdles in both houses Tuesday after the proposal was amended to apply only to those "lawfully present" in the United States under the federal Deferred Action for Childhood Arrivals (DACA) program.

The bill, sponsored by Sen. Todd Gardenhire (R-Chattanooga) and Rep. Mark White (R-Memphis), won approval in the House Education Administration Committee and the Senate Finance Committee. Its next stops are the Senate floor and the House Government Operations Committee.

**Little Hatch Act.** The Senate passed 27-6 Wednesday and sent to the governor a bill, sponsored by Sen. Joey Hensley (R-Hohenwald), prohibiting teachers from engaging in political campaign activities during school hours. The House passed the measure, sponsored by Casada, last week.

**State employees.** Administration bills ending longevity pay for new hires and curtailing some employee health insurance benefits for new hires cleared the House State Government Committee and the Senate State and Local Government Committee this week. Both measures, less controversial now that grandfather amendments have been added for current employees and retirees, will be in the finance committees next week.

**Medical marijuana.** The Senate and House health committees, as expected, deferred action Tuesday on the medical marijuana bill sponsored by Sen. Steve Dickerson (R-Nashville) and Rep. Ryan Williams (R-Cookeville) for a summer study.

**Revenue.** March revenue collections came in \$15.6 million below budget and were down 1.26% from the same month last year, Finance Commissioner Larry Martin reported today. Sales tax receipts, which came in \$32.5 million below estimates, accounted for the difference, which Martin blamed on February's severe ice storms. March collections reflect February sales. Franchise and excise tax collections exceeded the budgeted estimate of \$189.4 million by \$6.9 million.

**Teachers in office.** The House Local Government Committee deferred action for the year Tuesday on a bill that would prohibit any county government employee, including teachers and school administrators, from serving on county commissions. The panel is requesting that the Tennessee Advisory Commission on Intergovernmental Relations study the issue. The same day, the Senate State and Local Government Committee sent the measure to "general subcommittee."

The bill, which arose from a dispute in Sumner County, is sponsored by Rep. Courtney Rogers (R-Goodlettsville) and Sen. Mike Bell (R-Riceville).

## Tennessee Notes & Quotes

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■ The National Rifle Association is holding its national convention in Nashville this weekend, with 10 potential Republican presidential candidates as speakers. The Music City Center, the giant new convention center, is allowing delegates with permits to go armed. But the Bridgestone Arena across the street, where NRA concerts will take place, is maintaining its standard ban.

■ Gov. **Bill Haslam** apparently wasn't invited to give a welcoming speech to the NRA, but the snub or scheduling conflict or whatever it was likely will inflict no lasting psychological harm on the state's chief executive. U.S. Sen. **Bob Corker** (R-Chattanooga) was scheduled to address the convention today.

■ Senate Health, Education, Labor, and Pensions Committee Chairman **Lamar Alexander** (R-Maryville) and the committee's ranking Democrat, Sen. **Patty Murray** of Washington state, announced Tuesday an agreement on a bill to "fix" the No Child Left Behind law. The plan, which the committee will take up next week, would end the federal test-based accountability system, though states would still have to use the federally required tests in their own accountability systems. Another provision prohibits the federal government from mandating or offering incentives for states to adopt or maintain any particular set of standards, including Common Core.

■ A review process initiated by Gov. **Bill Haslam** has been collecting comments from citizens on Tennessee's standards, which will be reviewed by expert panels of Tennessee educators. A bill sponsored by Rep. **Billy Spivey** (R-Lewisburg) and Sen. **Mike Bell** (R-Riceville) will add one more layer to the process, with the speakers of the House and Senate and the governor appointing the members of yet another review committee. When it's all done, the sponsors say, whatever standards are presented to the state Board of Education will have a unique Tennessee stamp. And while it is unclear that they'll differ dramatically from Common Core, the process — and Sen. Alexander's initiative, if it prevails — may succeed in separating the standards from the Common Core stigma and **President Obama's** embrace. The bill has cleared Senate standing committees and is on the House Finance calendar for Tuesday.

■ "It shouldn't be put in the Blue Book with *Rocky Top*, salamanders, and tulip poplars. I'm sorry, it just shouldn't. It may pass, I don't know, but . . . I'm voting against it. I think it belittles the most holy book that's ever been written." — Lt. Gov. **Ron Ramsey**, on a bill approved in both Senate and House standing committees this week to make the Bible the official state book.

■ Senate Majority Leader **Mark Norris** (R-Collierville), who abstained in the Senate State and Local Government Committee vote on the Bible bill Tuesday, said a state attorney general's opinion has been requested on its constitutionality. In the House State Government Committee, Rep. **William Lamberth** (R-Portland) characterized the proposal as a way to recognize the "historical and foundational" importance of the Bible.

■ "It really puts me in a tough place, and I just want to say that to the sponsor." — Sen. **Mark Green** (R-Clarksville), who expressed concern the bill "may be demeaning" the Bible but ended up voting for it. Sen. **Steve Southerland** (R-Morristown) is the Senate sponsor. Rep. **Jerry Sexton** (R-Bean Station) introduced the bill in the House.

■ "Whenever the church has become part of the official government, it hasn't worked out well for the church." — Gov. **Bill Haslam**, on the Sexton-Southerland bill.

■ "A decade ago, he was mayor of Chattanooga, the nation's 136th-largest city . . ." — The Washington Post, in a story last weekend describing Senate Foreign Relations Committee Chairman **Bob Corker** as "an unlikely leader of the debate over the superpower framework for curtailing Iran's nuclear program."

■ After *The Tennessean* ran a column on its editorial page Tuesday criticizing Lt. Gov. **Ron Ramsey** and House Speaker **Beth Harwell** for not scheduling floor votes on the Insure Tennessee legislation, both speakers immediately offered public comments — in Harwell's case, an op-ed submitted to the newspaper — pointing out they have no such power. It sounded to us like they're kind of glad they don't.

■ Under certain conditions, with proper notice, either house can pull a bill out of committee directly to the floor. This takes 66 votes in the House, 17 in the Senate, but the maneuver almost never succeeds. That doesn't mean someone won't try it in the waning days of session.

■ Last week, when Speaker **Beth Harwell** and other House leaders made themselves available to Capitol Hill scribes, a running discussion, if not debate, on the gun-in-parks bill ensued, chiefly between GOP Caucus Chairman **Glen Casada** and seven of the reporters. It was fairly entertaining and at times a bit intense. Majority Leader **Gerald McCormick** at one point objected that "I feel like the Democrats are here." At least two political blogs posted transcripts, and we were surprised to discover that while video of some legislative meetings from that week still aren't available on the legislature's website, Harwell's event is on YouTube. She didn't put it there.

■ "I want to kind of walk Senator Kyle through what a vasectomy is. Having personal experience in that field, and also having one reversed, I want to promise you that when you start talking to a doctor about them whacking on you down there, you want to wait a while . . . They call you into the office, they meet with your spouse, they tell you about the consequences . . . and that you better go home and think about it." — Sen. **Todd Gardenhire** (R-Chattanooga), during the Senate Judiciary Committee's debate on informed consent and a 48-hour waiting period. A remark by Sen. **Sara Kyle** (D-Memphis) questioning why vasectomies shouldn't also be subject to a waiting period prompted the comment.

■ We were going to make a joke about this, but poor old **Gardenhire** has been whacked on enough this year.