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In battle over \$437M statewide amendment vote, real question is who will blink first

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If Amendment 1 fails to pass on Tuesday, its supporters claim thousands of prisoners could be set free and hospitals will close.

Gov. Robert Bentley says he won't raise taxes to keep that from happening.

But a Tuscaloosa developer says he'll head a last-minute campaign to get out the vote against the measure.

Any or all of them could be bluffing. And with \$437 million on the table, no one's likely to show all their cards until voters call their hand.

Alabamians will go to the polls Tuesday to vote on an amendment to the state constitution that would transfer \$437 million — broken into three yearly payments — from the Alabama Trust Fund to the state General Fund to patch a hole in Medicaid funding.

If that makes your eyes glaze over, you're not alone.

Alabama Secretary of State Beth Chapman has estimated that only about 20 percent of the state's voters will show up to mark their preference.

But there is truly a lot at stake. If the state makes it to Oct. 1 without the amendment in place — or some other fix — Alabama state agencies would enter a new fiscal year more than \$100 million short of funds. That money would have to come from somewhere: Medicaid, the prison system, or some other agency. Or all of the above.

“There have been projections of major budget cuts,” said Rick Journey, spokesman for the pro-amendment group Keep Alabama Working. “There's also a solution to that problem: Vote yes on Sept. 18.”

But for voters, the choice is complicated by the fact that no one knows for sure what will happen if the amendment fails to pass.

How we got here

When Republicans swept to power in Montgomery in 2010, most new legislators promised a smaller government and cuts to state spending. And for most state agencies, austerity has been the watchword ever since. Some outside agencies, such as museums and other nonprofits, were cut from the budget completely. Teachers were asked to pay more toward their retirement. The Alabama Department of Mental Health laid off workers after federal stimulus funds vanished and no state funds replaced them.

Yet despite the cuts, the state's budgets actually grew over the past two years. The General Fund — the budget over which legislators have the most control — grew from \$1.56 billion in 2010 to \$1.58 billion in 2011 and \$1.73 billion in 2012 after proration.

How did that happen? The bill for Medicaid, the joint state-and-federal program that provides health coverage for poor people, uninsured kids and people with disabilities, has expanded like a kernel of hot popcorn.

Medicaid has been steadily growing for a long time due to an aging population. (Two-thirds of Alabama nursing home patients are on the program.)

But the current crisis comes from an ebb in federal funding. Under the federal stimulus program, the federal government increased its matching funds for state Medicaid programs. Now that money is going away and the state's cost for Medicaid has nearly doubled in two years — from \$314 million in 2010 to \$575 million in 2012, after proration.

Lawmakers entered the budget process this year knowing there wouldn't be enough money to pay for it all. Before legislators even met, Bentley asked directors of state agencies to make plans to deal with cuts of up to 25 percent.

But by June, lawmakers had come up with a possible answer. By taking money from the Alabama Trust Fund — a fund set up to invest the revenues from taxes on offshore oil drilling — they could stave off the budget crash for at least three years.

There was just one problem. Getting the money would require a constitutional amendment. And that would require a statewide vote.

Another option?

When voters go to the polls on Tuesday, they'll see a ballot item for an amendment "to prevent the mass release of prisoners from Alabama prisons, and to protect critical health services to Alabama children, elderly and mothers" by transferring money from the Trust Fund.

A mass release of prisoners isn't mentioned in the actual bill. Nor are any specific health programs. But even as amendment advocates say prisons and Medicaid are the areas that would likely be cut if the amendment fails, critics say there's another option: The Legislature could convene in special session before the Oct. 1 beginning of the fiscal year and find some other way to soften the blow.

Bentley, who supports the amendment, has maintained for weeks that he has no plan to call a special session if the amendment fails. Bentley spokesman Jeremy King maintained that position Thursday — with an escape clause.

"The governor has no current plan for a special session, but he's not ruling anything out," King said.

One thing the governor won't accept is a tax increase, King said.

That would likely mean that if lawmakers did meet in special session, they'd be cutting the budget, not plugging the funding hole.

Even so, as the vote approaches, some lawmakers are backing away from the "mass release" wording on the ballot. Amendment advocates originally projected that 9,000 of Alabama's 25,000 prison inmates would be set free if the amendment passed. Prisons commissioner Kim Thomas later told The Star that he didn't have the statutory authority to release that many prisoners.

Senate President Pro Tem Del Marsh, R-Anniston, and the amendment's Senate sponsors, among others, have said they'll look for a way to fund prisons — possibly by cutting other agencies more deeply — even if the amendment fails.

Out of money

State health officer Don Williamson is much more willing to stand behind the other part of the ballot wording — the part that says the amendment will protect "critical health services."

Amendment advocates have projected that if the measure fails, cuts to Medicaid would force rural hospitals and nursing homes to close, leaving entire counties without service, even for people who have their own insurance. That would happen only if there's no special-session fix to the budget, but Williams says that forecast is not unrealistic.

Williamson said state law limits which Medicaid services can actually be cut. Where the state can cut, he said, the cuts would be unthinkable. Medicaid isn't required to pay for dialysis, for instance.

"You can't ethically stop dialyzing people," he said. "And even if we cut all we are allowed to cut without a statutory change, we don't save enough money."

But if the amendment failed and no other funding were found, he said, Alabama's Medicaid system would run out of money before year's end. That would have a cascading effect, he said, that would affect the entire health system.

"In the world of Medicaid funding, everything is stacked on top of something else," he said.

Forcing their hand

Sen. Scott Beason, R-Gardendale, hopes voters will turn the amendment down, forcing lawmakers to bite the bullet.

"This amendment will cover us for three years," he said. "What will we do in year four?"

Beason is one of about half a dozen legislators who are urging a no vote on Sept. 18. Most voted for the measure when it was actually in the Legislature. Beason missed the vote. He said he was in his office working on refinements to the state's immigration bill when the amendment passed.

Beason said the problem with Medicaid isn't going to go away, and the state needs to deal with the issue now. By saying no to the amendment, Beason said, voters can force their representatives to go back to Montgomery and truly finish the budget.

"The budget process should be a lively, even raucous debate about what our priorities are," he said.

Beason said he believes Medicaid could trim money by more closely rooting out fraud and by adopting a new approach that shifts much of the work to managed care providers.

"I agree with the senator," Williamson responded. "Medicaid needs to be fixed."

Williamson said something will have to change to bring the program's growing cost down, possibly through third-party managed care. He said health care agencies have told him it would take 12 to 18 months to set up a new payment system.

The amendment, he said, would buy the state time to make that happen.

Who will turn out?

It's not clear that legislators will get that time.

Gerald Johnson, a pollster for the Capital Survey Research Center, said that when survey respondents are read the wording of the amendment, a plurality of voters supported it.

In other words, fewer than half said they'd vote yes, but fewer said no, and many said they didn't know.

Johnson's agency is the polling arm of the Alabama Education Association, which supports the amendment. Johnson thinks the numbers are good for the pro-amendment side because "don't-know" voters will stay at home, and pro-amendment voters historically show up more regularly than anti-amendment voters.

"In the absence of organized opposition, it will probably pass," he said.

Tuscaloosa real estate developer Stan Pate wants to be that opposition.

"People are fed up with the government wasting their money and asking for more," Pate said.

Last week, Pate threatened to upset the Legislature's apple cart by funding a last-minute campaign to thwart the amendment. It's not his first time to sound off on a statewide referendum. Pate helped fund the campaign against that other Amendment 1 — then-Gov. Bob Riley's 2003 tax reform plan, which went down in flames.

Pate's history of activism may be the reason his announcement last week made headlines around the state.

But as of Friday, there was little evidence of an ad campaign against the measure. In a telephone interview, Pate said he had no plans to run television ads. He also offered cryptic comments about a plan to release a pig in a public place — or public places — to call attention to the raid on what he calls the state's "piggy bank."

He wouldn't explain whether he was talking about actual animals, people in pig costumes, or some other porcine facsimile.

"If I turned a herd of greased pigs a'loose on Dexter Avenue, I bet people would pay attention," he said, referring to the Montgomery street that ends at the steps of the Capitol.

Asked whether the supposed pig campaign would require the creation of a political action committee, Pate said: "You don't have to file anything if you haven't spent any money."

Lots of paper, simple message

Whether Pate is bluffing or serious, Rick Journey says Keep Alabama Working isn't likely to change its get-out-the-vote strategy.

For weeks, the pro-amendment group has been courting endorsements from the state's most prominent institutions — and it's picked up a wide swath of institutional support, from the anti-poverty group Alabama Appleseed to the conservative Business Council of Alabama. And the group has been churning out posters, pamphlets and flyers for those organizations to hand to their employees and clients.

"We've put a lot of paper out there with a lot of information," he said.

Journey said the plan all along was to reach the people directly affected by potential cuts and encourage them to talk about the amendment with the people close to them.

"We all know someone who is an employee or a client of the agencies that will be affected if this doesn't pass," he said. "This matters to everybody."

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