

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2389 – SB 2357

June 17, 2009

**SUMMARY OF AMENDMENT (010240):** Changes the definition of “available suitable accommodations” or “suitable available accommodations” to mean a state owned or operated hospital or treatment resource has the capacity, as reasonably determined by the Commissioner of Mental Health and Developmental Disabilities, and the medical capability, equipment and staffing to provide appropriate level of care, treatment and physical security to an individual in an unoccupied and unassigned bed. In instances where an individual is not admitted or transferred to a state owned or operated hospital or treatment resource due to the facility not having suitable available accommodations, the Commissioner is required to expeditiously find a state-owned or operated hospital or treatment resource to accommodate the person upon the availability of suitable available accommodations. Grants the court authority to order the defendant in a capital case post-conviction proceeding to be evaluated for a mental condition on an outpatient basis if no prior evaluation has been conducted. If the outpatient evaluator concludes that an inpatient evaluation is necessary, the court may order the defendant to be hospitalized for not more than 30 days.

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue - \$136,606,900  
Increase State Expenditures - \$29,863,400/FY09-10  
  \$35,911,600/FY10-11  
  \$41,959,900/FY11-12 and Subsequent Years

Increase Federal Expenditures - \$90,021,900/FY09-10  
  \$83,973,700/FY10-11  
  \$77,925,500/FY11-12 and Subsequent Years

Funding for this bill in the amount of \$41,662,500 in state funds and \$78,222,800 in federal funds is included in the Governor’s proposed FY09-10 budget.

Revenue recognition of \$139,300,000 is included in the Governor’s proposed FY09-10 budget.

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**FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Increase State Revenue –**

**\$136,606,900/Recurring/General Fund  
\$6,000,000/FY09-10 through FY11-12/General Fund  
\$937,500/FY10-11 through FY13-14/General Fund  
\$4,700,000/FY09-10 through FY10-11/Education Fund  
\$1,896,900/FY09-10/TRA/Dedicated Funds  
\$1,632,800/FY10-11/TRA/Dedicated Funds  
\$1,384,700/FY11-12/TRA/Dedicated Funds  
\$1,151,700/FY12-13/TRA/Dedicated Funds**

**Decrease State Revenue –**

**\$6,000,000/FY09-10 through FY11-12/Dedicated Funds  
\$4,700,000/FY09-10 through FY10-11/Cigarette Tax Earmark**

**Increase State Expenditures - \$29,863,400/FY09-10/General Fund  
\$35,911,600/FY10-11/General Fund  
\$41,959,900/FY11-12 and Subsequent Years/General Fund  
\$937,500/FY10-11 through FY13-14/  
Heritage Conservation Trust Fund**

**Decrease State Expenditures - \$18,977,900/Recurring/General Fund  
\$3,033,000/FY09-10 through FY10-11/General Fund**

**State Expenditures - Cost Avoidance - \$2,779,700/FY09-10/General Fund  
\$496,500/FY09-10/Dedicated Fund**

**Increase Local Expenditures – Exceeds \$3,767,100\*  
\$3,033,000/FY09-10 through FY10-11**

**Increase Federal Expenditures – Net Impact - \$89,960,900/FY09-10  
\$83,912,700/FY10-11  
\$77,864,500/FY11-12 and Subsequent Years**

**Other Fiscal Impact – The proposed legislation authorizes the transfer of approximately \$352,056,900 in reserves from funds enumerated in Tenn. Code Ann. § 4-3-1016 and the Department of Correction Confiscated Cash Fund, the Department of Economic and Community Development Bio-fuels Manufacturers Incentive Fund, the Department of Health Diabetes Prevention Fund and Health Improvement Account, and the Department of Environment and Conservation Natural Resources Trust Fund.**

**Potential Impact on Health Insurance Premiums (required by Tenn. Code Ann. § 3-2-111): Such legislation would result in an increase in the cost of health insurance premiums for plans to shift a portion of the proposed**

**tax increase to enrollees. The exact amount cannot be determined, but it is estimated to exceed \$1,000,000.**

Assumptions applied to amendment:

- The proposed increase in fees collected for the Environmental Protection Fund and the modification of the baseline ratio between the General Fund and the Environmental Protection Fund will result in a decrease in General Fund expenditures of \$2,694,700 and an increase in Dedicated Fund expenditures of \$2,694,700.
- There will be \$2,600,000 reallocated to the General Fund from the Environmental Protection Fund for FY09-10 through FY11-12 from solid waste assistance fees.
- There will be \$400,000 reallocated to the General Fund from the Environmental Protection Fund for FY09-10 through FY11-12 from used oil collection fees.
- According to the Department of Environment and Conservation, federal rules were changed in December 2008 that redefined some of the items that are currently defined as hazardous waste as hazardous secondary material. Defining hazardous secondary material and granting the Solid Waste Disposal Control Board authority to assess fees on the material will allow the State to continue to collect fees on material that it is currently collecting fees on. There will not be an increase in revenue collections due to this additional authority granted to the Board.
- There will be \$3,000,000 reallocated to the General Fund from the Environmental Protection Fund for FY09-10 through FY11-12 from underground storage tank fees.
- There will be \$4,700,000 reallocated to the Education Fund from the Agricultural Enhancement Program for FY09-10 through FY10-11 from the cigarette tax earmark.
- The Department of Commerce and Insurance is responsible for collecting the current two percent tax imposed on HMOs.
- According to the Department, \$11,124,134.15 was collected in calendar year 2007 and \$7,986,223.68 was collected in calendar year 2008 from commercial HMOs. This estimate is based on an average of the collections from these two calendar years, or \$9,555,179.
- According to the Department, \$67,539,803 was collected from TennCare HMOs in FY07-08. The Bureau of TennCare has \$68,505,900 in both state and federal funds in the current FY08-09 budget to pay the two percent tax. This estimate is based on the current FY08-09 TennCare budget.
- The estimated current revenue collection for the two percent HMO tax is \$78,061,079 (\$9,555,179 + \$68,505,900).
- The estimated proposed revenue collection for a 5.5 percent HMO tax is \$214,667,967 [(\$78,061,079/.02) x .055].

- The estimated net increase in revenue is \$136,606,888 (\$214,667,967 - \$78,061,079).
- The Bureau of TennCare covers the tax paid by its contracted HMOs. The estimated proposed tax increase to 5.5 percent for TennCare HMOs is \$188,391,225  $[(\$68,505,900 / .02) \times .055]$ .
- The estimated increase in expenditures for TennCare to cover the increase in the HMO tax is \$119,885,325 (\$188,391,225 - \$68,505,900).
- For FY09-10 and six months of FY10-11, the Bureau of TennCare will receive an enhanced federal medical assistance percentage (FMAP) of 75.09 percent.
- Of the \$119,885,325 increase in TennCare expenditures in FY09-10, \$29,863,434 will be state funds at a rate of 24.91 percent and \$90,021,891 will be federal funds at a 75.09 percent match rate.
- Beginning in January 2011, the FMAP will return to a lower rate. Because the rate for FY10-11 will not be set until sometime in late 2009, this estimate is assuming that the rate will be close to the current FMAP. The projected FMAP for six months of FY10-11 and subsequent years is estimated at 65 percent.
- Of the \$119,885,325 increase in TennCare expenditures in FY10-11, one-half, or \$59,942,663, will be federally matched at the higher percentage rate resulting in \$14,931,717 in state funds at a rate of 24.91 percent and \$45,010,946 in federal funds at a 75.09 percent match rate. The remaining \$59,942,663 in FY10-11 will receive a lower federal match rate resulting in approximately \$20,979,932 in state funds at a rate of 35 percent and \$38,962,731 in federal funds at a rate of 65 percent.
- The total increase in FY10-11 is estimated to be \$35,911,649 in state funds and \$83,973,677 in federal funds.
- The \$119,885,325 increase for FY11-12 and subsequent years is estimated to be \$41,959,864 in state funds at a rate of 35 percent and \$77,925,461 in federal funds at a rate of 65 percent.
- According to the Department of Revenue, Tenn. Code Ann. § 67-4-2008 exempts insurance companies from Franchise and Excise taxes. Currently, there are no HMO entities active as Franchise and Excise taxpayers.
- Beginning in FY10-11, there will be a \$4,000,000 repayment to the General Fund over a period of four years in increments of \$937,500 from the annual timber lease revenue in the North Cumberland project.
- As of June 30, 2008 and closing, the reserve funds enumerated in Tenn. Code Ann. § 4-3-1016 totaled \$333,112,500. The proposed amendment extends the authority to transfer all of these reserves except for the Dairy Promotion Board (\$4,900), the Fraud and Economic Crime Fund (\$2,154,900), and the Indigent Defense Fund (\$952,700) resulting in \$330,000,000 available in the reserve funds enumerated in Tenn. Code Ann. § 4-3-1016 for transfer.

- Includes the reserves of the Department of Correction Confiscated Cash Fund (\$18,300), the Department of Economic and Community Development Bio-fuels Manufacturers Incentive Fund (\$173,900), the Department of Health Diabetes Prevention Fund and Health Improvement Account (\$12,483,300), and the Department of Environment and Conservation Natural Resources Trust Fund (\$9,381,400) to those that may be transferred. As of June 30, 2008 these funds totaled \$22,056,900
- Prohibits the transfer of funds from the Department of Transportation, the Department of Commerce and Insurance E-911 Emergency Communications Fund (\$3,000,000), the Board of Accountancy (\$100,000) and Regulatory Boards (\$4,000,000), or the Department of Health Health-Related Boards (\$1,000,000).
- As of June 30, 2008, the Tennessee Regulatory Authority (TRA) had reserves in the amount of \$140,100 and the Telecommunications Device Distribution had reserves in the amount of \$1,078,000 resulting in \$1,218,100 in TRA reserves authorized to close TRA books.
- The suspension of statutory salary increases will result in cost avoidance for FY09-10. The positions whose salary increase has been suspended include the Department of Safety Highway Patrol Troopers and Electronic Alarm Technicians (\$843,000), commissioned officers of the Law Enforcement Training Academy (\$6,100), Assistant District Attorneys General and Criminal Investigators (\$1,290,300), Assistant District Public Defenders and Investigators (\$616,400), Assistant Post-Conviction Defenders (\$23,900), and TWRA Wildlife officers, biologists, and unique positions (\$496,500). The total cost avoidance is estimated to be \$2,779,700 in the General Fund and \$496,500 in Dedicated Funds.
- The proposed bill as amended authorizes the state to recoup costs from counties that are over-committing children to state custody at a level that exceeds 300 percent of the state average. According to the Department of Children's Services, this will result in a decrease in state expenditures of \$3,033,014. Local governments will pay the state portion resulting in an increase in local expenditures of \$3,033,014. Federal funds will not be impacted. This provision is only effective for two years through June 30, 2011.
- The Select Committee on Children and Youth will study the commitment patterns of children entering state custody during the regularly scheduled meetings of the Committee. Any cost can be accommodated within existing resources without an increased appropriation or reduced reversion.
- According to the Department of Finance and Administration, the Department of Mental Health and Developmental Disabilities (DMHDD) will incur a decrease in expenditures of \$11,811,700 for applying the suitable available accommodations which includes limiting forensic

inpatient evaluation and treatment beds to 125 statewide (\$3,968,000), reducing the number of full-time positions at the Regional Mental Health Institutes by 213 (\$7,739,500) and eliminating the reimbursement for defendants held pending a hearing forensic commitment (\$104,200).

- The local sheriffs will be responsible for individuals who are not able to be admitted to state facilities due to there not being suitable available accommodations. The individual will remain in the custody of the sheriff until suitable accommodations at a state facility become available resulting in an increase in local expenditures estimated to exceed \$100,000.
- Once suitable and available accommodations are found at a state facility and the facility has been properly notified of the individual's arrival time for an evaluation, the sheriff or transportation agent will remain at the facility for at least one hour and 45 minutes for the evaluation to occur. If the evaluation has not occurred during that period of time, then the individual will be placed in the custody of the facility and is no longer the responsibility of the sheriff or transportation agent. Currently, the sheriff or transportation agent must remain at a facility for one hour and 45 minutes for an evaluation prior to releasing the individual into the custody of the facility. This will not result in additional state or local expenditures.
- According to the Department of Mental Health and Developmental Disabilities, the Department currently has the authority to hire temporary staff to meet the needs at each facility. The proposed amendment will not expand the Department's current authority to hire temporary staff. Any costs incurred to contract temporary staff will be covered using the funds currently budgeted for this purpose. DMHDD will not need any additional funds for the provisions of the bill as amended.
- The Department budgeted \$8,090,000 for this purpose in FY08-09. DMHDD's FY09-10 proposed budget includes \$4,129,200 for this purpose.
- According to the Department of Finance and Administration, DMHDD will incur a decrease in expenditures of \$3,667,100 which includes misdemeanor forensic evaluations (\$611,400) and billing the counties for outpatient and inpatient mental health evaluations of misdemeanants (\$3,055,700). Local government will be billed for these services resulting in an increase in local expenditures of \$3,667,100.
- According to the Department of Finance and Administration, DMHDD will incur a decrease in expenditures of \$749,000 for all post-adjudication not guilty by reason of insanity evaluations to be conducted on an outpatient basis instead of an inpatient basis.
- According to the Department of Finance and Administration, the designation of the executive director of the Tennessee Higher Education Commission as the executive director of the Tennessee Student

Assistance Corporation will result in a decrease in expenditures of \$177,300, of which \$55,400 is state funds, \$61,000 is federal funds, and \$60,900 is other funds.

- TRA's implementation of a general policy that ensures that utility financial incentives are aligned with helping customers of each electric and gas utility to use energy more efficiently and to provide timely cost recovery and earnings opportunities for utilities associated with cost-effective measureable and verifiable efficiency savings will enhance the state's ability to qualify for federal energy efficiency grants.
- According to the TRA, the inspection fee revenue collected on the intrastate gross receipts from services provided by public utility and telecommunication public utility has been declining as a result of declining gross receipts. While there will be an increase in revenue as a result of the proposed fee increase, the increase in revenue will decline over the next few years. TRA estimates that there will be increases in revenue of \$1,896,900 in FY09-10, \$1,632,800 in FY10-11, \$1,384,700 in FY11-12, and \$1,151,700 in FY12-13.
- Pursuant to Tenn. Code Ann. § 65-4-101, municipalities and utility districts are not considered a regulated public utility and will not be impacted by the proposed fee increase.
- Expanding the definition of "uncompensated care" to include the difference in the actual costs incurred through trauma services and the amount reimbursed to a center for providing services to a TennCare enrollee provides the state with an opportunity to seek federal matching funds for the Trauma Center Fund Grants which are awarded to eligible trauma centers to assist in funding uncompensated care.
- Approval by the Centers for Medicare and Medicaid Services (CMS) will take at least six months and will be difficult to receive. At the time of approval, CMS will determine whether the state can receive the enhanced FMAP or if it will receive the standard FMAP.
- Due to the uncertainty of receiving approval by CMS for these federal matching funds and the time frame in which the funds would be received, no federal funds are included in this estimate for the Trauma Center Fund Grant program. Any funds that are received will be dedicated to this fund and will most likely be received in FY10-11.
- DMHDD will not incur a significant increase in expenditures to report the implementation and impact of the available suitable accommodations provisions to the General Assembly on a quarterly basis.
- Requiring DMHDD to phase in the proposed reductions in bed capacity at state owned or operated hospitals or treatment resources as included in the FY09-10 budget will not change the proposed expenditure reductions.
- According to TSAC, any cost associated with providing necessary notification will not result in a significant increase in expenditures and

can be accommodated within existing resources without an increased appropriation or reduced reversion.

- The provisions of the proposed amendment will not result in significant changes to the proposed budget reductions associated with the Commissioner's authority to determine suitable available accommodations at state owned and operated hospitals or treatment resources. The Department will not be required to admit an individual into a state owned or operated facility until suitable available accommodations at such a facility have been reasonably determined to be available.
- Pursuant to Tennessee Supreme Court Rule 13, the Administrative Office of the Courts (AOC) currently compensates mental health experts at the rates and caps specified by Rule 13 for evaluations for capital post-conviction petitioners.
- It is assumed that the proposed bill as amended will codify the current practice of the AOC. No fiscal impact on state government.
- The provisions of the bill limit mental health evaluations for capital post-conviction petitioners only in cases in which there has not been a previous mental health evaluation. This limitation is not included in Tennessee Supreme Court Rule 13.
- If the proposed bill as amended limits the amount of mental health evaluations for capital post-conviction petitioners, there could be a decrease in expenditures. The amount of decrease is unknown.

### **CERTIFICATION:**

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "James W. White". The signature is fluid and cursive, with the first name "James" and last name "White" clearly legible.

James W. White, Executive Director

/kml