

STATE OF TENNESSEE
PUBLIC CHAPTER NO. 531
SENATE BILL NO. 2357

By Kyle

Substituted for: House Bill No. 2389

By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 2; Title 3; Title 4; Title 5; Title 6; Title 7; Title 8; Title 9; Title 11; Title 12; Title 13; Title 16; Title 33; Title 36; Title 37; Title 38; Title 39; Title 40; Title 41; Title 42; Title 43; Title 44; Title 45; Title 47; Title 48; Title 49; Title 50; Title 51; Title 54; Title 55; Title 56; Title 57; Title 58; Title 59; Title 60; Title 61; Title 62; Title 63; Title 65; Title 66; Title 67; Title 68; Title 70 and Title 71; relative to the operation and funding of state government and to fund the state budget for the fiscal years beginning on July 1, 2008 and July 1, 2009.

WHEREAS, in accordance with Article II, Section 24, of the Constitution of the State of Tennessee, expenditures of the state shall not exceed revenue and reserves for a fiscal year; and

WHEREAS, from time to time it becomes necessary that certain changes in the general law must be made to ensure the proper and constitutional management and stewardship of the State of Tennessee; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-203-101, is amended by adding the following as subdivision (b)(1)(N):

(N) Section 11-1-101 relative to those fees charged by the commissioner other than ones related to parks;

SECTION 2. Tennessee Code Annotated, Section 68-203-103(h), is amended by deleting subdivisions (1) and (2) and substituting instead:

(1) Filing/processing fee for state water quality permit: five thousand dollars (\$5,000);

(2) Annual maintenance fee for NPDES permit or state water quality permit: fifteen thousand dollars (\$15,000);

SECTION 3. Tennessee Code Annotated, Section 68-203-104, is amended by deleting subdivision (a)(3) in its entirety and substituting instead the following:

(3) After July 1, 2012, authorities responsible for setting fees shall not increase fees in any year general state revenues appropriated to the program have decreased from the previous year.

SECTION 4. Tennessee Code Annotated, Section 68-203-104, is further amended by deleting subsection (d) in its entirety and substituting instead the following:

(d) For each division of the department that administers one or more of the statutes listed in § 68-203-101(b), no promulgating authority shall establish a fee schedule that results in a ratio between state appropriations and environmental protection fees, exclusive of penalties and damages, in which the environmental protection fees constitute a higher percentage of the total funds expended by the division than the following ratios, which represents an approximation of the time spent by the divisions in activity that protects the public and the environment generally to that spent addressing a particular entity such as in technical assistance, permitting, inspection or enforcement:

(1) For the divisions of air pollution control, radiological health, solid waste management, and water supply: the percentage of environmental protection fees shall not constitute a higher percentage of the total of fees and appropriations than they did in the fiscal year 1994-1995;

(2) For the division of ground water protection: environmental protection fees, 71%, state appropriations, 29%; and

(3) For the division of water pollution control: environmental protection fees, 50%, state appropriations, 50%.

SECTION 5. Tennessee Code Annotated, Section 68-211-835, is amended by deleting subdivision (d)(2) and substituting instead:

(d)(2) The operator of the municipal solid waste disposal facility or incinerator shall collect this surcharge and remit it to the state treasury, except that the operator shall be allowed a deduction of the surcharge due, reported, and paid to the department in the amount of one percent (1%) of the amount due on the report. No deduction from the fee shall be allowed if the report or payment of the surcharge is delinquent. Of the funds received from this surcharge, for a period of three years starting July 1, 2009, the state shall credit an amount not to exceed two million six hundred thousand dollars (\$2,600,000) to the general fund annually, if the annual appropriations act so provides, and the remainder shall be credited to the solid waste management fund. On July 1, 2012 and thereafter, all of the funds received from this surcharge shall be credited to the solid waste management fund.

SECTION 6. Tennessee Code Annotated, Section 68-211-1006, is amended by deleting subsection (c) in its entirety and substituting instead the following:

(c) The fee established in this part shall be collected by the Department of Revenue and deposited to the used oil collection fund. Of the funds received

from this fee, for a period of three years starting July 1, 2009, the state shall credit an amount not to exceed four hundred thousand dollars (\$400,000) to the general fund annually, if the annual appropriations act so provides, and the remainder shall be credited to the used oil collection fund. On July 1, 2012 and thereafter, all of the funds received from this fee shall be credited to the used oil collection fund.

SECTION 7. Tennessee Code Annotated, Section 68-212-104, is amended by adding the following language as a new definition and redesignating the remaining subsections accordingly:

"Hazardous secondary material" means a secondary material (e.g., spent material, by-product, or sludge) that when discarded would be identified as hazardous waste under the rules promulgated pursuant to this part.

SECTION 8. Tennessee Code Annotated, Section 68-212-110, is amended by deleting the language in subsection (a) prior to the colon (:) and substituting instead:

(a) The board shall establish a schedule of fees for hazardous waste generators, hazardous waste transporters, operators of hazardous waste transfer facilities; applicants and holders of permits for the storage, reclamation, treatment, or disposal of hazardous waste; and for the generation, storage, transportation, reclamation or treatment of those hazardous secondary materials that, if discarded, would be identified as spent materials, listed by-products, or listed sludges. The board shall not establish fees for those hazardous secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance. To establish an incentive to minimize risk to public health and the environment, the board shall consider the following factors in establishing the fees

SECTION 9. Tennessee Code Annotated, Section 68-215-110, is amended by deleting subdivision (h)(3)(A)(ii) and substituting instead:

(ii) Second, for a period of three years starting July 1, 2009, the state shall credit an amount not to exceed three million dollars (\$3,000,000) to the general fund annually, if the annual appropriations act so provides, and the remainder shall be credited to the petroleum underground storage tank fund. On July 1, 2012 and thereafter, all of the funds received from this fee shall be credited to the petroleum underground storage tank fund.

SECTION 10. Because of the need for revenue in the entire fiscal year starting July 1, 2009, due to current economic conditions, rules promulgated in the current fiscal year using the authority granted by Section 3 or Section 4 of this act shall be effective by July 1, 2009, or, if that date has already passed before this bill becomes law, then as close to that date as possible.

SECTION 11. Tennessee Code Annotated, Section 67-4-1025(d), is amended by deleting the period at the end of the sentence and substituting instead the following:

; provided, however, that in the fiscal years beginning July 1, 2009, and July 1, 2010, the amount of sixteen million three hundred thousand dollars (\$16,300,000) or a larger amount not exceeding twenty-one million dollars (\$21,000,000) annually shall be allocated to the Tennessee agriculture enhancement program, such amount to be specified in the annual appropriations act.

SECTION 12. Tennessee Code Annotated, Section 56-32-124(a), is amended by deleting the words and figure "two percent (2%)" and substituting instead the words and figure "five and one-half percent (5.5%)".

SECTION 13. Tennessee Code Annotated, Section 11-7-103, is amended by adding the following language as a new subsection (h):

(h) The provisions of this subsection are contingent upon a four-million-dollar (\$4,000,000) appropriation being made to the trust fund in the 2009 General Appropriations Act. Provisions of this section and of other law to the contrary notwithstanding, in the five (5) or fewer fiscal years beginning July 1, 2010, the Commissioner of Finance and Administration annually shall transfer from the heritage conservation trust fund to the general fund an amount of \$937,500, plus annual interest earnings on that amount, plus any unexpended balance of four million dollars (\$4,000,000) remaining after certain commitments of the trust fund have been satisfied, plus other available sources, until the general fund has been reimbursed for a four-million-dollar (\$4,000,000) appropriation made in fiscal year 2008-2009. The four-million-dollar appropriation has been provided to allow the state to fulfill commitments made before November 2008, while a \$9,375,000 lease payment for timber rights is earned over a ten-year period. For purposes of this subsection, the term "other available sources" shall not include gifts, contributions, bequests, donations and grants, if such funds are restricted for specific acquisitions or purposes.

SECTION 14. Tennessee Code Annotated, Section 4-3-1016, is amended in subsection (d) by deleting the word "and" after the date "2008"; by inserting the language "and June 30, 2010," immediately after the date "2009,"; by deleting Items 69, 70, and 79 from subsection (d); and by renumbering subsequent items accordingly.

SECTION 15. Tennessee Code Annotated, Section 4-3-1016, is amended by adding the following language as new subsections to immediately follow the existing subsection (d) and by re-designating the existing subsection accordingly:

(e) In the fiscal years ending June 30, 2009, and June 30, 2010, in addition to the transfers authorized in subsection (d), transfers are authorized from the following additional funds, reserve accounts, and programs:

(1) Department of Correction, confiscated cash fund, created or referenced in Title 4, Chapter 6, Part 1.

(2) Department of Economic and Community Development, biofuels manufacturers incentive fund, created or referenced in Title 67, Chapter 3, Part 4.

(3) Department of Health, diabetes prevention and health improvement account, created or referenced in Title 4, Chapter 40, Part 4.

(4) Department of Environment and Conservation, natural resources trust fund, created or referenced in Title 11, Chapter 14, Part 3.

(f) In the fiscal year ending June 30, 2009, transfers shall not be made from the following funds, reserve accounts, or programs:

(1) Department of Transportation funds, reserve accounts and programs in the highway fund or other funds created or referenced in Titles 54, 55, 57, 65 and 67, except as otherwise provided by law.

(2) Department of Commerce and Insurance, emergency communications funds, created or referenced in Title 7, Chapter 86, Part 1;

(3) Department of Commerce and Insurance, state board of accountancy fund, created or referenced in Title 62, Chapter 1, Part 1;

(4) Department of Commerce and Insurance, division of regulatory boards fund, created or referenced in Title 56, Chapter 1, Part 3;

(5) Department of Health, health-related boards fund, created or referenced in Title 63, Chapter 1, Part 1.

SECTION 16. Tennessee Code Annotated, Section 40-28-201(a)(4), is amended by deleting the last sentence of the subsection and substituting instead the following: "The Department of Correction shall deposit the contribution as departmental revenue of the institution."

SECTION 17. Tennessee Code Annotated, Section 40-28-201(d), is amended by inserting after the word "rehabilitation" the words "by the board of probation and parole".

SECTION 18. Tennessee Code Annotated, Section 40-28-203, is amended in subsection (a) by deleting the words "are established separate Department of Correction and" and substituting instead the words "is established a" and by deleting the letter "s" from the word "funds"; by deleting from subsection (b) the language "or the Department of Correction, as appropriate,"; by deleting from subsection (b) the words "in the funds" and substituting instead "in the fund"; by deleting from subsection (c), in the first sentence, the letter "s" from the word "funds"; by deleting from subsection (c), in the last sentence, the language "work release, prerelease, or other"; by deleting from subsection (c), in the last sentence, the words "parole, probation, or sentence" and inserting instead the words "parole or probation"; and by deleting from subsections (d)(1) and (d)(2) the words "rehabilitation funds" and substituting instead "rehabilitation fund" in both instances.

SECTION 19. Tennessee Code Annotated, Section 4-3-1016, is amended by adding the following as a new, appropriately designated subsection:

() Other provisions of law to the contrary notwithstanding, in the year ending June 30, 2009, reserves of the Tennessee Regulatory Authority, including the deferred revenue account created or referenced in Title 65, Chapter 1, Part 1; the assistive telecommunication device distribution program reserve created or referenced in Title 65, Chapter 21, Part 1; and any other reserve fund maintained by the authority are available to the authority for its operational costs, and such reserves may be transferred between operational accounts of the authority.

SECTION 20. Tennessee Code Annotated, Section 4-7-209, is amended by deleting the language in its entirety and substituting instead the following:

Implementation of salary increases pursuant to this part based on step schedules shall be suspended for the fiscal years beginning July 1, 2003, and ending June 30, 2004, and beginning July 1, 2009, and ending June 30, 2010. In the fiscal years beginning July 1, 2004, and July 1, 2010, and in subsequent fiscal years, salary increases pursuant to this part based on step schedules shall not include time of service between July 1, 2003, and June 30, 2004, nor between July 1, 2009, and June 30, 2010.

SECTION 21. Tennessee Code Annotated, Section 8-7-201, is amended by deleting the language in subsection (g) in its entirety and substituting instead the following:

Implementation of salary increases pursuant to the pay schedules prescribed in this section shall be suspended for the fiscal years beginning July 1, 2003, and ending June 30, 2004, and beginning July 1, 2009, and ending June 30, 2010. In the fiscal years beginning July 1, 2004, and July 1, 2010, and in subsequent fiscal years, salary increases pursuant to pay schedules prescribed in this section shall not include time of service between July 1, 2003, and June 30, 2004, nor between July 1, 2009, and June 30, 2010.

SECTION 22. Tennessee Code Annotated, Section 8-7-226, is amended by deleting the language in subsection (b) in its entirety and substituting instead the following:

Implementation of salary increases pursuant to the pay schedule prescribed in subsection (a) shall be suspended for the fiscal years beginning July 1, 2003, and ending June 30, 2004, and beginning July 1, 2009, and ending June 30, 2010. In the fiscal years beginning July 1, 2004, and July 1, 2010, and in subsequent fiscal years, salary increases pursuant to the pay schedule prescribed in subsection (a) shall not include time of service between July 1, 2003, and June 30, 2004, nor between July 1, 2009, and June 30, 2010.

SECTION 23. Tennessee Code Annotated, Section 8-7-230, is amended by deleting the language in subsection (b) in its entirety and substituting instead the following:

Implementation of salary increases pursuant to the pay schedule prescribed in subsection (a) shall be suspended for the fiscal years beginning July 1, 2003, and ending June 30, 2004, and beginning July 1, 2009, and ending June 30, 2010. In the fiscal years beginning July 1, 2004, and July 1, 2010, and

in subsequent fiscal years, salary increases pursuant to the pay schedule prescribed in subsection (a) shall not include time of service between July 1, 2003, and June 30, 2004, nor between July 1, 2009, and June 30, 2010.

SECTION 24. Tennessee Code Annotated, Section 8-14-207, is amended by deleting the language in subsection (b)(4) in its entirety and substituting instead the following:

Implementation of salary increases pursuant to the pay schedule prescribed in subsection (b)(1) shall be suspended for the fiscal years beginning July 1, 2003, and ending June 30, 2004, and beginning July 1, 2009, and ending June 30, 2010. In the fiscal years beginning July 1, 2004, and July 1, 2010, and in subsequent fiscal years, salary increases pursuant to the pay schedule prescribed in subsection (b)(1) shall not include time of service between July 1, 2003, and June 30, 2004, nor between July 1, 2009, and June 30, 2010.

SECTION 25. Tennessee Code Annotated, Section 8-14-207, is amended by deleting the language in subsection (c)(5) in its entirety and substituting instead the following new language:

Implementation of salary increases pursuant to the pay schedule prescribed in subsection (c)(1) shall be suspended for the fiscal years beginning July 1, 2003, and ending June 30, 2004, and beginning July 1, 2009, and ending June 30, 2010. In the fiscal years beginning July 1, 2004, and July 1, 2010, and in subsequent fiscal years, salary increases pursuant to the pay schedule prescribed in subsection (c)(1) shall not include time of service between July 1, 2003, and June 30, 2004, nor between July 1, 2009, and June 30, 2010.

SECTION 26. Tennessee Code Annotated, Section 8-14-207, is amended by deleting subsection (d) in its entirety.

SECTION 27. Tennessee Code Annotated, Section 8-23-206(d)(2), is amended by inserting after the words "Acts 2003, Ch. 355" the language ", and this act".

SECTION 28. Tennessee Code Annotated, Section 40-30-209, is amended by adding the following language as a new subsection (d):

(d) Notwithstanding any provisions of law to the contrary, any limitations on compensation and step increases that apply to district public defenders and assistant public defenders for the period of time beginning from June 16, 2003, to June 30, 2004, and the effective date of this act to June 30, 2010, shall also apply to post-conviction defenders and assistant post-conviction defenders. In the fiscal years beginning July 1, 2004, and July 1, 2010, and in subsequent fiscal years, salary increases pursuant to the pay schedule prescribed in this section shall not include time of service between July 1, 2003, and June 30, 2004, and between July 1, 2009, and June 30, 2010.

SECTION 29. Tennessee Code Annotated, Section 70-1-309, is amended by deleting the last two sentences of the section and substituting instead the following language:

Implementation of salary increases pursuant to such salary administration plan shall be suspended for the fiscal years beginning July 1, 2003, and ending June 30, 2004, and beginning July 1, 2009, and ending June 30, 2010. In the fiscal years beginning July 1, 2004, and July 1, 2010, and in subsequent fiscal years, salary increases pursuant to the salary administration plan shall not include time of service between July 1, 2003, and June 30, 2004, nor between July 1, 2009, and June 30, 2010.

SECTION 30. Tennessee Code Annotated, Section 37-2-205, is amended by adding the following language as a new subsection (f):

(f)(1)(A) Notwithstanding any state law to the contrary, the Department of Children's Services shall allocate resources for children placed in state custody based on a county's child population and the average state commitment rate per thousand children. In fiscal years 2009-2010 and 2010-2011 the department shall pay for a county's commitments of dependent and neglected children and delinquent children until such commitments exceed three hundred percent (300%) of the state average commitment rate.

(B) When a county exceeds the limit on either dependent and neglected children or delinquent children established in subdivision (f)(1)(A), the county shall be billed for the actual daily cost to the state for the duration of the length of stay of such child in state custody.

(C) The department shall develop statewide averages for:

- (i) Dependent and neglected children; and
- (ii) Delinquent children.

(D) The average state commitment rate shall be based on the higher of:

- (i) 2007-2008 fiscal year statewide average commitments per thousand children; or
- (ii) 2008-2009 fiscal year statewide average commitments per thousand children.

(2) The department shall initiate a collaborative planning process at any such time a county is believed to be likely to exceed two hundred percent (200%) of the state average commitment rate. Upon request of the county or the court, the department shall partner with the county or the court to develop and implement strategies to identify and address underlying problems contributing to over-commitment that may exist in such county. The department shall provide commitment data to the county or the court as needed to prevent a county from exceeding the limits established in subdivision (f)(1)(A).

(3) On or before January 15 of each year, the department shall provide a report to the general assembly listing the counties that have exceeded the state average commitment limits. The report shall also detail actions taken by the department to comply with subdivision (f)(2).

(4) The Select Committee on Children and Youth is directed to study commitment patterns of children entering state custody. Findings shall be provided to the Commissioner of the Department of Children's Services and to the members of the Select Committee on Children and Youth on or before January 15, 2010.

(5)(A) The Commissioner of the Department of Children's Services is authorized to promulgate rules and regulations to effectuate the provisions of this subsection (f).

(B) The provisions of subsection (f) shall expire June 30, 2011, unless reauthorized by the general assembly.

SECTION 31. Tennessee Code Annotated, Section 33-1-101, is amended by adding the following language as a new subsection (3) and by redesignating existing subsection (3) and subsequent subsections accordingly:

(3) "Available suitable accommodations" or "suitable available accommodations" mean, for the purposes of this title, that a state owned or operated hospital or treatment resource has the capacity, as reasonably determined by the commissioner, and the medical capability, equipment and staffing to provide an appropriate level of care, treatment and physical security to an individual in an unoccupied and unassigned bed.

SECTION 32. Tennessee Code Annotated, Section 33-1-101, is amended by adding the following language as a new subsection (16) and by redesignating existing subsection (16) and subsequent subsections accordingly:

(16) "Medical capability" means, for the purposes of this title, that a state owned or operated hospital or treatment resource has the ability to treat an individual's medical needs onsite or that the individual's medical needs do not exceed the onsite capability of the state owned or operated hospital or treatment resource to treat.

SECTION 33. Tennessee Code Annotated, Section 33-2-1109(a)(2), is amended by deleting the existing language in its entirety and substituting instead the following:

A person subject to evaluation, diagnosis or treatment under Chapter 5, Part 5 of this title, or Chapter 7, Part 3 and charged with a felony, or Chapter 7, Part 4 of this title;

SECTION 34. Tennessee Code Annotated, Title 33, Chapter 2, Part 12, is amended by adding the following as a new section:

Section 33-2-1203. If, in the commissioner's judgment, the occupancy level at a state owned or operated hospital or treatment resource requires

additional staffing for a temporary period in order to maintain suitable available accommodations, the commissioner is authorized to contract for and utilize temporary staffing at the affected location.

SECTION 35. Tennessee Code Annotated, Section 33-3-301(c)(2), is amended by deleting the existing language in its entirety and substituting instead the following:

(2) If the commissioner approves the emergency transfer, the commissioner shall notify the chief officers of the transferring and receiving facilities. The chief officer of the transferring facility shall then have the person transferred immediately. A bed shall remain open at the transferring facility for seventy-two (72) hours after the transfer for the readmission of the person.

SECTION 36. Tennessee Code Annotated, Title 33, Chapter 6, Part 1, is amended by adding the following language as a new Section 33-6-108:

33-6-108. Admissions to a state owned or operated hospital or treatment resource.

Notwithstanding any other provisions of the law to the contrary, all admissions or transfers to a state owned or operated hospital or treatment resource shall be subject to available suitable accommodations, as herein defined, and no admission to a state owned or operated hospital or treatment resource shall occur until the department has designated the state owned or operated facility as having available suitable accommodations; provided, if there are no suitable available accommodations at the time of the determination, then the commissioner shall expeditiously find a state owned or operated hospital or treatment resource to accommodate the person upon the availability of suitable available accommodations.

SECTION 37. Tennessee Code Annotated, Section 33-6-404(3)(B), is amended by deleting the period at the end of subdivision (iii) and by substituting instead the language ", AND" and by adding the following language as a new subdivision:

(iv) if admission is sought at a state owned or operated hospital or treatment resource, the physician, psychologist or designated professional shall verify that the state owned or operated hospital or treatment resource has been contacted and has available suitable accommodations, acknowledging such verification in writing.

SECTION 38. Tennessee Code Annotated, Section 33-6-406(a), is amended by deleting the subsection in its entirety and by substituting the following language:

(a) If the person certified for admission under § 33-6-404 is not already at the facility, hospital or treatment resource at which the person is proposed to be admitted, the physician, psychologist, or designated professional who completed the certificate of need under § 33-6-404 shall give the sheriff or the transportation agent designated under Chapter 6, Part 9 of this title, the original of the certificate and turn the person over to the custody of the sheriff or transportation agent who shall transport the person to a hospital or treatment resource that has available suitable accommodations for the person for proceedings under § 33-6-407.

Provided, further, if admission is sought to a state owned or operated hospital or treatment resource, the physician, psychologist, or designated professional who completed the certificate of need under § 33-6-404 shall also provide to the sheriff or transportation agent a written statement verifying that the state owned or operated hospital or treatment resource has been contacted and has available suitable accommodations, and the sheriff or transportation agent shall not be required to take custody of the person for transportation unless both the original of the certificate and the aforementioned written statement are provided. Failure of the sheriff or other county transportation agent to provide both a certificate of need and the aforementioned written statement to the receiving state owned or operated hospital or treatment resource for proceedings under § 33-6-407 shall result in all costs attendant to the person's admission and treatment being assessed to the transporting county.

SECTION 39. Tennessee Code Annotated, Section 33-6-406(b)(2), is amended by deleting the subdivision in its entirety and substituting instead the following:

(b)(2) The sheriff or transportation agent shall notify the hospital or treatment resource of the anticipated time of arrival; if the sheriff or transportation agent has given notice and arrives at the hospital or treatment resource within the anticipated time of arrival, then the sheriff or transportation agent is required to remain at the hospital or treatment resource long enough for the person to be evaluated for admission under § 33-6-407, but not longer than one (1) hour and forty-five (45) minutes. After one (1) hour and forty-five (45) minutes, the person is the responsibility of the evaluating hospital or treatment resource, and the sheriff or transportation agent may leave.

SECTION 40. Tennessee Code Annotated, Section 33-6-406(b)(3), is amended by deleting the subdivision in its entirety.

SECTION 41. Tennessee Code Annotated, Section 33-6-407(a), is amended by deleting the existing language in its entirety and substituting instead the following:

A hospital or treatment resource that receives a person transported under § 33-6-406 shall have a licensed physician examine the person to determine whether the person is subject to admission under § 33-6-403.

SECTION 42. Tennessee Code Annotated, Section 33-6-505, is amended by deleting the existing language in its entirety and substituting instead the following:

If the court commits a person under this section, the person comes into the commissioner's custody only if the state owned or operated facility or treatment resource has available suitable accommodations; provided, if there are no suitable available accommodations at the time of the determination, then the commissioner shall expeditiously find a state owned or operated hospital or treatment resource to accommodate the person upon the availability of suitable available accommodations. Prior to transporting a person for such commitment, the sheriff or other transportation agent shall determine that the receiving state owned or operated facility or treatment resource has available suitable accommodations.

SECTION 43. Tennessee Code Annotated, Title 33, Chapter 7, Part 1, shall be amended by adding the following language as a new Section 33-7-104:

33-7-104. Admissions to a state owned or operated facility.

Notwithstanding any other provisions of the law to the contrary, all admissions or transfers to a state owned or operated hospital or treatment resource under this chapter shall be subject to available suitable accommodations as herein defined, and no admission to a state owned or operated hospital or treatment resource under this chapter shall occur until the commissioner has designated the state owned or operated facility as having available suitable accommodations; provided, if there are no suitable available accommodations at the time of the determination, then the commissioner shall expeditiously find a state owned or operated hospital or treatment resource to accommodate the person upon the availability of suitable available accommodations. Prior to transporting a defendant for such evaluation and treatment in a department facility, the sheriff or other transportation agent shall determine that the receiving facility has available suitable accommodations.

SECTION 44. Tennessee Code Annotated, Section 33-7-301(a), is amended by adding the following language as a new subdivision (5):

(5) Prior to transporting a defendant for such evaluation and treatment in a department facility, the sheriff or other transportation agent shall determine that the receiving department facility has available suitable accommodations.

SECTION 45. Tennessee Code Annotated, Title 33, Chapter 7, Part 3, shall be amended by adding the following language as a new Section 33-7-304:

33-7-304. Cost of Evaluation and Treatment.

(a) The cost of evaluation and treatment under Chapter 7, Part 3 of this title, if the defendant is charged with a misdemeanor, will be a charge upon the funds of the county. If the court finds the defendant financially able to pay all or part of the costs and expenses for the evaluation and treatment, the court may order the same. Payment shall be made to the clerk of the general sessions court for remittance to the person, agency or facility to whom compensation is due, or if the costs and expenses have been paid by the county, to the appropriate office of the county.

(b) Costs of the care or treatment of any defendant ordered by the court and who is charged with a misdemeanor shall be paid by the state only when specifically authorized by law.

SECTION 46. Tennessee Code Annotated, Section 33-7-301(a)(4), is amended by deleting the subdivision in its entirety and substituting instead the following language:

(4)(A) Except as provided in subdivision (B), during the post-conviction stage of a criminal proceeding, if it is believed that a defendant is incompetent to assist counsel in preparation for, or otherwise participate

in, the post-conviction proceeding, the court may, upon its own motion, order that the defendant be evaluated on either an outpatient or inpatient basis, as may be appropriate. If the defendant is indigent, the amount and payment of the costs for the evaluation shall be determined and paid for by the administrative office of the courts. If the defendant is not indigent, the cost of the evaluation shall be charged as court costs. If the evaluation cannot be done on an outpatient basis and if it is necessary to hospitalize the defendant in a department facility, hospitalization shall not be for more than thirty (30) days and shall be subject to available suitable accommodations. Prior to transporting a defendant for such evaluation and treatment in a department facility, the sheriff or other transportation agent shall determine that the receiving department facility has available suitable accommodations. Any costs incurred by the administrative office of the courts shall be absorbed within the current appropriation for the indigent defense fund.

(B) In a post-conviction proceeding in a capital case, if there is a question on the defendant's mental condition at the time of the commission of the crime when there has been no such prior evaluation, or a question as to whether the defendant is mentally retarded, the court may, upon its own motion, or upon petition by the district attorney general or by the attorney for the defendant, and, if the matter is contested, after a hearing, order that the defendant be evaluated on an outpatient basis. If and only if the outpatient evaluator concludes that an inpatient evaluation is necessary, the court may order the defendant to be hospitalized for not more than thirty (30) days.

SECTION 47. Tennessee Code Annotated, Section 33-7-301(b)(5), is amended by deleting the existing language in its entirety and substituting the following:

If the court enters an order of judicial hospitalization, the defendant shall be transferred to the custody of the commissioner, and if the court finds in addition that the defendant is substantially likely to injure the defendant or others if the defendant is not treated in a forensic services unit and that treatment in the unit is in the defendant's best interests, the defendant shall be transferred to the custody of the commissioner at a forensic services unit designated by the commissioner. If the court commits a person under this subsection (b), the person comes into the commissioner's custody only if the forensic services unit has available suitable accommodations; provided, if there are no suitable available accommodations at the time of the determination, then the commissioner shall expeditiously find a state owned or operated hospital or treatment resource to accommodate the person upon the availability of suitable available accommodations. Prior to transporting a defendant for such commitment, the sheriff or other transportation agent shall determine that the receiving facility has available suitable accommodations.

SECTION 48. Tennessee Code Annotated, Section 33-7-303(a), is amended by deleting the existing language in its entirety and substituting instead the following:

When a person charged with a criminal offense is acquitted of the charge on a verdict of not guilty by reason of insanity at the time of commission of the

offense, the criminal court shall order the person to be diagnosed and evaluated on an outpatient basis. The evaluation shall be performed by the community mental health agency or licensed private practitioner designated by the commissioner to serve the court.

SECTION 49. Tennessee Code Annotated, Section 33-7-303(b)(1) and (2), are amended by deleting the existing language in its entirety and substituting instead the following:

(b)(1) Following diagnosis and evaluation, if certification is provided that the person is committable under Chapter 6, Part 5 of this title, the district attorney general shall file a complaint in criminal court for judicial commitment under Chapter 6, Part 5 of this title. If certification is not provided that the person is committable under Chapter 6, Part 5 of this title, the district attorney general shall file a complaint in the criminal court for an order requiring the person to participate in outpatient treatment under this subsection.

SECTION 50. Tennessee Code Annotated, Section 33-7-303(c)(3), is amended by deleting the existing language in its entirety and substituting instead the following:

If the court commits a person under this subsection (c), the person comes into the commissioner's custody only if the commissioner determines that a facility has available suitable accommodations; provided, if there are no suitable available accommodations at the time of the determination, then the commissioner shall expeditiously find a state owned or operated hospital or treatment resource to accommodate the person upon the availability of suitable available accommodations. Prior to transporting a defendant for commitment in a department facility, the sheriff or other transportation agent shall determine that the receiving facility has available suitable accommodations.

SECTION 51. Tennessee Code Annotated, Section 33-7-303(f), is amended by deleting the existing language in its entirety and substituting instead the following:

The cost of treatment incurred as a result of the outpatient treatment and evaluation required in subsection (b)(3) shall be taxed as court costs.

SECTION 52. Tennessee Code Annotated, Section 49-4-202, is amended by deleting the language in subsection (h) in its entirety and substituting instead the following language:

(h) The executive director of the Tennessee Higher Education Commission, appointed pursuant to § 49-7-205, shall serve as the executive director of the Tennessee student assistance corporation and shall have the responsibility, including employment of other personnel, to carry out the purposes of Parts 2-7 of this chapter.

SECTION 53. Tennessee Code Annotated, Title 65, Chapter 4, Part 1, is amended by adding the following language as a new section:

Section 65-4-126. The general assembly declares that the policy of this state is that the Tennessee regulatory authority will seek to implement, in appropriate proceedings for each electric and gas utility, with respect to which the authority has rate making authority, a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provides timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers' incentives to use energy more efficiently.

SECTION 54. Tennessee Code Annotated, Section 65-4-303, is amended by deleting subsection (c) in its entirety and substituting instead the following:

(c)(1) Except as set forth in subsection (c)(2) that follows, the fee fixed and assessed against and to be paid by each public utility shall be due and payable on or before April 1, 2010, and each April 1 thereafter and be based on the previous calendar year's gross receipts from intrastate operations. The fee shall be as follows: four dollars and twenty-five cents (\$4.25) per one thousand dollars (\$1,000) for the first one million dollars (\$1,000,000) or less of such gross receipts over five thousand dollars (\$5,000); and for public utility gross receipts over and above one million dollars (\$1,000,000), the fee shall be three dollars and twenty-five cents (\$3.25) per one thousand dollars (\$1,000).

(2) The fee fixed and assessed against and to be paid by each telecommunications public utility that has, as of July 1, 2009, over one million (1,000,000) telephone access lines in the State of Tennessee and elects to operate under market regulation pursuant to § 65-5-109 by the date that the fee is due and payable shall be as follows: the fee shall be three dollars (\$3.00) per one thousand dollars (\$1,000) for the first one million dollars (\$1,000,000) or less of gross receipts from intrastate operations over five thousand dollars (\$5,000); and for such public utility gross receipts over and above one million dollars (\$1,000,000) two dollars and seventy-three cents (\$2.73) per one thousand dollars (\$1,000) of gross receipts from intrastate operations. Such fee shall be due and payable on or before April 1, 2010, and each April 1 thereafter.

(d) The fee provided for in this section may be recovered by a public utility operating under rate of return regulation through either a rate case proceeding pursuant to § 65-5-103 or through separate recovery mechanism to be determined by the authority. Nothing in this section shall alter the manner in which public utilities that operate under price regulation or market regulation, pursuant to § 65-5-109, may set rates. Nothing in this section shall alter the limitations on the jurisdiction of the authority over market-regulated companies as set forth in § 65-5-109. A public utility may recoup its inspection fees by including a line item on its subscribers' bills.

SECTION 55. Tennessee Code Annotated, Section 68-59-102, is amended by deleting subdivision (10) in its entirety and by substituting instead the following:

(10) "Uncompensated care" means either:

(A) Care provided by a facility defined as part of the trauma system to a trauma patient who:

(i) Has no medical insurance, including Medicare Part B coverage;

(ii) Has no medical coverage for trauma through workers' compensation, automobile insurance, or any third party, including any settlement or judgment resulting from such coverage; and

(iii) Has not paid for the trauma care provided by the trauma provider after documented attempts by the provider to collect payment; or

(B) The uncompensated cost to the provider for care provided by a facility defined as part of the trauma system to a trauma patient who is covered by TennCare in the event that TennCare payment to the trauma provider does not fully compensate the provider for the actual cost of trauma services rendered.

SECTION 56. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 57. Tennessee Code Annotated, Title 33, Section 6, Part 1, is amended by adding the following as a new section:

The department shall report quarterly to the House Health and Human Resources Committee, the Senate General Welfare, Health and Human Resources Committee, and the Finance, Ways and Means Committees of both the House and Senate the implementation and the impact of available suitable accommodations, including the number and length of any delayed admissions.

SECTION 58. Tennessee Code Annotated, Title 33, Chapter 2, Part 12, is amended by adding the following as a new section:

Reductions in bed capacity at state owned or operated hospitals or treatment resources pursuant to the fiscal year 2009-2010 budget shall be phased in as determined by the department.

SECTION 59. Tennessee Code Annotated, Section 49-4-940, is amended by adding the following language as new subsection (b) and by relettering the subsequent subsection accordingly:

(b) TSAC shall not draw funds from the lottery for education account that are invested pursuant to this section unless no other lottery revenues are available to make payments of the scholarships and grants established pursuant to this part. If TSAC anticipates that it may need to draw funds from the lottery for education account that are invested pursuant to this section, then TSAC shall notify the general assembly, the treasurer, the state funding board and the

Tennessee Higher Education Commission at least ninety (90) days before the date the need for such funds is expected to occur.

SECTION 60. Tennessee Code Annotated, Section 4-51-111(c)(1), is amended by deleting the second sentence of the subdivision and by substituting instead the following language:

No later than the date of presentation of such estimates to the governor by the state funding board in all subsequent years, the funding board shall project the revenue for net lottery proceeds for the remainder of the then current fiscal year and the next succeeding four (4) fiscal years.

SECTION 61. Tennessee Code Annotated, Section 4-51-111(c)(2)(A), is amended by designating the existing language as subdivision (i) and by adding the following language as new subdivision (ii):

(ii) Before December 15 of each year, the state funding board with the assistance of the Tennessee student assistance corporation shall project long-term funding needs of the lottery scholarship and grant programs established under Title 49, Chapter 4, Part 9. Such projections shall cover at least the four (4) fiscal years next succeeding the current fiscal year. Such analysis shall be performed to determine if adjustments in lottery scholarship and grant programs should be made to prevent funding required in the future for such programs from exceeding estimates of net lottery proceeds made under subdivision (c)(1).

SECTION 62. Tennessee Code Annotated, Section 4-51-104(c), is amended by adding the following language as new subdivision (4) and by renumbering the subsequent subdivision accordingly:

(4) Not approve a bonus for, and no bonus shall be paid to, the chief executive officer or any other of the executive employees of the corporation for any fiscal year in which lottery revenues are flat or declining as measured against the previous fiscal year's revenues.

SECTION 63. Section 12 of this act shall take effect on July 1, 2009, and Section 46 of this act shall take effect at 12:01 a.m. on July 1, 2009, the public welfare requiring it. All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: June 17, 2009



RON RAMSEY
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 25th day of June 2009



PHIL BREDESEN, GOVERNOR