

# PUBLICATION

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## A Preview of the 113th Tennessee General Assembly: Second Regular Session

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The second regular session of the 113th Tennessee General Assembly will convene on Tuesday, January 9 at 12:00 p.m. Central. As members return, details of the recently announced ten-year \$15 billion transportation project, as well as August's extraordinary or "special" session addressing public safety, will be fresh on their minds. Should historical trends hold, the upcoming election cycle this fall will accelerate an end to the session so that members may return home, raise funds, and switch campaigns into overdrive. Members could complete business and adjourn *sine die* as early as the end of April.

### Statewide School Choice

In November, Governor Lee unveiled the [Education Freedom Scholarship Act of 2024](#), his flagship legislative initiative for the upcoming session. The bill proposes a statewide school choice program available to all Tennessee families, prioritizing low-income students and those with disabilities.

Prior to the formal announcement, Democrats from both chambers held a press conference denouncing the plan. Later that day, many key Republican lawmakers joined Governor Lee at his announcement ceremony before a packed house, although some Republicans were quick to voice skepticism or note outstanding questions. Key components are still being ironed out, but it is expected that some version of the initiative will pass, mostly along party lines.

### State Budget Outlook

When Governor Lee issued the call for members to return this summer to discuss enumerated public safety issues, observers took note when respective Senate and House Finance, Ways and Means Committees heard testimony from the Department of Finance & Administration, home to the executive branch's budget center. Budget forecast: Cloudy.

The Department testified that revenue collections for the state's current fiscal year, 2023 – 2024, had taken a significant blow due to, among other things, the three-month grocery sales tax holiday signed into law in the previous session. Those initiatives, plus a general economic cooling off, as well as the end of federal dollars tied to various pandemic relief measures spell a reduction in growth of state revenue for fiscal year 2024 – 2025.

For those interested in exact figures, last year the State Funding Board projected General Fund growth of 7.20 percent to 7.70 percent for FY22 – 23, and only 1.25 percent to 2.25 percent for FY23 – 24. This year, the State Funding Board projected General Fund growth of -0.50 percent to 0 percent for FY23 – 24, and -0.50 percent to 0.50 percent for FY24 – 25.

Governor Lee's proposed budget will be released after session begins, and the projected cost of the Education Freedom Scholarship Act is unknown. However, administrative budget [hearings](#) held last fall provided insight into other anticipated budget highlights:

- Tennessee Investment in Student Achievement (TISA) increase of \$260 million

- TennCare medical utilization and inflation cost increase of \$69 million
- Medicare Part D pharmacy benefit increase of \$85 million
- Department of Human Services increase of \$16 million for maintenance of current information technology systems

Tennessee's "rainy day fund" total sits at \$2.05 billion, approximately 9 percent of general fund revenue.

### **Simplifying Franchise & Excises Taxes**

In effort to provide even greater tax relief to businesses that operate in the state, Governor Lee is set to release the details of proposed changes to the franchise and excise tax. The current tax calculation model was first established in the early 20th century and is based either on the net worth of the company or tangible property. The measure is spurred by a need to modernize the calculation method and ensure Tennessee remains competitive with other states during business recruitment negotiations.

### **Certificate of Need**

Certificate of need (CON) laws require health providers to prove that an area has sufficient need before they can provide proposed health care services. In 2021, after two years of heated stakeholder discussions, the General Assembly, led by Senator Shane Reeves (R-Murfreesboro), made numerous adjustments to the state's CON policies associated with opening, reopening, or expanding a hospital. Accompanying the legislation was an informal agreement placing a moratorium on substantive CON discussions for two years. That moratorium ends when the gavel falls in January.

### **Tennessee Nuclear Energy Advisory Council**

Last year Governor Lee included \$50 million in the state's budget to establish a nuclear energy supply chain investment fund administered by the Department of Economic and Community Development to recruit companies to aid in the development of a nuclear and manufacturing ecosystem for the future.

In May 2023, Governor Lee went on to issue [Executive Order 101](#) creating the Tennessee Nuclear Energy Advisory Council. The body is comprised of officials in the administration, the General Assembly, and various stakeholders who work in the nuclear energy space. The council is charged with preparing recommendations to propel Tennessee's ability to lead the nation in nuclear energy, including:

- Legislative, policy, and budgetary changes to address regulatory, workforce, or education barriers that exist to the creation and expansion of nuclear energy facilities in Tennessee;
- Funding opportunities for state government, local governments, and the private sector;
- Storage and waste practices that continue the state's long history of conserving Tennessee's natural resources; and
- Federal actions that Tennessee should pursue with federal partners and agencies.

### **Judicial Selection Committee**

[Executive Order 87](#) provided for the continuation of the Governor's Council for Judicial Appointments, which directly advises Governor Lee regarding Tennessee appellate court vacancies. The Council, chaired by Baker Donelson Shareholder Lang Wiseman, oversaw the high-profile dash to select a slate of three replacement options in the wake of Tennessee Supreme Court Justice Roger A. Page's [retirement](#) announcement. The Council nominated Court of Criminal Appeals Judges Ross Dyer and Camille McMullen, and Shelby County Circuit Judge Mary Wagner for consideration by Governor Lee. The Governor will choose a nominee from that list in the coming weeks, with the nomination subject to legislative confirmation.

### **TennCare Managed Care Organizations**

Tennessee's Medicaid program, known as TennCare, contracts with the three managed care organizations (MCOs) to provide care for approximately 1.7 million eligible participants. Current MCOs include BlueCross BlueShield, Wellpoint (formerly Amerigroup), and UnitedHealthcare. After a House and Senate dustup in the Joint Fiscal Review Committee last November, existing contracts were extended. The showdown was driven by potentially adding a fourth MCO, Centene, which bid, lost, and has since begun a series of challenges to the contract award process. With tensions high, it is likely that continued public discussion will occur, loom large, and be a source of strain between the legislative chambers.

### **Broadband Expansion**

In 2020, the General Assembly created the Emergency Broadband fund to rapidly accelerate broadband accessibility in the wake of COVID and the highlighted demand for connectivity. The proceeding years saw a deluge of federal dollars direct at the same issue. In March 2021, the American Rescue Plan ballooned the Tennessee Emergency Broadband Fund. In November of the same year, the Broadband Equity, Access, and Deployment Program (BEAD), a part of the Infrastructure Investment and Jobs Act (IIJA), put even more funds in the state's coffers.

In September 2022, the Tennessee Department of Economic and Community Development announced a massive a \$446 million grant program, but more is still to come. Tennessee was awarded \$813 million via the BEAD program, and those funds are specifically designed to address high-cost build outs in unserved areas by delivering fiber to the customer. How those resources will be divided amongst competing industry actors remains to be seen.

### **Crime Rates**

High crime rates have driven much of the political rhetoric in recent years. In 2022, the General Assembly passed "truth in sentencing" legislation, which mandated that those convicted of certain felonies serve the entirety of their sentence, eliminating eligibility for parole based on rehabilitative programming and good behavior credits.

Since its passage, many members remain displeased about the level of crime activity in more populous areas of the state. Several solutions have been proposed, but few have successfully navigated the legislature. It remains to be seen what measures will be proposed, funded, and passed this year.

### **Ongoing Litigation**

Every session inevitably involves a series of controversial bills, and the first regular session of the 113th General Assembly was no exception. Much has been written about legislation aimed at gender-affirming care, the Metropolitan Nashville Airport Authority board, Nashville raceway governance, etc., and the resulting legal challenges. Look for bills that might surface seeking to amend legislation to adapt to any flaws identified in adverse court rulings.

### **Looking Ahead: Campaign Season and Retirements**

Governor Lee was reelected to a second four-year term in November 2022, whereas the entire House of Representatives and a half the Senate (those in even numbered districts) stand for election every two years. While the qualifying deadline for the upcoming cycle is April 4 at 12:00 p.m. Central and the final withdrawal deadline is a week later, notable contests in both chambers are developing.

In recent years, redistricting has rendered most districts either heavily Republican or heavily Democrat, meaning that traditional wisdom has focused on battles in the respective party primaries as the place where most of the action might reasonably be anticipated. However, some believe this cycle could see some general election contests become a greater focal point. While primary and general election cycles sport robust early voting periods, primary election day is August 1, and the general election is set for November 5.

Notable announced retirements include Representative Curtis Johnson (R-Clarksville, District 68), a member of the influential Business & Utilities Subcommittee and Ethics Committee, who announced his retirement late this Fall. Representative Sam Whitson (R-Franklin, District 65), a member of the House Finance, Ways and Means Committee, also announced that he will not seek reelection in 2024.

Baker Donelson's [State Public Policy and Government Relations](#) Team looks forward to working with clients during the second regular session of the 113th Tennessee General Assembly and will provide timely updates as developments occur. If you have questions about the legislative session or need additional information, please contact [Jacob D. Baggett](#).