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## Legislative Update

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MONDAY, JULY 6 2009

### **CONTINUING BUDGET DAY 6: STRICKLAND BLASTS SENATE GOP OVER STALEMATE; SECOND EXTENSION APPROVED**

Last week Gov. Ted Strickland struck a conciliatory tone over stalled state budget negotiations. Following a Fourth of July weekend that saw no progress toward a resolution, the governor on Monday fired off accusations that the Republican-controlled Senate was more interested in political gain than Ohio citizens' well being.

Senate President Bill Harris (R-Ashland) later dismissed the governor's charges and suggested the Democrat had his own political agenda in mind by calling a Statehouse news conference.

The rhetorical heat-up came hours before the Senate passed and sent to the governor for his signature a second temporary budget to keep payments flowing and state operations moving (HB 245), and as another round of hearings on slots and potential budget cuts ensued respectively in the Senate and House. (*See separate stories*)

While decrying the Senate's hearings and suggestions of a "video lottery terminal" ballot issue alternative as a "blatant political gimmick" Mr. Strickland said majority House Democrats were justified in holding hearings on further budget reductions in the absence of a credible GOP proposal.

The second budget extension, effective through July 14, buys lawmakers another week to break the impasse over the governor's disputed slots-at-racetracks plan, which officials described again as the only remaining unresolved point of difference between House and Senate versions of the measure biennium spending measure (HB 1).

"The conference committee has substantially addressed the other issues," House Finance Chairman Rep. Vernon Sykes (D-Akron) said of behind-the-scenes negotiations on hundreds of other policy matters at play. "Once this issue is resolved, I think we can move forward."

The six-member conference panel has met only once: late last month to get the sobering revenue update, which pegged the shortfall at \$3.2 billion and prompted the governor to propose his "framework for further discussions. Nevertheless, Chairman Sykes said he believed the actual public process of approving a compromise report could get done in a day or two.

Rep. Sykes said he remained "hopeful" of a short-term resolution and added of the dueling hearings, "It's good that we're having the discussions."

The Democrat described GOP questions regarding the nature of the House Finance & Appropriations Committee hearings as "inside politics."

Gov. Strickland also backed the House's approach. "What the House is doing is simply laying out what will happen if we don't have a budget resolution," he said. "I think it's important for the people of Ohio to understand the consequences of that."

### **GAMBLING TRIFECTA: BLESSING OFFERS STALEMATE END; BUSINESSES TELL SENATE TO EXPAND VLTS; GOVERNOR DISAVOWS 'CLAWBACK'**

A House Republican leader who wants video lottery terminals at Ohio's seven horse race tracks outlined a way Monday to break an increasingly contentious stalemate over the issue.

Separately, a business coalition delivered an alternative VLT proposal to a Senate panel that calls for the devices in bars, taverns, bowling centers and fraternal clubs, as well as tracks. It also would provide for local option elections.

Meanwhile, Gov. Ted Strickland backed away from a "clawback" allowance in a VLT plan delivered to a budget conference committee. Such a clause would permit track owners to recoup license fees paid to the state in the event voters subsequently approved casino gambling.

The Democratic governor also raised the level of rhetoric in a standoff with the Republican controlled Senate over the issue.

Mr. Strickland described as "utterly and totally unacceptable" potential GOP moves to place the gambling question before voters, and to enact a one-year education budget.

**Blessing Plan:** Rep. Lou Blessing (R-Cincinnati) sent a proposed resolution of the stalemate to Gov. Strickland and legislative leaders. It embraces both the governor's VLT plan and a requirement of Senate President Bill Harris (R-Ashland) for a statewide vote.

First among Rep. Blessing's recommendations: defeat of a constitutional amendment now headed for the Nov. 3 ballot that would authorize full-service casinos in Cleveland, Columbus, Cincinnati, and Toledo.

"We cannot let that pass. It would be a disaster for many reasons," he said.

Rep. Blessing said backers of the amendment should be asked to withdraw it. If they refused, he said the state should file suit in the Ohio Supreme Court in an attempt to have it removed.

"If that fails, we should do everything possible to cause its defeat at the polls," Rep. Blessing said.

His other recommendations:

- Enact legislation that would allow VLTs at the tracks, and create an Ohio Gaming Control Commission with horse racing and the lottery as divisions. He said waiting until November to act could cost the state up to \$300 million in lost revenue.
- Place a comprehensive four-city casino and horse-racing proposal on the Nov. 3 ballot as a constitutional amendment. "That way the people of Ohio have a vote on everything," the assistant minority leader said.

"Let's implement this plan, project the revenue from the VLT proposal, and pass a budget so our constituents receive the government services they need," Rep. Blessing said.

Responding later, the Ohio Jobs & Growth Committee gave no indication it would withdraw its casino amendment in a dispute over VLTs at horse tracks.

"We have tried very, very hard to not get caught up in this whole discussion, which really we have no control over, and it changes every 15 minutes. The legislature's going to do what they're going to do," said Bob Tenenbaum, spokesman for the casino initiative.

"We have not heard anything from anybody that would cause us to back away from the issue," Mr. Tenenbaum said.

Rep. Blessing contended the amendment offers no guarantee of income from taxes because its definition of "gross casino revenue," against which taxes are levied, does not include cash.

He said the taxable event is the exchange of money to buy chips, tokens, tickets, or electronic cards.

"The casinos could just run cash games and pay no tax. And there is nothing in the amendment prohibiting cash games," Rep. Blessing said.

"At the end of the day, there is no tax revenue guaranteed - not a penny. This proposed constitutional amendment needs to be withdrawn, court ordered off the ballot or defeated at the polls," he said.

Mr. Tenenbaum said the amendment clearly subjects all wagering to a 33% tax on gross casino revenues.

He said Indiana, Michigan, Pennsylvania, and West Virginia all prohibit cash wagering.

"(Casino) operators in today's environment operate cashless games because this allows greater regulatory scrutiny, creates a much stronger audit trail and ensures the integrity of the games," Mr. Tenenbaum said.

"Contrary to the claim of some opponents of this proposal, there is nothing in the amendment that prevents either the General Assembly, through the required enabling legislation, or the Ohio Casino Control Commission, through its rule-making authority, from mandating cashless wagering," he said.

**VLT Alternative:** The Ohio Coin Machine Association and others told a select Senate panel studying the VLT issue the state should not put all of its eggs into one basket by limiting the devices to horse tracks.

"We propose a balanced public-private business approach that will bring much greater revenues to the state and will spread those proceeds among tens of thousands of Ohioans and small business owners," said Andy Shaffer, the group's incoming president.

Its plan calls for the coin operators industry, rather than the state, to cover the cost of leasing 40,000 VLT machines. Machine manufacturers, distributors, and operators would pay annual license fees, as would the businesses and racetracks attracting customers.

Mr. Shaffer estimated net revenue to the state of \$1.4 billion over the budget biennium, compared with a projected \$933 million under the governor's proposal limited to the seven tracks.

The Ohio Licensed Beverage Association said limiting VLTs to racetracks would negatively impact other businesses such as bars.

"We have proposed the use of the local option process to determine which on-premise permit locations would have the privilege of offering this alternative form of entertainment," said Philip Craig, executive director.

"Allowing it in adult oriented businesses, such as racetracks and bars and taverns, ensures that the games are available primarily to adults," he said.

In other testimony, Dr. John Mossbarger, a veterinarian whose family owns a standardbred breeding farm in Fayette County, said Ohio was breeding over 3,000 mares a year until expanded gaming surrounded the state.

"In 2008, Ohio bred less than 800 mares and our farm dropped under the 200 mark. My family was forced to move five of its nine stallions to Indiana this year," Mr. Mossbarger said.

He said the VLT plan would not only help support the budget, but would have a major economic impact on the horse racing industry.

"This is much more than just gambling. It is about real jobs, real people, and real families," Dr. Mossbarger said.

The Ohio Council of Churches, which opposed the state lottery and four statewide gambling ballot issues, found it "unthinkable" that legislation allowing 14,000 slot machines at tracks would be slid into a budget bill.

Tom Smith, public policy director, said the council agreed with Sen. Harris about the need for a statewide vote.

"If we are not to have a vote of all Ohioans, a bill allowing such gambling should follow the normal route requiring individual members to cast a vote that their constituents can hold accountable," Mr. Smith said.

He characterized as "incredible" the provision that would require the state to return to track owners part of the \$65 million that each paid for licenses in the event voters approve the Nov. 3 casino measure.

"I understand why nobody who favors this plan wants a statewide vote on racetrack slots, because Ohio voters are much too smart to think that this plan can solve Ohio's economic problems," Mr. Smith said.

**"Clawback":** Gov. Strickland said at a Statehouse news conference he would not support legislation that includes a "clawback" provision.

The provision is contained in what has been described by the administration as the House's draft amendment. The governor said he didn't have the authority to propose legislation himself.

On the hearings uncovering what the GOP has described as "fatal flaws," Mr. Strickland said similar discussions could have taken place earlier between policymakers had the Senate been willing to negotiate on slots.

"Many of the questions could have been raised earlier and answers could have been provided," he said.

Sen. Jon Husted (R-Kettering) challenged Mr. Strickland's attempt to divorce himself from the clawback provision.

"It's right in his proposal," Sen. Husted said, pointing to a copy of what appears to be turning into an orphan amendment.

"If it's not his proposal, then where's his proposal? Because that's what his staff gave us and said was his proposal," he said.

"This is what the governor offered. He says he wants us to take action. But we're playing a game of hide and seek with him as to whether or not it's really his proposal or whether it's not his proposal. Tell us what you want, governor," Sen. Husted said.

Sen. Husted is seeking answers to a half-dozen specific questions, one of which is whether a constitutional amendment is required to implement the VLT plan or whether it could be done through statute.

Chairman Mark Wagoner (R-Toledo) told reporters the select committee would not submit an alternative proposal. Both he and Sen. Dale Miller (D-Cleveland) also are members of the budget conference committee.

"The charge of this committee to ask the questions with regard to the VLT proposal that was put out there. We are continuing to work and expedite this process. We're having hearings on state holidays when nobody else is meeting," Sen. Wagoner said.

"We first have to find out whether this solution that the governor presented was a viable solution," he told reporters.

Sen. Wagoner said other options also were being considered. One might result in the measure being placed on the ballot. Another would involve a one-year education budget. He said additional unspecified options were under consideration.

"What you're starting to hear is the governor taking options off the table as we go through this process," Sen. Wagoner said.

Sen. Husted said the panel had taken the governor's proposal seriously.

"It's ... worth noting that, based on what we have, his proposal is a false solution because it is contingent upon a ballot initiative failing before the revenues actually would materialize," he said.

The committee scheduled additional hearings for Tuesday and Wednesday at 10 a.m.

**Friday Hearing:** A Senate panel Friday pored over Gov. Ted Strickland's plan for slot machines at horse race tracks as intently as a gambler clutching an odds form, with Republicans discovering what they said were "fatal flaws."

Backers of the proposal to install video terminals through the Ohio Lottery at the seven tracks produced witnesses to boost confidence in "conservative" revenue estimates and to underscore the need for legislative, rather than executive, approval.

Opponents argued that approval via either route would thwart the will of voters who have turned down expanded gambling on four previous occasions.

Two horsemen's groups said the 4% cut proposed for them was too small compared with percentages in other states. Bowling alleys contended they also should be able to offer video slots to customers.

A five-member Senate Select Committee created to examine Gov. Strickland's proposal heard three hours of testimony Friday.

Sen. Mark Wagoner (R-Toledo), the chairman, said more witnesses would be heard on Monday and Tuesday, with starting times to be announced.

Sen. Wagoner characterized the debate as one of competing casino issues. He referred to a separate constitutional amendment headed for the Nov. 3 ballot that would authorize four full-service casinos in Cleveland, Columbus, Cincinnati, and Toledo.

"What's becoming clear is we're having pressure to pass this legislation right now favoring one set of casinos over another. One of the possible things to explore is letting the voters of Ohio decide which casinos should win out, if any," Sen. Wagoner told reporters after the hearing.

He said the Senate hearings to fully vet the proposal have produced more questions than answers.

"It sounds to me like it's a very good deal for these racetracks. You heard the CEO of a major, publicly traded corporation say that Scioto Downs could potentially have \$30 million dollars in profit at one of those locations," Sen. Wagoner said.

"At the same time ... the Ohio Lottery Commission has the obligation to maintain the machines, possibly to purchase the machines and lease these machines, and how does that work? The state's picking up that," he said.

Gov. Strickland proposed the video lottery terminals to offset about one-third of a \$3.2 billion deficit in Ohio's pending two-year budget. The state currently is operating under a one-week interim spending plan, with a second interim waiting in the wings.

Sen. Jon Husted (R-Kettering) said the November election would determine whether the budget is balanced. He said the state is not guaranteed payment of \$450 million in slots license fees, depending on the outcome of the vote on the separate casino measure.

"This committee's charged to consider a plan that we were asked to pass three days ago, and there aren't answers to any of these questions right now, and we are the only ones asking them. The only ones asking them," he said.

"This committee was called a political stunt, all right?" Sen. Husted said, raising his voice and striking the desk for emphasis.

"And today, after two days of hearings, we are clear that what this committee has done is discover the fatal flaws in this proposal that need to be addressed. And we will find a way to get them addressed in cooperation with the governor and Senate leadership," he said.

**Testimony:** David Basler, executive director of the Ohio Horsemen's Benevolent and Protective Association, supported the addition of video lottery terminals at tracks and said it would yield economic benefits for the industry.

"There's been gambling at race tracks in Ohio for over 75 years. Wagering already goes on," Mr. Basler said.

However, he said a higher percentage of revenue should be allocated for horsemen. He indicated the 4% current proposed was not high enough.

"We think 12% is a fair number, but there may be some give and take," Mr. Basler said. Even at 10%, he said, Ohio would be below what some other states allocate.

Sen. Husted noted that the proposal targets the 4% share for unspecified racing enhancements.

"I believe the senator is absolutely right," Mr. Basler said. "There's no guarantee that would go to purses."

Robert Griffin, president and chief executive officer of MTR Gaming Group, Inc., said Ohio would receive \$350 million in licensing fees and in excess of \$800 million a year as a result of allowing VLTs at the seven tracks.

MTR Gaming owns Scioto Downs Race Track in Columbus, Mountaineer Race Track and Casino in Chester, West Virginia, and Presque Isle Downs in Erie, Pennsylvania.

"Based on the demographics of this market and current competitive environment, I am confident that the target of \$933 million in taxes can be obtained within this biennium if statutorily authorized within the next couple weeks," Mr. Griffin said.

"In fact, given the right environment, we think the estimates could be conservative," he said.

Mr. Griffin said the proposed 4% to the horse industry would increase current purse levels from \$34 million to an estimated range of \$100 million to \$120 million.

He said MTR Gaming has operated Scioto Downs for the last five years at a loss of more than \$1.5 million a year. He estimated the track could turn a \$30 million profit with the addition of video slots.

Sen. Husted asked if Mr. Griffin would support the proposal should legislators decide to place it on the ballot.

Mr. Griffin said the company would have to evaluate the specific plan in front of it. "I cannot commit today that we'd be willing to do that," he said.

The American Policy Roundtable opposed the plan, pointing out that voters had rejected such casino-style activity four times.

Melanie Elsey, the group's legislative director, said a 1973 constitutional amendment authorizing the Ohio Lottery referred to the sale of lottery tickets.

"It is not possible that the citizens of Ohio could have intended for the legalization of lotteries to include the use of video lottery terminals, because in 1973 they did not exist," she said.

Ms. Elsey said the governor's proposal would violate the constitution by using lottery revenues as a means to balance the state's general budget instead of solely supporting education.

"We absolutely will file a lawsuit over revenue shifting," she said.

Ms. Elsey also said the slots package would give the lottery commission "a blank check" to proceed with other forms of gambling without future consent from legislators or voters.

### **INDEPENDENT POLL SHOWS SHARP DROP IN GOVERNOR'S APPROVAL RATING, SUPPORT FOR SLOTS WITH PUBLIC VOTE**

Results of an independent poll Friday show a sharp drop in the job approval rating for Gov. Ted Strickland. The survey from the Quinnipiac University Polling Institute also reflected support for video slot machines at horse race tracks. However, respondents say voters - not the General Assembly - should decide the issue.

Voters questioned in the poll gave 46%-42% approval of Mr. Strickland's job performance. That compares to a 57%-29% approval rating in a May 6 survey.

Friday's figure is the lowest approval rating for the governor since Feb. 1, 2007, one month after he took office.

Voters disapproved 53%-33% of the way Mr. Strickland is handling the economy. They disapproved 53%-32% of the way he is handling the state budget.

Respondents voiced support, 65%-31%, for Gov. Strickland's proposal to place video slot machines at racetracks.

But by an 84%-13% margin, voters said they should decide the issue in a referendum instead of leaving the decision to legislators.

The poll reflected 61%-35% support for gambling casinos in Columbus, Cleveland, Cincinnati, and Toledo.

Separately, the poll shows former U.S. Rep. John Kasich with a slight lead (35%-32%) over former U.S. Sen. Mike DeWine in a hypothetical race for the Republican gubernatorial nomination next year.

However, the poll shows Mr. DeWine has caught up with Mr. Strickland in a potential 2010 match-up, with 40% to the governor's 41 percent. Mr. Kasich trails Mr. Strickland 43%-38 percent.

Mr. Kasich has declared for the GOP gubernatorial nomination, while Mr. DeWine has not disclosed which office he might seek in 2010.

Quinnipiac University surveyed 1,259 voters in Ohio from June 26-July 1. The poll has a margin of error of plus or minus 2.8 percentage points.

TUESDAY, JULY 7 2009

### **SENATE GOP PROPOSES SLOTS BALLOT ISSUE; GOVERNOR SAYS IT WON'T SOLVE BUDGET PROBLEM, HINTS AT ORDERING LEGISLATORS TO STAY ON JOB**

Senate Republicans released an alternative Tuesday to Gov. Ted Strickland's plan for slot machines at horse tracks: a constitutional amendment on the Nov. 3 ballot for competitively bidding operations at seven unspecified locations.

Senate President Bill Harris (R-Ashland) characterized the proposal as "the bridge to reaching a consensus" with the governor and the House in a stalemate that has left the state without a biennial budget for the first seven days of the new fiscal year.

Shortly after release of the Senate letter outlining the proposed "video lottery terminal" amendment, the governor said it was "not terribly relevant" to finding the revenue needed to immediately balance the two-year spending plan.

He also hinted at the possibility of ordering legislators to remain in Columbus to resolve the deadlock. He quickly added that his comments came in response to a reporter's question, and that he was not making a threat.

Speaker Armond Budish (D-Beachwood) said the House couldn't go along with the Senate GOP's proposal because it expanded gambling beyond horse racetracks and wouldn't provide revenue fast enough to address the shortfall for the upcoming biennium.

"It would be fiscally irresponsible to balance the budget based on revenues we cannot count on," he said at a Statehouse news conference. "Our plan addresses the budget shortfall. Their plan simply expands gambling."

The speaker's comments followed an afternoon meeting with the Senate president that he described as cordial in general but unproductive in terms of resolving differences over the gambling debate.

The state faces a \$3.2 billion shortfall in the biennial budget. Mr. Strickland is seeking legislative approval for installation of VLTs at the state's seven horse tracks, through the Ohio Lottery, to raise about \$933 million. Another \$2.4 billion in spending cuts would erase the rest of the projected deficit. Gov. Strickland said Sen. Harris told him Monday night the letter was coming.

"I appreciate the fact that he did communicate a plan to me, or what he perceives to be a plan. I do not perceive it to be a plan," the governor told reporters.

"By putting the video lottery terminal language in a constitutional amendment, I think it continues to fall short of the legislature's responsibility and obligation to provide for a balanced budget now," Mr. Strickland said.

"You cannot budget a ballot initiative because there is absolutely no guarantee of the passage of that initiative. And even if it passed I think, as it has been suggested to us, it would be irrelevant to any significant revenue during the current biennium," he said.

Already headed for the Nov. 3 ballot is an initiated constitutional amendment that would authorize development of one full-service casino each in Cleveland, Columbus, Cincinnati, and Toledo.

Sen. Harris told the governor that the casino-backed proposal would limit all gambling to those four locations, rendering any legislative enactment of VLTs at horse tracks moot.

"In that case, the revenue on which you are counting for Ohio schools would evaporate," Sen. Harris said.

"Additionally ... we know that litigation is a certainty should your proposal be enacted, subjecting the state to legal wrangling and potentially tying up funding for schools in the courts. A voter-approved constitutional amendment is not subject to such legal challenges," he said.

State government on Wednesday begins operating under its second, seven-day interim budget. Gov. Strickland said each day that passes puts the state into a deeper financial hole.

"We have calculated ... that as a result of fees we are not collecting, the federal resources we are not able to draw down, and programs we are continuing to fund that would be reduced or cut under a new budget, we are making the deficit greater by (\$13.77 million) per week," he said at a news conference. He said legislative authorization for VLTs at tracks would resolve the only remaining issue blocking enactment of a balanced budget. Gov. Strickland also indicated legislative action could be taken that would limit the time frame of any potential legal challenges.

"We think we have taken some steps in the language that we are proposing that will enable us to shorten the time that any legal challenge would be forthcoming," he said.

The governor's office has suggested the House propose giving the Ohio Supreme Court original and exclusive jurisdiction with respect to any challenges, thus avoiding the normal time required for a trial and appeals. Gov. Strickland said it would be "unacceptable for us to do anything other" than to continue working "as long as it takes" on a solution.

### **CONTINUING BUDGET DAY 7: SPEAKER SEEKS THEN CANCELS PUBLIC DEBATE; THIRD INTERIM PLAN PONDERED**

The Statehouse was abuzz again Tuesday with budget-related activity, however none of it involved substantive movement toward breaking a long-running stalemate over the two-year spending plan.

In fact, neither Republicans in control of the Senate or Democrats running the House and governor's office seemed to back off an inch from their disparate positions regarding Gov. Ted Strickland's plan to install lottery-operated slot machines at horse racetracks as part of a \$3.2 billion fix.

With prospects for a speedy resolution appearing bleak, House Finance Chairman Rep. Vernon Sykes (D-Akron) said in an interview that a third budget extension was in the works. The governor, who has expressed concerns about the negative fiscal impacts of interim budgets, nevertheless signed into law Tuesday the second weeklong bill to allow the state to pay bills and maintain most operations through July 14.

Chairman Sykes said of a third interim budget, "We may regrettably have to offer that" even though "we're hopeful that we can resolve these issues since most of the other differences between the two chambers have been resolved."

Speaker Armond Budish (D-Beachwood) did call Tuesday for the resumption of conference committee talks on the budget (HB 1), but his announcement came with a twist - and then the meeting was later canceled.

He had asked Senate President Bill Harris (R-Ashland) to join him and conference panelists to publicly debate the so-called "video lottery terminal" issue.

"Our work should be out in the open, for all Ohioans to observe, so they will have the confidence of knowing that we are fulfilling our constitutional obligation to create a fiscally responsible, balanced budget that protects Ohio's families and moves us forward," Speaker Budish said in a letter to the Senate president.

Asked if Democrats would show up at such a meeting with without Republican lawmakers, Mr. Budish said he was hoping that wouldn't happen. "I don't understand why anybody would be opposed to discussing these issues publicly," he said.

Sen. Harris did not respond directly to the speaker's request because the meeting was canceled, his office said.

Additionally, the Wednesday meeting of the Select Committee on VLTs was also canceled.

### **LAWYERS OFFER SENATE PANEL DIFFERING VIEWS ABOUT CONSTITUTIONAL, LEGAL ISSUES OF 'VLTS'**

A special Senate panel was told Tuesday that while Gov. Ted Strickland could install video lottery gaming at horse race tracks via an executive order, a constitutional amendment would better protect against legal challenges.

Attorney Chad Readler of Columbus said a governor enjoys "a very broad grant of power" regarding lotteries, recalling the executive authorization last year of keno through the Ohio Lottery.

"Presumably that same power could be used here," Mr. Readler said, in regard to Mr. Strickland's proposal to install 17,500 "video lottery terminals," or slot machines, at the state's seven horse tracks.

He testified before a Senate Select Committee examining the governor's VLT plan. Mr. Readler identified three concerns for committee consideration. One, he said, was whether a VLT qualifies as a lottery. Voter approval of the Ohio Lottery in 1973 predated the invention of such devices, and centered on the sale of tickets. He said it was unclear how a court would rule on a private license holder's operation of a lottery, as opposed to a state agency. Another potential issue: use of slots money to free up other state support that was supposed to go to education. Mr. Readler said a governor's executive order, or legislative enactment, could be challenged immediately, forcing the question of VLTs into courts for an extended period.

"It's much more difficult to challenge a constitutional amendment than an act of the legislature," he said.

The question, Mr. Readler told the committee, is whether legislators want to put the issue before voters or before judges.

"At some point a judge will be asked to decide if the term lottery includes a video terminal," he said.

Mr. Readler acknowledged, in a response to a question from Sen. Timothy Grendell (R-Chesterland), that a constitutional amendment could be drafted that would address all the issues raised.

Separately, Attorney Mark Tucker of Columbus told the five-member panel that video lottery terminals now under consideration would come within a "well-established" definition of lottery in the state.

"The devices bear all of the characteristics of a traditional lottery in that a participant (1) pays a price, (2) for a chance, (3) to win a prize," he said. "Numerous courts in other states have concluded that games using similar electronic or mechanical devices are, in fact, 'lotteries.'"

However, Mr. Tucker said courts in some other states that have considered the issue have concluded that express legislative authorization is required to conduct lotteries through use of electronic or mechanical devices.

"Although some would more broadly interpret (Ohio law) to authorize lotteries not involving the sale of tickets, there is a substantial risk that, without express authorization from the General Assembly, the conduct of lotteries not involving the sale of tickets could be held unlawful. Express statutory authorization will serve to insulate the conduct of such lotteries from legal attacks that may adversely impact the revenue from such lotteries," Mr. Tucker said.

He told the panel that reliance solely on a gubernatorial executive order would leave the continued use of VLTs subject to the action of future administrations.

"Although contractual arrangements may, to some extent, prevent the abrupt cessation of lotteries conducted through the use of video lottery terminals, lenders and investors simply will not provide the long-term support necessary for such large capital projects when a future governor may simply revoke authorization," he said.

### **POLITICS NOTEBOOK: STIVERS SEEKS KILROY REMATCH**

Former Sen. Steve Stivers said Tuesday he would run again for Congress next year against U.S. Rep. Mary Jo Kilroy (D-Columbus) in the 15<sup>th</sup> District.

"I'm running for Congress to bring the common sense solutions and values of Central Ohio families to our nation's capitol," the Republican said in his announcement.

"We can no longer afford to continue to grow government, increase spending and damage our economy - our children deserve better. We need to leave a legacy of prosperity for future generations - not more debt, more bad policies and more taxes."

Mr. Stivers' entry into the contest sets up a likely rematch against the incumbent, who won a five-way race for the seat in 2008 by less than a percentage point over the GOP candidate.

A lieutenant colonel in the Ohio Army National Guard, Mr. Stivers, 44, served five years in the Ohio Senate prior to his unsuccessful bid for Congress. Since then, he has worked as a business consultant specializing in operations and finances with an office in Upper Arlington.

**Hog Debate:** Separately, an animal rights group plans to bring three hogs to the Statehouse on Thursday, and hog farmers want to bring reporters to their farms.

In advance of a Capitol Square exhibit by People for the Ethical Treatment of Animals, the Ohio Pork Producers Council sent reporters an invitation to tour a local hog farm to "encourage an accurate depiction" of their operations.

The council expressed concern for the welfare of three demonstration pigs.

"Ohio's hog farmers are very concerned about the welfare of the hogs being used in this stunt, in particular how the hogs will be cared for in the July heat, the exposure of the hogs' to humans and the risk to animal health, the stress of transport and public display and general disregard for the hogs' well being that is evident," the group said.

Meanwhile, PETA appealed an earlier decision by the Capital Square Review & Advisory Board to bar the group from including 3,500 buckets of pig manure and urine in the Statehouse exhibit. CSRAB did grant permission to display three hogs and use a sound system.

PETA says the exhibition is designed to draw attention to the role that cramped conditions in factory farms play in spreading diseases, such as the H1N1 virus.

"You can't have a serious discussion about swine flu without understanding that the stressful and filthy conditions on factory farms are what spawn the disease," Executive Vice President Tracy Reiman said in a statement. "The best way to protect animals and our own health is to go vegetarian."

### **OHIO DATA SHOWS HIGHEST MORTGAGE RATES, LOWEST HOME SALE PRICES**

Mortgage rates in Ohio declined in recent months along with the national trend, but the cost of the average mortgage remained among the highest in the states, according to data released Tuesday.

The average 30-year fixed mortgage rate in Ohio was 5.48% last week, a decrease of 1.4% from the previous week, according to real estate website Zillow.com. The average for the 20 states with the highest quote volume was 5.40%, down from 5.48% a week earlier.

Ohio was tied with Illinois, Massachusetts, and New York for the highest mortgage rate, the company said. Georgia had the lowest average at 5.32%.

Meanwhile, another real estate website said Ohio had the lowest average home price in the country at \$64,000. California saw the highest sales prices, with an average of \$343,000, according to ForeclosureListings.com.

The company said home prices rose more than 1% in some states, such as Michigan and Florida.

WEDNESDAY, JULY 8 2009

## **STRICKLAND BUDGET PROPOSAL TO CUT STATE EMPLOYEE RETIREMENT CONTRIBUTIONS DECLARED DEAD**

A Strickland administration proposal to help balance the budget by reducing retirement contributions for state workers has been shelved, leading lawmakers said Wednesday.

Rep. Todd Book (D-Portsmouth) and Sen. Keith Faber (R-Celina) both said Gov. Strickland's plan to cut employer contributions from 14% to 8% over the biennium has been rejected by lawmakers.

It remained unclear how officials would make up the \$256 million the plan would have freed up to balance the stalled biennium budget. The delayed contributions were part of the governor's "framework" to close a \$3.2 billion gap in the two-year biennium spending plan (HB 1).

Rep. Book said the option was considered as a way to help sustain state operations over the new biennium, but it would have created notable problems for the Public Employees Retirement System. "The proposal had a short shelf life and is off the table now," he said.

Sen. Faber said the Senate insisted that lawmakers not adopt the plan, suggesting that officials need to send a "clear message" that retirement system funds aren't state money.

The lawmakers' comments came as the Ohio Retirement Study Council voted unanimously to oppose the proposed reduction that was included in the governor's budget framework released last month.

The council's Glenn Kacic said the change would cost the system \$256 million in contributions over the biennium, and said even if those funds were repaid over the next ten years, PERS would miss out on \$183 million in investment opportunity costs.

He also said the move could set a precedent for local governments also struggling to balance their budgets may seek authority to reduce their contribution levels. That reduction, he said, could have an even larger impact on the system.

Mr. Kacic said implementation of the plan would also jeopardize retiree health care, create notable unfunded liabilities, lower the state bond rating and force the system to sell assets in a down market to pay benefit expenses. Among other things, he also questioned whether current lawmakers could bind future legislatures to repay the funds.

Rep. Lynn Wachtmann (R-Napoleon) said the proposal is a "direct frontal assault" on the system, members and retirees. "It is absolutely critical that this council take action to make sure that this radical outrageously bad plan does not get put into print."

PERS Director Chris DeRose relayed the system's opposition, saying it would have a significant impact on its solvency. He said the change would likely de-fund the PERS health care fund within ten years, pushing some retirees onto other forms of government-supported health care.

"It would put health care for all retirees in jeopardy," he said.

Mr. DeRose told Sen. Faber he never received details about the interest rate at which the delayed contributions would be repaid and said he didn't know whether the governor intended to count the loan against the state's debt limit.

Mr. DeRose said the plan would have significant ramifications beyond helping to address the current state fiscal emergency, noting that the proposal would threaten the system for years to come.

"We believe this is short-sighted," he said. "We're looking at this as a permanent reduction."

The director said the change would push the system's funding period to 50 years by the end of 2012, which runs counter to ongoing efforts to keep or bring retirement systems within a 30-year funding period.

"This action will only make the problem worse," he said.

## **BILL FOR HORSE TRACK VLTS INTRODUCED IN HOUSE; CASINO BALLOT BACKERS SEE \$11 BILLION ECONOMIC IMPACT**

Bipartisan backers of video lottery terminals at Ohio's seven horse racing tracks introduced their proposal as a separate bill Wednesday for hurry-up hearings and possible inclusion in the stalled biennial state budget.

Rep. Todd Book (D-Portsmouth), co-sponsor of the measure (HB 250) with Rep. Lou Blessing (R-Cincinnati), attached no special significance to offering an individual bill as opposed to potential budget amendments that have been circulating.

"I don't think you can take it as any signal," Rep. Book said in an interview.

"Right now, in this environment, I think it's just a fact that we put out the bill that calls for VLTs at the tracks. Nothing more. Nothing less," he said.

Later on Wednesday, the House Rules and Reference Committee that Rep. Book chairs assigned the bill to the State Government Committee.

"There are some changes, minimal. But we should start having some testimony on those hopefully if not this week at the very beginning of next week," the sponsor said. "Somehow this has to make its way into the budget package."

The legislation contains a provision intended to speed consideration of any legal challenges to VLTs by declaring the Ohio Supreme Court has original and exclusive jurisdiction. That is intended to avoid lengthy trials and appeals.

"That language regarding the Supreme Court is in the document," Rep. Book said. "I thought we put it in there a long time ago. But it's in there."

The bill also retains a provision in previous versions requiring any challenge to constitutionality be filed within 90 days after the section takes effect.

As with earlier versions, each track would pay a one-time, \$65 million licensing fee, in five installments, and could install up to 2,500 VLTs, more commonly referred to as slot machines, through auspices of the Ohio Lottery, at each location.

Surfacing of the House legislation came one day after Senate Republicans proposed - but have not introduced - a joint resolution for a Nov. 3 expanded gambling ballot issue.

The Senate resolution would authorize competitive bidding for VLT licenses at seven locations. Horse tracks are not mentioned.

Republicans contend Democratic Gov. Ted Strickland could implement his proposal for VLTs at tracks with an executive order absent any legislative action.

However, Rep. Book said such an approach was not workable.

"I think the tracks have to have some security when they go to get financing. And the fact that it would be by executive order is pretty insecure when it comes to making this type of investment," he said.

"We're asking them to invest \$145 million dollars," Rep. Book said. He said an executive order does not provide the security they need.

Mr. Book said there also were practical problems with a ballot issue approach.

"You look at the experiences of other states where they've put it on the ballot and had the bidding process. We're in a position now where we need money for this biennium," he said.

"That process of ballot and bidding will not get the money in this biennium. It doesn't mean we're against a vote. The practicality of it is that ... it won't work by executive order. If the goal is to get money for this biennium, it won't happen," he said.

Unlike the Senate ballot proposal, the House bill specifically identifies the tracks as the venue for video lottery terminals.

Rep. Book said the Senate resolution would provide for VLTs at seven unspecified locations.

"Maybe it could end up at Cedar Point, or it could end up at Kings Island. Who knows where it's going to end up? All seven could end up in one city, one community," he said.

"The idea of the tracks, it's a known destination, (and) gambling is going on there. We are just expanding the opportunities for gambling at those locations," he said.

**Casino Economics:** Separately, advocates of an initiated casino constitutional amendment headed for the Nov. 3 ballot said their plan would create 34,000 jobs and have an \$11 billion economic impact during construction and the first five years of operations.

The pro-casino Ohio Jobs & Growth Committee commissioned a study from the University of Cincinnati's Economics Center for Education and Research, part of the College of Business.

It analyzed the direct and indirect employment and economic impact statewide and in the four cities that would host the proposed casinos - Cleveland, Columbus, Cincinnati, and Toledo.

The study projected the casino amendment would:

- Create nearly 19,000 jobs during initial investment and construction that would begin in 2010.
- Create nearly 16,000 jobs once the casinos opened in late 2012.
- Generate \$56 million in earnings, sales and property taxes directly to the state during the construction phase, and \$35 million a year in earnings, sales and commercial activity tax once the casinos open.
- Produce average earnings for casino workers of about \$33,000.

Charlie Luken, the former U.S. Rep. and Cincinnati mayor who heads the casino committee, said the study shows the amendment is "far and away the best proposal" for expanded gambling ever presented to Ohio voters.

Voters have rejected four other casino proposals in statewide elections since 1990.

"In the midst of a deep economic slump, we are looking at a proposal that will create tens of thousands of new jobs and pump billions of dollars into our major cities," Mr. Luken said in a news release.

He said the proposal would provide \$651 million a year of tax revenue in which all 88 counties, the eight largest cities, and every school district would share.

### **CONTINUING BUDGET DAY 8: PRIVATE TALKS GO ON**

Following two days of heightened rhetoric over stalled budget talks, the Statehouse was relatively quiet Wednesday as negotiations again retreated behind the scenes.

Gov. Ted Strickland's proposal to fill part of a \$3.2 billion budget gap with proceeds from slot machines at horse tracks, meanwhile, continued to trigger various opinions regarding its legal aspects. (*See separate story*)

And lawmakers confirmed following a meeting of the Ohio Retirement Study Council that one of the more controversial components of Gov. Ted Strickland's budget balancing "framework" - a delay in paying the state's share of employee retirement benefits - was no longer on the table. (*See separate story*)

The planning and then the abrupt cancellation of Speaker Armond Budish's (D-Beachwood) proposed public hearing on slots prompted some speculation Tuesday that the parties may be inching closer to a resolution of the stalemate.

Spokesman Keary McCarthy said Wednesday that the speaker canceled his proposed conference committee debate "in order to allow for a productive dialogue to move this process forward."

Although more discussions did indeed ensue, there were no obvious signs of a breakthrough by the end of the day.

### **SECRETARY OF STATE WEBSITE COMPILES DATA ON WIDE VARIETY OF SOCIAL HEALTH INDICATORS**

Ever wondered how many children tested positive for lead in Van Wert County in 2003 or how many deer-vehicle collisions occurred in Richland County in 2007?

Secretary of State Jennifer Brunner introduced a new website Wednesday that can answer those questions (181 and 571 respectively) and a host of other statistical inquiries that have hitherto eluded all but the most dedicated policy wonks willing to search and compile data from numerous sources.

The Better Lives, Better Ohio website is designed to provide information about the state's social health based on a wide variety of about 300 statistical indicators in the fields of education, government, natural resources, health, public safety, family, and the economy.

Some examples include: the consumer price index; venture capital investment; adoptions; low infant birth rate; juvenile arrests; library visits; farm land acreage; foreclosures; and psychiatric hospitalizations.

"The data from 18 state and federal agencies in one place, one format we believe will be a valuable policymaking tool," Ms. Brunner told reporters during a news conference to unveil the site. "Making this information readily available will be important for people who are working to make our state a better place to live, work and play."

Completion of the website fulfills one of the four goals Ms. Brunner campaigned on in 2006, she said, explaining she first got the idea while serving as a judge. She recognized the need for such data to view social trends in a broader context.

After holding several forums were held around the state to solicit input on what indicators should be included, the office's IT department created the website in-house with minimal expense, she said. The information will be routinely updated as agencies release new data.

Secretary Brunner said the website could enable state policymakers to measure the impact of budget and policy decisions they make over time.

In addition, the information will be useful for local chambers of commerce seeking to attract economic development, as well as local officials, students, teachers, grant writers, researchers and the general public, she said. "We think this is an empowerment tool."

### **PUCO APPROVES AGREED DISTRIBUTION HIKE FOR DUKE ENERGY**

The average residential consumer in Duke Energy Ohio's service territory will see their total electric bill increase by 2.6% under terms of a distribution rate increase approved Wednesday by state utility regulators.

The action will boost the utility's revenues by \$55.3 million, the Public Utilities Commission of Ohio said. The utility sought an increase of \$86 million, according to the commission.

The increase was included in a stipulation signed by the utility, commission staff and the Ohio Consumers' Counsel, among other parties.

"The OCC helped sharply reduce the distribution rate increases originally proposed by Duke and negotiated to provide payment assistance to as many as 10,000 residential customers who can least afford their electricity," said Consumers' Counsel Janine Migden-Ostrander. "Given these hard economic times, the OCC is working hard to limit the amount of rate increases and to provide protections for consumers."

The order calls on the company to help low-income customers through new programs, one of which involves a \$4 monthly credit for up to 10,000 customers that don't participate in the Percentage of Income Payment Plan.

Duke said the approved amount represents 64% of its initial request.

"The approved agreement will continue to allow us to make investments in the maintenance of our delivery system," said Julie Janson, president of Duke Energy Ohio. "We have made every effort to cut operating costs by freezing non-union salaries, renegotiating supplier contracts and cutting employee travel, but this funding was essential for us to continue to deliver electricity safely and reliably."

OCC also said the stipulation specifies that Duke may not increase rates - in this case - to cover costs regarding power restoration in the wake of Hurricane Ike. That request, OCC said, will have to come in a separate case.

The rate change is expected to take effect on July 13.

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### **CONTINUING BUDGET DAY 9: PARTIES MULL SLOTS OPTIONS; THIRD INTERIM PLAN PENDING**

The lack of any substantial progress Thursday toward breaking a budget stalemate over expanded gambling - at least publicly - means the legislature will likely have to enact a third temporary spending plan to keep state operations going in the interim.

The second one-week budget expires on Tuesday, June 14. Even if the idle House-Senate conference committee on the bill (HB 1) was to suddenly resume its work Friday on the hundreds of policy and funding differences between the two chambers' versions, meeting that deadline would be dicey given the administrative tasks involved in finalizing the panel's report and the 3,500-page bill.

At deadline Thursday, the best-case scenario for policymakers appeared to entail a near-term resumption of the conference committee with plans for a temporary budget in the works as a backstop to give the Legislative Service Commission enough time to perform final processing work on the measure.

Key lawmakers said the main difference to resolve in regards to Gov. Ted Strickland's "framework" for dealing with a \$3.2 billion revenue hole in the fiscal year 2010-2011 spending plan remains the proposal to place slots, or "video lottery terminals," at horse racetracks.

Thursday marked the second day in a row that the Statehouse took on an eerie quiet following two days of heightened partisan rhetoric over the gridlock.

Sen. Jon Husted (R-Kettering) said all parties have veered away from the more combative positions of late days and were continuing to work in earnest to resolve differences over how to expand gambling and close the budget gap.

"I think everybody recognizes that the course we were on collectively was not a constructive course and everybody is working in a more constructive manner," he said.

"The first question is what are we going to do as it relates to the gambling proposals and then how are we going to do it. A lot of the focus has come on 'the how,' but really 'the what' needs to be decided first," he said.

Complicating the issue is a separate casino ballot issue targeted for the Nov. 3 ballot and how it would impact Mr. Strickland's slots plan.

Much of the ongoing, private debate between the Big Three state leaders centers around what would best for the state in the short term versus a more long-sighted approach, Sen. Husted said. For example, Republicans' plan to bid gambling rights would maximize revenue, but could delay the process and be subject to legal challenges.

"Those are legitimate questions, legitimate conflicts and that's why this has been a difficult issue for people to resolve," he said.

"There is no surefire way to prevent a challenge to any of it," he added. "We believe going to the ballot creates the least risk."

Noting members have been bombarded with constituent pleas to avert damaging cuts, House Minority Leader Bill Batchelder (R-Medina) said in a letter to Gov. Strickland that House Republicans have offered up plans to streamline state government and improve efficiencies only to have them ignored. He said the ideas should be given more consideration given the circumstances.

"These bills, which could be a part of the solution to our current problems, have been given no hearings before the Ohio House," the lawmaker wrote.

"It is disingenuous to the citizens of this state to move forward with deep cuts to services and undeveloped proposals to establish new revenue streams when all cost-saving options have not been explored. As such, we are calling for a public conversation on how the state might make the elimination of wasteful spending a priority and develop long-term solutions to Ohio's budgetary problems."

#### **STATE SAW 12% TAX REVENUE DROP IN FY 2009, BUDGET OFFICE REPORTS**

The Office of Budget and Management's draft revenue data for fiscal year 2009 underscores how the state's bottom line, and economy, bottomed out over the last 12 months in historic fashion.

One red number stands out among the rest in the OBM revenue charts for June: \$2.32 billion. That's how much less tax money the state took in during the last fiscal year compared to FY 2008, and the 12% plummet is off the charts when lined up with decades of statistics reviewed recently by the Department of Taxation.

Agency spokesman John Kohlstrand said the annual drop is by far the largest in years for which the state has easily researched data, as he personally looked up numbers dating back more than 50 years.

"Nothing remotely like this has happened in the past half century," he said. "Certainly, it is a historic drop."

While not a surprise to officials given the dismal performance of the personal income tax and other revenue sources in the later months of FY 2009, the final year-to-date numbers were dragged deeper into the red by a month that saw Ohio's coffers take in nearly 24% less in tax collections than in June 2008.

State budget administrators have said the biggest factors in the drop are the economic anemia and the tax restructuring of 2005, which reduced income tax rates across the board by 21%, cut or eliminated certain business taxes and made other changes.

The economic impacts became clearer with the close of tax filing season, after which Gov. Ted Strickland's administration revised its already dampened financial projections and later announced the state faced a roughly \$1 billion deficit for FY 2009. That hole was filled with the drainage of the Budget Stabilization Fund, which now stands at 89 cents.

Last fiscal year was the third in a row in which the state collected less tax revenue than the year before - a streak that's also considered a record. Mr. Kohlstrand said the agency could only find three other years dating back to 1957 in which such declines occurred.

Dating to that year, he said the annual tax revenue dips occurred in: 2008 (0.3%); 2007 (0.5%); 2002 (1.1%); 1961 (2.9%); and 1957 (1.7%).

Just how bad was the tax intake freefall last year? The final month's tax receipts came in \$244.7 million, or 14.6%, less than OBM estimates that were revised downward about halfway through the fiscal year. For the entire year, personal income tax receipts alone were nearly \$630 million, or 7.6%, below revised estimates.

Most of the remaining underage came in the sales tax categories, which were a combined \$339 million, or 4.6%, below estimates, OBM reported.

### **RAIL PANEL TOLD MILLIONS IN FEDERAL FUNDS OBLIGATED FOR OHIO PROJECTS, MORE COMING DOWN TRACK**

The Ohio Rail Development Commission was told Thursday that federal economic stimulus funding has been obligated for eleven projects across the state, clearing the way for engineering and construction.

Ten other projects with bigger price tags are still awaiting federal approval to proceed.

Of the eleven projects now obligated, the single largest grant of \$2 million is for rail line rehabilitation in the City of Jackson.

Matthew Dietrich, the ORDC executive director, said in a report to the panel that the other approved projects include \$1.3 million for rehabilitation of the RJ Corman Western Ohio Line; \$1.2 million for Wheeling & Lake Erie track rehabilitation in Akron/Canton; and \$1 million for track rehabilitation through the West Central Ohio Port Authority.

More than \$60 million worth of projects are on the list of ten for which federal approval still is being awaited.

The two largest - at \$20 million each - are for improvements needed to allow the CSX system to move double-stack freight trains, and for the V&M Steel expansion in Youngstown.

Another \$7 million is being sought for the state-owned Panhandle Line in eastern Ohio; \$6.5 million for the Norfolk Southern Airline Intermodal project in Toledo; and \$3.6 million for a Norfolk Southern double-stack project from Cincinnati to Columbus.

Commission members were told that the level of funding provided in the state's interim budget is sufficient to meet minimum costs.

"(We) are hopeful that an agreement will be reached shortly so that we can move forward with planning our activities and project funding for the rest of the fiscal year," Mr. Dietrich said in his report.

"Fortunately, our safety funds and loan funds were passed in the transportation bill that was approved in April, so we can be responsive in those areas," he said.

Acting on an agenda item, the ORDC approved a loan of up to \$50,000 to help finance construction of a new rail spur to serve the Norwalk plant of the New Horizons Baking Company.

The firm, one of the largest in Huron County, produces buns, muffins and other baked goods for McDonald's, and for other food service and retail companies.

New Horizons wants to add a rail spur to reduce costs of transporting wheat that now is trucked from mills in Kansas, Nebraska, and Cleveland.

Total cost of the project is \$291,412. The Ohio Department of Development is providing a \$170,000 industrial site improvement grant. Huron County and the company are jointly contributing \$72,853.

**Passenger Rail:** Separately, public officials and civil leaders from 122 communities met in Columbus this week for an update on Gov. Ted Strickland's bid to land \$400 million in federal funds to begin conventional speed rail passenger service.

The governor's plan anticipates Amtrak trains at up to 79 miles per hour on a route from Cleveland, through Columbus and Dayton, to Cincinnati.

Resumption of passenger service is seen as a first step toward Ohio's participation in a nationwide high-speed rail network.

The ORDC said receipt of economic stimulus funds from \$8 billion set aside nationally for high speed rail would have the conventional speed service running in Ohio by 2011.

"Hearing from the communities along the proposed rail routes will help us identify community priorities for this conventional-speed start-up service," Mr. Dietrich said.

"These, in turn, will help us identify the eventual high speed 3C route that will best meet the need and goals of our citizens," he said.

The Ohio 3C Corridor has not seen passenger service since 1971.

Amtrak, state agencies, and the state's two major freight railroads - Norfolk Southern and CSX - are developing a route, with recommendations expected later this summer.

The U.S. Department of Transportation and the Federal Railroad Administration will determine this fall which states receive a share of the \$8 billion in stimulus money available for passenger rail.

### **SUPREME COURT SETS SEPT. 1 DATE FOR ARGUMENTS IN GROCERS' BID TO SKIN OHIO'S CAT**

The Ohio Supreme Court said Thursday it would hear oral arguments on Tuesday, Sept. 1 in a lawsuit that challenges application of the state's Commercial Activity Tax (CAT) to food wholesalers and retailers.

Justices scheduled the case without comment after a week in which the Ohio Business Roundtable and three education organizations filed friend of the court briefs in support of the state's levying of the tax on the food industry.

At issue in the court's ruling - which may not come until late this year or early in 2010 - is the potential loss of \$188 million a year in state tax revenue.

Attorneys for the state also say a decision in favor of grocers would mean refunds of at least \$355 million, and would likely lead to similar challenges on behalf of other businesses.

The litigation began when the Ohio Grocers Association and other plaintiffs filed a lawsuit contending the CAT, as applied to them, violated a prohibition in the Ohio Constitution against excise taxes on food sales.

A Franklin County common pleas judge ruled against the grocers, holding that the CAT was not a transactional tax but a franchise tax on the privilege of doing business.

The 10<sup>th</sup> District Court of Appeals reversed. The appellate panel said that, "by its very operation when applied to gross receipts derived from the sales of food, a transactional tax is precisely what the CAT becomes."

The Ohio Business Roundtable told the court this week that notwithstanding the contention of grocers, application of the CAT does not violate the Ohio Constitution.

The business group said the constitution does not prohibit a general excise tax on the privilege of doing business from including gross receipts from sales of food in the base by which the excise tax is measured.

It said the constitution prohibits only transactional excise taxes on sales or purchases of food.

"The CAT is not an excise tax on sales or purchases; it is an excise tax on the privilege of doing business in Ohio," Richard Farrin, the group's attorney, said in a court filing.

"As part of Ohio's major business tax reforms, the CAT was enacted to replace the corporation franchise tax as Ohio's excise tax on the privilege of doing business," he said.

"The purpose was to eliminate the franchise tax, which discouraged capital investment in Ohio, and replace it with the CAT, a broad-based, low-rate business privilege tax," Mr. Farrin said.

Also lining up in support of the CAT were the Buckeye Association of School Administrators, the Ohio Association of School Business Officials, and the Ohio School Boards Association.

They said the historical record "overwhelmingly indicates" the constitutional amendments on which grocers rely were intended to specifically prohibit sales taxes on food.

"These appendices show that the intent of the framers of the amendments, which the people adopted, was to prohibit sales or other transactional excise taxes on food for consumption off of the premises," said attorney Fred Livingstone of Cleveland.

"The constitutional amendment to repeal the sales tax on food was a common issue in periodicals at the time and it is clear that the issue was understood by all to pertain only to a transactional sales tax," Mr. Livingstone told the court.

Grocers said in an earlier filing that the two constitutional sections at issue combine to prohibit the imposition of all excise taxes levied or collected on the sale or purchase of food at the wholesale level and at the retail level when it is to be consumed off the premises where sold.

"Because the taxation of the food increases the costs of food for consumers, these provisions are intended to prohibit all excise taxes on the sales of food, except for dine-in sales, from being a source of revenue for the State of Ohio," said Gerhard Gosnell, the group's attorney.

Mr. Gosnell dismissed claims of the state that a ruling in favor of the grocers would "wreak havoc" on tax laws.

"(It) goes without saying that the CAT is no more constitutional when applied to food sales because the state is in need of tax revenue or because numerous interest groups supported its passage. The Ohio Constitution prohibits the taxation of food sales, and the CAT, by operation and effect, falls squarely within its terms," he said.

FRIDAY, JULY 10 2009

**CONTINUING BUDGET DAY 10: AGREEMENT ANNOUNCED WITH SLOTS-AT-RACETRACKS DEAL; FINAL VOTE COULD COME MONDAY**

State leaders broke a weeks-long deadlock Friday over slot machines at horse racetracks, setting the stage for finalization of the stalled biennium budget measure as early as Monday.

Speaker Armond Budish (D-Beachwood) said the agreement entails authorization of the so-called "video lottery terminals" through an executive order as well as "supporting legislative language."

That approach means both sides gave a little under the deal. Senate Republicans wanted Gov. Ted Strickland to implement the proposal himself with an executive order, or that the plan be presented as a ballot issue. The governor and fellow Democrats in control of the House had demanded legislation to shore up legal arguments.

"With this understanding, I am confident that the legislature can now move quickly to enact a balanced budget that rightly prioritizes education as the foundation of Ohio's economic revival, reduces state government spending while minimizing the impact on critical health and safety services, and does not raise taxes on Ohioans or Ohio businesses struggling through this recession," Gov. Strickland said.

Under the most recent version of the proposal, the state would authorize 2,500 slot machines, or "video lottery terminals," at Ohio's seven horse racetracks and the devices would be under the auspices of the Ohio Lottery Commission. The proceeds - estimated at \$933 million over the biennium - would like other lottery profits be dedicated to K-12 education funding.

Officials said some of the final details of the plan remained under discussion as of Friday afternoon, so there could be some changes compared to legislation that had been under scrutiny in the Senate and the language of bill introduced recently in the House (HB 250).

"I am pleased that we have been able to work through this difficult budget and to provide solutions that will help move Ohio forward," Mr. Budish said in a statement. "By reaching a bipartisan compromise on the implementation of video lottery terminals to limited locations where gambling already occurs, we will provide a balanced, two-year state operating budget."

Senate President Bill Harris (R-Ashland) said, "The Governor has indicated that he intends to use an executive order to direct the Ohio Lottery Commission to install video lottery terminals at Ohio racetracks. As I have said many times in the past few weeks, I believe he has the authority to do that and that I would be willing to pass legislation to implement it. As such, I have agreed to include language in the conference committee report that will acknowledge his authority to expand the Lottery."

The conference committee on the budget (HB 1), which has met only once to get downgraded tax revenue estimates for the fiscal year 2010-2011 biennium, is set to resume at 11 a.m. Monday in Statehouse Room 313.

The conference process is expected to proceed relatively quickly since all other major differences have been resolved in recent days while the Big Three negotiated - sometimes acrimoniously - over the slots plan.

While officials hope to complete the process in time to avoid a third temporary budget measure, Budish spokesman Keary McCarthy said a short-term spending plan would be passed through both chambers on Monday just in case a few days are needed for processing purposes.

The backstop temporary budget will be inserted Monday into separate "Military Family Monthly" legislation (HB 150) pending in the Senate, Harris spokeswoman Maggie Ostrowski said. However, if the conference committee is able to complete its work in time under an expedited process, the panel's report could also be considered for final approval later that day.

The slots proposal was included in a "framework" that the governor put forth in June to resolve a \$3.2 billion hole in the spending plan that stemmed from the economic downturn and related dearth of tax collections.

The governor's outline, which the conference committee is expected to alter considerably, also included some \$2.4 billion in spending cuts. Among the expected changes is the scrapping of the administration's proposal to delay state contributions to employee retirement plans.

Mr. Strickland said he would "issue a directive instructing Ohio's Lottery director to expeditiously take all necessary actions to implement video lottery terminals at Ohio racetracks"

"The General Assembly will acknowledge the Lottery's authority to implement video lottery terminals and provide for a statutory definition of video lottery terminals and other implementation requirements in House Bill 1, the operating budget bill," he added.

Details said to be in flux as of Friday included the initial VLT license fee, which has been proposed at \$50-65 million, and the share of profits that horsemen would receive.

Mr. Strickland's executive order will likely be issued on Monday, his office said.

The announced budget agreement is also expected to break the logjam on other legislation that has been on hold amidst increased partisan Statehouse rhetoric of late.

For instance, a pending ballot issue on livestock care that had been informally passed in the House (SJR 6) was set for a hearing and possible vote Monday in the chamber's Agriculture and Natural Resources Committee.

### **LOCAL OHIO AGENCIES GET \$31.6 MILLION IN FEDERAL RECOVERY GRANTS TO UPGRADE TRANSIT SYSTEMS**

The U.S. Department of Transportation has approved \$31.6 million in economic recovery grants for a series of local transit system improvements across Ohio.

About one-third of the total - \$10.2 million - went to the Greater Cleveland Regional Transit Authority. The money will help finance rail station rehabilitation, track upgrades, and grade crossing design and repairs.

Akron's Metro Regional Transit Authority will receive \$8.4 million.

The transportation department said the money would fund six commuter-style buses, four 40-foot low-floor buses, and nine buses for paratransit use. The money also will fund roof replacement at a bus storage barn, replacement of bus hoists, repair of driveway asphalt, passenger shelters, and trash cans.

A \$3.6 million grant went to Laketrans in Lake County to buy 18 replacement paratransit vans, and four replacement 30-foot, low-floor buses. The money also will pay for signage at two park and ride lots, new radios, and preventive maintenance.

Other federal grants included:

- Portage Area Regional Transportation Authority, Kent: \$981,392 to fund facility renovation, architectural and engineering, and preventive maintenance.

- Trumbull Transit Service, Niles: \$514,420 to fund the capital cost of contracting expenses to transport young adults with special needs to job training classes and sites.
- Sandusky Transit System: \$848,579 to buy eight light transit vehicles and four vans, transit enhancements, and other capital items. Funds will also be used to purchase and install eight passenger shelters for a new JARC route.
- Stark Area Regional Transit Authority, Canton: \$5.1 million to fund various capital investment projects, including the purchase of nine replacement 35-foot, hybrid diesel-electric buses, surveillance cameras, bike racks for existing fixed-route buses, and replacement of a bus washer system in the maintenance facility.
- Licking County Transit Board: \$373,177 to purchase four expansion buses, mobile data computers, automated vehicle locators, facility cameras and a keyless entry system.
- City of Springfield: \$1.6 million to buy as many as six buses, preventive maintenance and facility upgrades.

"By quickly moving federal dollars to the cities and towns across the country, we are putting people back to work now and ensuring that our nation will have reliable and efficient transit system for generations to come," Transportation Secretary Ray LaHood said in a news release.

Nationwide, 343 grants worth \$3.2 billion have been made available for transit improvements.

Overall, the U.S. Department of Transportation has made \$48.1 billion available for highway, road, shipyard, bridge and airport construction and repairs nationwide, including \$8.4 billion for transit capital and operating improvements.

### **OHIO AGENCIES, HOSPITALS GET COMBINED \$13.2 MILLION IN FEDERAL FUNDS TO PLAN FOR POTENTIAL FLU PANDEMIC**

The Ohio Department of Health said Friday the state will receive a \$9.8 million one-time federal grant to continue planning and preparation in the event a more severe form of the H1N1 flu develops in coming months.

Secretary Kathleen Sebelius of the U.S. Department of Health and Human Services said the money is part of \$350 million now available to states and hospitals to prepare for the fall flu season.

"While the flu may have slipped off the radar screen for the media, it's still very much alive and well in this country," Secretary Sebelius said in a telephone conference call.

"We currently have about 1 million cases of H1N1, and the flu is presenting itself in 102 countries around the world," she said.

In addition to the \$9.8 million, \$3.3 million in preparedness grants will go to Ohio hospitals. That brings the total state allocation to \$13.2 million.

Of the \$350 million national total, \$260 million will support public health grants. The money is to help local departments prepare for a potential vaccination campaign, and implement strategies to reduce exposure.

Another \$90 million will go to hospitals to help them prepare for an anticipated surge of patients they will treat in the event of an outbreak.

Secretary Sebelius said surveillance teams currently are monitoring the flu season that just began in the Southern Hemisphere.

"To date ... it doesn't appear to be significantly more lethal than seasonal flu is," she said. "That's the good news."

However, it still transmits rapidly and easily, and is targeting a younger population - "very different from seasonal flu," Ms. Sebelius said.

She met Thursday with about 500 state and local health officials at the National Institutes for Health in Bethesda, Maryland, to discuss a series of issues about preparing for the fall flu season.

Among those at the conference was Director Alvin Jackson, M.D., of the Ohio Department of Health.

"The wave of flu illness we saw starting in April should be a wake-up call to all Ohioans - that preparedness is important for each individual, family and community," said Dr. Jackson.

"Government cannot do this alone. A flu pandemic affects every one of us, and every one of us should prepare," he said in a news release.

As of Friday, the department listed 144 confirmed cases of H1N1, and two probable cases. One death in Ohio has been attributed to the virus.

The Ohio agency said the \$9.8 million would enable it and 130 local health departments in planning for a potential pandemic.

Between 2005 and 2008, Ohio received about \$17.4 million in pandemic planning funds. Almost \$12 million of that amount went to local health departments around the state.

Secretary Sebelius told reporters Friday no final decision had been reached about whether or not to have a vaccination program this fall. She said virus strains are being grown, and clinical tests will begin later this month.

Presuming production, first vaccination opportunities would occur in mid-October.

The Ohio agency said the federal government is expected to provide a free H1N1 vaccine to the states this autumn. As a result, the latest grant will not be used to buy supplies of vaccine or antiviral medications.

Secretary Sebelius said the government has created a Website dealing with the flu.

It also is conducting a campaign that invites the public to make and submit public service announcements about the flu.

The idea "is to tap into the nation's creativity to help educate Americans about how to plan for and prevent the spread of H1N1 influenza." Producers of the winning PSA will receive \$2,500 in cash.

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