

# PUBLICATION

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## The 113th Tennessee General Assembly Adjourns *Sine Die* – Highlighted Overview

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The 113th Tennessee General Assembly adjourned *sine die* on April 25, 2024. The session was dominated by debate over the size and scope of the \$1.6 billion legislative fix to the state franchise tax that naturally dashed plans for other budget initiatives, but below is a summary of how various major items played out this year:

### Franchise and Excise Tax

On January 4, 2024, Tennessee Governor Bill Lee announced plans to amend the Tennessee franchise tax to simplify the calculation of the franchise tax to, in effect, give tax relief to businesses that are invested in the state. The relief, i.e., elimination of the alternative tax measure, comes with a substantial price tag: a \$400 million hit to annual recurring revenues and a nearly \$1.6 billion pool for potential one-time refunds.

After months of intense negotiations between a host of stakeholders, the House and Senate hotly debated the issue and resorted to a joint conference committee to bridge the divide. On the final day of session, legislators produced a joint conference committee report that detailed the final contours of the tax plan – i.e., a three-year lookback refund period, a waiver of the right to file suit upon acceptance of the refund, and a transparency provision that will require publication of the names of the relevant companies receiving a refund along with a range of the amount of refund received.

### Certificate of Need Amendments

In 2021, the political discussion concerning "The Health Services and Planning Act" a.k.a. "CON reform" was so fierce that legislative officials in Tennessee placed an informal "moratorium" on the topic of further changes – agreeing not to return to the matter for two years.

In the late summer of 2023, as the moratorium expired, whispers around the Capitol suggested that members of the General Assembly seemed intent on a large-scale repeal. A rift developed over the timing of repeal, though, discussions with various stakeholders further convinced members that a more surgical approach was preferred. Many also voiced concerns about whether the newly independent Health Facilities Commission (HFC), which oversees the CON program, would require time to effectively adapt from a CON approach to a mere licensure environment, leading to a staggered approach for certain facilities to be removed from the CON process over time. Numerous bills and amendments were filed during the committee process, which ultimately resulted in the following changes to the CON landscape.

While the existing CON appeal provisions are restated, the bill limits the ability to appeal to unsuccessful applicants, meaning opposing parties will no longer have the right to appeal – which is a substantial change to current law. The bill continues the requirement under current law that the losing party in an appeal is liable for costs, including the other side's attorney's fees.

Effective July 1, 2025, this bill eliminates CON for many facilities and services in counties without a hospital. However, CON would remain applicable in such counties for rehabilitation facilities, home care organizations, hospices, opiate addiction treatment facilities, nursing homes, and organ transplant organizations. A

freestanding emergency department (FSED) in those counties must be within ten miles of a host hospital but more than ten miles from a different host hospital or FSED.

For facilities and services requiring both CON and a license, the bill also adds a provision that such facilities or services can begin on the date a CON is obtained or a license is issued, whichever comes first.

Effective December 1, 2025, the language would also remove the following from CON:

- intellectual disability institutional housing facilities;
- burn units;
- Neonatal Intensive Care Units (licensing necessary);
- Magnetic resonance imaging for counties under 175,000 (licensing necessary); and
- Positron emission tomography for counties under 175,000 (licensing necessary).

Effective December 1, 2027, this amendment would remove from CON:

- Ambulatory Surgical Treatment Centers (charity care requirements included);
- Linear accelerator services; and
- Long term acute care hospitals.

Effective December 1, 2029, this amendment would remove from CON:

- open heart (licensing necessary).

Finally, an annual study on the impact of CON will be conducted from December 31, 2026, to the same date in 2030.

### **Cybersecurity Liability**

On the heels of several highly publicized cyberattacks, health care facility representatives were motivated to address the aftereffects. Senator Shane Reeves (R- Murfreesboro) and Rep. Bryan Terry (R-Murfreesboro) filed [SB2018/HB2434](#) to relieve private entities from liability in a class action resulting from a cybersecurity event so long as the cybersecurity event was not caused by willful, wanton, or gross negligence. The bill was later [amended](#) to expand the same level of liability protection to governmental entities.

### **"Wiretapping" and Business Websites**

Tennessee's 1994 wiretapping criminalized the "interception" of oral, wire, or other electronic communications and created a private right of action, with penalties of up to \$10,000 per violation. Companies recently found themselves being subjected to creative legal claims asserting that common third-party website technology, such as cookies or pixels (which are industry norms used to track web traffic and enhance user experience), somehow constituted an illegal "interception." This bill, [SB2221/HB1658](#), clarifies that the wiretapping statute was not designed to apply to common website technology and removes the statute's civil penalties, thus eliminating the threat of costly lawsuits for simply operating a standard website.

### **Anti-Foreign Influence**

Several bills were filed aimed at curbing what some members perceived as foreign influence in the areas of manufacturing, agriculture, real property, and higher education.

[SB2639/HB2553](#)

The bill prohibits a prohibited foreign party, as defined, or prohibited foreign-party-controlled business from acquiring any interest in agricultural land in Tennessee, regardless of whether it intends to use such land for nonfarming purposes. It also requires that any such party must divest itself of any agricultural land within two years of the date the entity is found to be in violation. Exceptions include prohibited foreign parties that are registered and in good standing with the Secretary of State and are not implicated by certain federal laws. While the bill imposed no significant cost on the state, it received extra scrutiny from the finance committees due to potential indirect **fiscal impacts** that could not be reasonably determined. The legislation ultimately passed both houses by a wide margin.

#### **SB2426/HB1843**

This bill was titled "The Allied Investments in Tennessee Act." It sought to prohibit the application of tax credits and other economic or financial incentives for companies domiciled within countries of concern. "Country of concern" meant the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, the Syrian Arab Republic, or any other nation-state categorized as a country of concern by the governor in consultation with the United States Department of State. It also authorized a person or entity to report, based upon a reasonable belief, a suspected violation of this bill to the Department of Economic and Community Development. After surviving votes in substantive committees, the bill failed to progress for lack of state funding.

#### **SB2863/HB2889**

Under this bill, "agents of a foreign principal" of countries of concern would be required to register with the state, and it requires the filing of a comprehensive statement of the registrant's business. Agency, as defined, encompassed many professionals. Punishment for some violations includes a fine of not more than \$100,000 and imprisonment for not more than five years. This measure also fell short after funding failed to materialize.

#### **The Budget**

Highlights of the \$52.8 billion budget (\$25.6 billion in state funds) include:

- \$393 million recurring franchise tax cut;
- \$1.55 billion for potential franchise tax refunds and subsequent refunds;
- Rainy Day Fund deposit of \$100 million (\$2.15 billion total by the end of this fiscal year);
- \$163 million in TennCare III waiver shared savings to be used for \$80 million in rural health spending, \$50 million for health care resiliency, and \$25 million for in-patient behavioral health;
- \$10 million for children's hospitals;
- \$110 million for TennCare buybacks (\$12 million in recurring state funding and \$98 million in nonrecurring from TennCare reserves);
- \$12 million to nursing homes from TennCare reserves for additional support;
- \$144 million for 20,000 freedom scholarships;
- \$261 million for Tennessee Investment in Student Achievement;
- \$59 million for state park capital projects;
- \$32 million for direct service providers;
- \$17.4 million for sixty new Tennessee Highway Patrol trooper and support staff positions;
- \$8.5 million for court-appointed representative rate increases; and
- \$3 million in additional funding for pregnancy crisis centers.

#### **Broadband Access**

In 2020, the General Assembly created the Emergency Broadband Fund to rapidly accelerate broadband accessibility in the wake of COVID-19 and the heightened demand for connectivity. The proceeding years saw a deluge of federal dollars directed 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 \$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, but [one transparency effort](#), SB2907 by Senator Paul Bailey (R-Sparta) and HB2910 by Rep. Rebecca Alexander (R-Jonesborough) would have required all recipients of state or federal broadband internet access grants to report a list of locations for which the recipient received funding to expand broadband access that remain unserved. The bill was later amended in the House and eventually sent to "summer study." It is unclear whether the study will take place.

## Cannabis and Hemp Products

Last year Senator Richard Briggs (R-Knoxville) and Rep. William Lamberth (R-Portland) sponsored [SB378/HB403](#) and took a major step toward regulating the hemp-derived cannabinoid market by instituting basic consumer protections, a licensing structure for market actors, and a privilege tax built to offset enforcement cost. Product testing regulations, authored but not yet in effect, have been the source of considerable legal struggle and publicity.

It is clear that hemp-derived cannabinoid products are gaining in popularity. Many companies are now infusing drinks with cannabinoids and bringing them to market. Conventional alcohol retailers were quick this year to ensure that such beverages could be sold in their stores. Senator Ed Jackson (R-Jackson) and Rep. Michele Carringer (R-Knoxville) authored [SB2427/HB2607](#) to make the clarification.

## Statewide School Choice

In November 2023, Governor Lee unveiled his flagship legislative initiative, the [Education Freedom Scholarship Act of 2024](#), with plans to establish a statewide school choice program available to all Tennessee families, prioritizing low-income students and those with disabilities. Always a delicate subject, the administration was aware the road to passage would be a tough one.

Almost as soon as placeholder bills were filed, the House and Senate announced widely divergent policy goals. The Senate version would have allowed public school students to enroll in any district, zoning notwithstanding. The House version included, among other things, an increased state contribution toward health insurance costs for teachers, building cost assistance, and fewer tests for high-performing teachers. Issues caused by the different policy aims were compounded by different price tags. In the waning days of session, the Senate and House were unable to reach a compromise, and the bill stalled. Governor Lee acknowledged that further work on his signature initiative would have to wait until next year, although he was successful in having the legislature pave the way for future discussion, and the legislature reserved potential funding for a future measure.

## Retirements and Campaign Season

Retirement announcements are commonplace near the conclusion of session, and this year was no different. One state senator announced their retirement and a House member has announced his intention to give up his current seat to run for that upcoming senate vacancy. Six additional house members also announced their retirement.

On April 4, the candidate petition filing deadline passed, and the [final list](#) of potential candidates firmed up, except that two Senate candidates and nine House candidates were later removed from the ballot after [failing to meet](#) the state Republican party's *bona fide* standards.

For the most part in Tennessee, the winner of the Republican primary in a state legislative contest is all but assured to win in the general election. As a result, most of the campaign action is focused on open seat races, or primary contests involving incumbents facing challenges from the right. That trend is holding true this year, with those sorts of challenges seemingly becoming more prevalent and significantly better organized. Primary elections will be held on August 1, and the general election on November 5, 2024. Other key election cycle dates may be found [here](#).

## **Conclusion**

Baker Donelson's State Public Policy and Government Relations Team looks forward to working with clients to prepare for this year's election cycle, advancing administrative matters, and crafting legislative efforts in anticipation of the 114th General Assembly convening in January 2025. If you have questions about the concluded legislative session or need additional information, please contact [Jacob Baggett](#).