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Legislative Update

Friday, May 15, 2009

MONDAY, MAY 11 2009

STEPS TAKEN TO ADDRESS \$150 MILLION OF FY 2009 BUDGET SHORTFALL; AUDITOR AGAIN OBJECTS TO DEBT SHIFT

The administration took steps Monday to address a chunk of the anticipated fiscal year 2009 revenue shortfall, with a move to push more state debt payments into the future again triggering the opposition of State Auditor Mary Taylor.

To save nearly \$53 million in state costs for the fiscal year ending June 30, the Ohio Public Facilities Commission voted 5-1 to add that amount of outstanding debt to the \$400 million it already planned to delay payments on until after the next biennium.

On another front, Office of Budget and Management Director Pari Sabety reported that the administration could save about another \$98 million by the end of June as a result of the executive order Gov. Ted Strickland issued last month.

Most of those savings, about \$60 million, she said, come from liquidating encumbrances within state agency budgets. The remainder has been saved through stop-work orders, canceled contracts and other maneuvers called for in Mr. Strickland's order.

The result: \$150 million of the FY 2009 budget shortfall, estimated last week at a minimum of \$600 million but more likely upwards of \$900 million, will not have to be transferred from the state's "rainy day" Budget Stabilization Fund, which has an unobligated balance of \$948 million.

Ms. Sabety said the administration remains in discussions regarding near-term legislation to provide authority for the BSF transfer, whatever the necessary size. That move will likely come before the biennium budget is finalized, so it would presumably entail a separate bill.

Meanwhile, Auditor Taylor continued to express her concerns about the state's tenuous budget circumstances through her vote of opposition, delivered by Senior Policy Advisor Tim Keen, on the OPFC's expanded debt restructuring plan.

Mr. Keen was also the only "no" vote in late February, when the commission originally authorized the two-year delay in paying off \$400 million in outstanding debt until after the FY 2010-2011 biennium. The move was one of several "one-time" maneuvers called for in the pending budget measure (HB 1) aimed at helping to balance the spending package.

On Monday, OPFC, which had since February's vote delayed going to market with the restructuring plan, amended it with another \$52.8 million in debt that otherwise would have come due in June, thus giving Ohio that much more breathing room to end the current fiscal year in balance.

Under the original \$400 million restructuring plan, the additional costs to the state were estimated at about \$90 million on debt service payments through 2021, according to OBM. By adding the \$53 million, the cost goes up another \$10.6 million or so over the same period.

While acknowledging it would be difficult to solve the FY 2009 problem with only budget cuts given there are only about six weeks left in the fiscal year, Mr. Keen said during the commission meeting that Auditor Taylor remained opposed to the plan as a whole because it pushed the payback of the debt too far into the future.

The restructuring still amounts to "borrowing money for operating purposes," Mr. Keen said. "Which in her view is unacceptable."

After Ms. Sabety said OBM was still exploring all available options in regards to the budget squeeze, Mr. Keen said: "If it is the case where there are other options...then we would urge that this action not be taken at this time and we do not add to these out-year costs."

Kent Markus, chief legal counsel for Gov. Strickland and his designee on OPFC, asked whether the state auditor would come up with other options of her own for saving money in the budget.

"We'd be more than happy to have those discussions," Mr. Keen said. "She would be inclined to take a good hard look at the appropriation levels involved in this budget to achieve that end."

Ms. Sabety responded: "I look forward to that."

Mr. Markus and Ms. Sabety voted for the debt restructuring, as did Amer Ahmad, representing State Treasurer Kevin Boyce, Veronica Sherman, voting for Secretary of State Jennifer Brunner, and Todd Dieffenderfer, the designee for Attorney General Richard Cordray.

OBM said the original meeting to give final approval for the bond restructuring, which had been set for April 27, was delayed so bond-rating firms could be fully apprised of the state's updated fiscal situation. The timing of the delay again prompted Republicans to question why House Democrats were apprised of the situation before passing an inflated budget bill just two days later.

Mr. Keen asked OBM Debt Manager Kurt Kauffman to detail the timeline for the OPFC. Mr. Kauffman said that along with the realization that a more updated revenue picture would be available in early May, there were issues with marketing and other sale-related presentations and the office was running into difficulties meeting the original schedule.

Despite the changing state revenue landscape, OBM said the three main bond-rating firms decided to hold steady on the ratings for the restructuring sale and reported that they will not revisit Ohio's financial grades until after the budget bill is enacted.

Ms. Sabety suggested and OBM staff confirmed that the firms realize that most other states are in the same financial pickle given the historically rocky economic conditions.

After the meeting, the OBM director reiterated that the administration made the shortfall information available as soon as it was finalized with Department of Taxation data.

"We understand that this has been absolutely horrific timing," she said. "There's nothing we can do about the timing, so we have taken it upon ourselves to try and come up with as much as we possibly can from the executive branch administratively to deal with the shortfall we see emerging before us."

TUESDAY, MAY 12 2009

CONSTRUCTION CONTRACTING OVERHAUL LATEST BUDGET BILL DEBATE: ADMINISTRATION WANTS AMENDMENT, BUT OPPOSITION GROWS

The administration's plan to include a rewrite of government construction contracting laws in the budget bill has already run into opposition from key union and non-union groups.

Department of Administrative Services Director Hugh Quill on Tuesday outlined a plan to start hearings on separate legislation in the House with the goal of inserting a package of law changes into the biennium budget measure (HB 1).

"Public construction law has not substantially changed since the 1870s," Mr. Quill told the Senate Finance & Financial Institutions Committee, which is currently reviewing the \$54 billion spending plan. "Obviously, as in every other industry, technology, knowledge and management practices have greatly changed over time."

The administration's proposal stems from the work of the Ohio Construction Reform Panel, which last month finalized a list of 25 recommendations that included: expanding construction delivery options beyond the existing Multiple Prime Contracting and Construction Manager as Advisor Contracting; streamlining dispute resolution processes; and eliminating an existing requirement for newspaper advertising of construction management services and construction bidding.

Long sought by higher education institutions, the move away from Multiple Prime Contracting comes with claims of savings in the 10%-30% range, however those estimates have and continue to come under dispute.

The latest broadside in that regard was delivered Tuesday by the International Brotherhood of Electrical Workers, Fourth District, which includes Ohio. International Representative David Moran said in relaying the group's opposition to a budget bill tack-on for the recommendations that the projected cost savings "are totally unsubstantiated."

Mr. Moran wrote to reform panel members, lawmakers and other key policymakers that his group sees room for improvement in public contracting but opposes the legislation under development. "It is incomplete and deceiving at best," he said.

"The current rush to legislation is disturbing at best," Mr. Moran said of the budget bill proposal. "The changes being proposed are significant and deserve careful consideration. Transparency and sanctity of the competitive bidding process are far more important than any of these changes."

Associated Builders and Contractors, the trade group representing non-union contractors that objected to its exclusion from the reform panel process, also opposes a fast tracking of the recommended changes.

ABC Ohio Director of Government Affairs Shane Ostrowski said Tuesday of the administration's aims, "That's sort of disingenuous. They should debate it on its own."

"They were formed behind closed doors to begin with," he added of the recommendations."

ABC responded to the range of proposals, including a neutral approach on Multiple Prime Contracting because it affects members in different ways, with a position statement sent to lawmakers, Mr. Ostrowski said. "They deserve full review" that can't be achieved within the context of budget deliberations.

Mr. Quill told senators that the administration is looking at a different approach to the multiple prime/single prime issue by providing a "menu" of choices for government entities. "What we wanted to do was not create an either-or situation," he said.

The DAS director reiterated the administration's goal of enacting the changes now while billions in federal stimulus funds are in the pipeline toward Ohio.

"The state's major newspapers are lining up behind this effort on their editorial pages. The Obama administration's economic stimulus program is well on its way and the federal government continues to look for shovel-ready projects," he said.

"We believe now is the time to act," Mr. Quill added.

Sen. Bill Seitz (R-Cincinnati) questioned the plan to first hold hearings in the House and then expect the Senate to oblige with related amendments. He said the Senate GOP was rebuffed with an earlier effort to see the proposed legislative language.

"It seems to me a little cooperation would go a lot further than having a House bill debated when you expect it to be part of our process," he told the director.

Mr. Quill said the legislation, now in the hands of the Legislative Service Commission, was not complete at the time but he offered to supply the Senate panel with a memorandum outlining the proposals.

DAS did not respond to a request for a copy of the document prior to deadline Tuesday evening.

CINCINNATI DEMOCRAT ENTERS STATE AUDITOR'S RACE WITH VOW TO AVOID 'MUD OF PARTISAN POLITICS'

Democrat David Pepper, a first-term Hamilton County Commissioner, entered the 2010 race for State Auditor on Tuesday, saying Ohio deserves an independent auditor who avoids "the mud of partisan politics."

Mr. Pepper declared his candidacy during an event at Ohio Democratic Party headquarters.

Among those joining him was Gov. Ted Strickland, who recruited Mr. Pepper and described him as his "first and only" choice for the post.

The governor said Mr. Pepper, an attorney and former member of Cincinnati City Council, was highly qualified and competent.

"I've been impressed with David since he early on got involved in Hamilton County politics," Mr. Strickland said.

Mr. Pepper will seek the Democratic Party nomination in the May 2010 primary to challenge Republican State Auditor Mary Taylor in the event she seeks a second, four-year term.

Mr. Pepper said the state deserves an auditor who resists the temptation to become involved in daily partisan battles.

"Giving in to that temptation, I believe, is the death knell of an effective auditor's office," he told supporters.

"(T)his need for independence is far too important for the auditor to get mired in the mud of partisan politics at the Statehouse, Washington, or anywhere else," he said.

"So let me be clear. Under my watch, this office will not become the tool for partisan politics," Mr. Pepper said.

He criticized the incumbent for cautioning against use of federal economic stimulus money to balance the pending biennial state budget. He said her path would have led to "draconian cuts in services or tax increases."

Mr. Pepper also criticized her forecast of an even larger fiscal problem in future state budgets.

"Even though it may make for good politics, from my standpoint it's not good enough to point out that we will face major budget challenges in future budget cycles and leave it at that," he said.

"Stating that there are budget challenges now and in the future is, frankly, stating the obvious," Mr. Pepper said. "What Ohio needs is an auditor who will use the position to do the leg work, the home work, and the analysis to offer real solutions to budget challenges."

He portrayed himself as a fiscal watchdog who would help create jobs, spur economic growth, and avoid partisan political games.

A Cincinnati-based group that wants to limit growth in government taxation and spending had a different view. It accused Mr. Pepper of revealing "his true contempt for the taxpayers" in May 2007.

The Coalition Opposed to Additional Spending and Taxes (COAST) said that was when the Democratic commissioner sought to impose a one-half cent sales tax increase. Voters ultimately rejected the proposal.

Mr. Pepper told reporters Tuesday that his record is primarily one of reducing taxes.

"Every year I voted on the city council to reduce the property tax rate. We did that. We have not seen an increase in Hamilton County. Actually in Hamilton County, believe it or not, we have the lowest tax rate of the largest counties in Ohio on both the property tax and the sales tax rate," he said.

"We have one major issue ... we have a major jail overcrowding issue. We did put forward a plan to solve that. The voters didn't support it. The voters have a right to vote as they did," Mr. Pepper said. "That was the one area where I did push into."

He described the funding proposal as a bipartisan effort.

"The last two budgets in Hamilton County, when the budget cycle started, our budget people came and said, 'You need to raise taxes. That's the only way through it.' And we said, 'No, no, no.'" Mr. Pepper said.

Later on Tuesday, Chairman Kevin DeWine of the Ohio Republican Party said Gov. Strickland "clearly ... would rather have a lapdog than a watchdog" as State Auditor.

"I find it especially amusing that David promises to be independent and non-partisan while announcing his candidacy at Ohio Democratic Party headquarters alongside the Democratic governor and the Democratic Party chairman," Mr. DeWine said in a news release.

The GOP contends Mr. Pepper has no knowledge of state government, and that his "limited experience pales in comparison" to that of Ms. Taylor.

Mr. Pepper is a fifth-generation Cincinnati resident. Since 2000, the 37-year-old has been an associate with Squire Sanders & Dempsey, where he concentrates on appellate litigation.

The graduate of Yale University and Yale Law School clerked for former Judge Nathaniel Jones of the 6th U.S. Circuit Court of Appeals, who joined him for the announcement event.

"He was in demand all over the country as a judicial law clerk," Judge Jones said, noting Mr. Pepper's intelligence, integrity, and honesty. "He had a burning desire to enter public service."

From 1993 to 1996, Mr. Pepper worked at the Center for Strategic and International Studies in Washington, D.C. as an aide to former National Security Adviser Zbigniew Brzezinski.

He also worked in St. Petersburg, Russia on investment and economic growth matters with Russian and American businesses. Mr. Pepper's political career began with his election to Cincinnati City Council in 2001. In 2006, he defeated incumbent Phil Heimlich for county commissioner.

IG FINDS MORE CONTRACT STEERING, ABUSE AT TARGETED ODOT REGIONAL OFFICE

A far-reaching contract-steering and bid-rigging process that resulted in criminal charges against several former Ohio Department of Transportation employees and contractors was more expansive than state investigators first thought, the Ohio Inspector General said Tuesday.

IG Thomas Charles said the case involving former District 12 facilities manager Dennis L. Kratochvil also involved the steering of more than \$200,000 to Nozzle New Inc. and Marek Land Company, two firms owned by a Solon businessman. The district office is in Garfield Heights.

Also involved in the process was Dennis B. Kratochvil, Mr. Kratochvil's son, who allegedly created a front company to draw ODOT funds.

Information for the supplemental investigation, which included no new recommendations, was obtained through documents that the former ODOT official kept in his home, the IG said.

"Kratochvil inadvertently provided investigators with a blueprint of his scheming by holding onto the ODOT records that were found at his home," the report declares. "This box of records, unmissed for years by District 12's finance staff, is an encyclopedia of fraud."

The earlier report charged that those involved in the process had "criminalized" the office's purchasing and procurement operations.

The supplemental report, which is being referred to the Cuyahoga County Prosecutor's Office and the Ohio Ethics Commission, includes no new recommendations.

SENATE PANEL CONSIDERS OPENING WORKERS' COMPENSATION TO PRIVATE INSURERS

Having given up on the idea of privatizing Ohio's workers' compensation system, a vocal free market advocate in the Senate wants policymakers to consider ways to allow private companies to compete with the state-run plan.

Sen. Timothy Grendell (R-Chesterland) told members of the Senate Insurance, Commerce & Labor Committee Tuesday that competition from private insurers could help drive down the high cost of Bureau of Workers' Compensation insurance premiums.

"In these trying economic times, where jobs are at a premium and employers are struggling, we owe it to Ohio employers and injured employees to take a good look at the alternatives to our current government run workers' compensation approach," he said during testimony on the BWC budget bill (HB 15).

Sen. Grendell asked members to support an amendment he was still drafting that would create a bipartisan task force to study ways to introduce market competition to Ohio.

Responding to a question from Sen. Eric Kearney (D-Cincinnati), Sen. Grendell said he found there were numerous constitutional barriers to the option of converting the BWC to a private company.

Even opening up Ohio's market to outside competition raises a host of complex issues that the study committee could address, he said.

The BWC would retain a considerable tax-free advantage to private companies seeking to compete, he said. "Is it even feasible to have private market competition? I don't know."

Charles Buhren, of Liberty Mutual Group, said his company was "very keen" on the idea.

However, some insurers would likely be apprehensive because it would be hard to compete with the bureau's tax-exempt status and its publicly subsidized workforce, he said. Nonetheless, private companies could offer superior customer service and rate stability.

Scott Gilliam, government relations officer for the Cincinnati Insurance Companies, spoke as an interested party, saying he was "intrigued by the proposition."

"Of course the key question is whether the private market could provide a product that Ohio employers would consider a better option when they look at such key factors as price, protection, service and reliability," he said.

The proposed study committee would be an appropriate way to investigate the issue, he said in response to a question from Sen. Joe Schiavoni (D-Youngstown). "I really don't think a study done and paid for by the insurance companies is going to have the same credibility with the large number of interested parties involved."

Sen. Kearney asked if he thought smaller companies would be willing to break into workers' compensation market.

Mr. Gilliam said smaller companies usually avoid workers' compensation because it's a particularly difficult market. Smaller insurers "would probably be loath to enter this marketplace."

WEDNESDAY, MAY 13 2009

ACTUARIES CALCULATING IMPACT OF POTENTIAL BENEFIT CHANGES, RETIREMENT AGE INCREASES FOR STATE FUNDS

The state's public employee retirement systems have been asked to determine the financial impact of several potential changes - including raising retirement ages and skipping retiree cost-of-living adjustments - as part of an effort to bring them in line with funding guidelines.

The request from Ohio Retirement Study Council staff also charges system actuaries with calculating the impact of several other potential changes, including increases in employee and employer contribution rates.

While some of the issues have been under consideration for some time, Rep. Todd Book (D-Portsmouth) said it seems more likely that lawmakers will act on some of the potential changes this year.

"There's a lot of corrections that they've been interested in for some time," Mr. Book said. "I want to see what makes sense and what will be acceptable to the legislature."

"The systems are holding their own now, but with the economic downturn, we have to make sure that the corrections they want are in place that will keep them viable and keep them strong."

The systems provide "an unbelievable benefit" for public employees, and their fiscal health is crucial to the state's overall well being, he said. "We want to keep the door open on all the different options."

Council staff has also asked systems to consider adjustments in determining an employee's final average salary, changing the cost of purchasing service credit and imposing actuarially sound pension reductions for early retirees.

For the non-uniformed systems, actuaries are also considering establishing a minimum retirement age regardless of an employee's years of service.

Changes in the deferred retirement option plan are also under consideration for the two uniformed systems.

GOVERNOR TAKES TAX HIKES OFF THE TABLE - AGAIN, BUT GOP HOUSE LEADER SENSES WAFFLING

In case people were still wondering, Gov. Ted Strickland's office had a "read my lips" response Wednesday to suggestions that he was backing away from his position that higher taxes are off the table for the biennium budget.

The governor told reporters after an event Tuesday that he didn't want to draw any lines in the sand heading into the final negotiations on the budget measure (HB 1), which faces significant cuts in light of the historical slump in state tax revenue.

While some interpreted that statement to reflect a backing off of his prior sentiments on the tax hike issue, his office was quick to issue an official "no" when asked Wednesday if his position had indeed changed.

"The governor remains steadfastly opposed to a tax increase of any sort during this recession," spokeswoman Amanda Wurst said. "He will fight to maintain the tax cuts proposed in his budget bill," including the continuation of the tax system overhaul enacted in 2005 and the homestead exemption expansion passed with the current budget plan (HB119, 127th General Assembly).

Nevertheless, House Minority Leader Bill Batchelder (R-Medina) seized on media reports of the governor's recent comments as evidence of a potential fiscal flip-flop.

"In his state of the state address, only a few months ago, Governor Strickland promised he would not raise taxes on Ohioans. Recently, the governor has commented that he is now open to the idea," Rep. Batchelder said.

"The governor was aware before making this promise that the state's revenues were retreating. He now must work together with the Legislature to find a solution and uphold his word. Raising taxes on Ohioans goes against the grain if we are sincerely trying to live within our means."

Senate President Bill Harris (R-Ashland) and Speaker Armond Budish (D-Beachwood) recently reiterated that tax increases are off the table for the budget despite the state's anemic revenue circumstances.

"From my own perspective, I believe that tax increases during the midst of perhaps the most serious recession we've seen certainly in my lifetime would be a mistake," Speaker Budish said Wednesday.

He said of balancing the budget bill given the need to perhaps cut out billions in spending, "I do believe it can be done through cuts. Those cuts will be painful if that is the approach we take."

OLD BUILDING STANDARDS COULD BLOCK OHIO'S ACCESS TO FEDERAL STIMULUS FUNDING

Ohio could lose out on millions of dollars in federal stimulus funding if the legislature doesn't adopt new energy efficiency building standards, lawmakers and consumer, environmental, and business groups said Wednesday.

The American Reinvestment and Recovery Act includes \$96.1 million for Ohio to invest in energy efficiency and renewable energy, but the money is in jeopardy because of the state's out-of-date residential building code, according to Environment Ohio. To be eligible for program funding, Ohio needs to update its building codes to reflect the most current International Energy Conservation Code.

"Bold action to improve the efficiency of our buildings would go a long way toward meeting our energy challenges and reducing our carbon pollution," Amy Gomberg, of Environment Ohio, said in a statement. "And we create local jobs and save Ohioans money by doing so. But, we must act now."

Rep. Connie Pillich (D-Cincinnati) said the funding could help revitalize the state's economy.

"Challenging times call for quick action and innovative solutions. One of those solutions is to solidify a 21st Century, job-generating economy for Ohio. This means investing in ways to make Ohio a leader in the manufacturing of the tools of the new economy and green building practices - like solar panels and wind turbines."

Ohio Chemistry Technology Council President Jack Pounds said technologically advanced materials would be essential to minimize energy loss in buildings of all types.

"Companies in Ohio's chemical industry are today investing in research, development and commercialization of the high energy-efficient products that will play the major role in creating the most energy-efficient buildings possible," he said.

STATE CONTINUES VOTER REGISTRATION PROGRAM TARGETING HIGH SCHOOL GRADUATES

For the third straight year, state officials are asking schools to help graduating seniors register to vote and remain involved in their communities.

Secretary of State Jennifer Brunner said the Grads Vote 2009 program, which has the support of Gov. Ted Strickland and State Superintendent Deborah Delisle, will be targeted to more than 1,200 schools this year.

"The health of our democracy can be measured by the level of youth participation," Secretary Brunner said Wednesday. "Engaging high school students and graduates in our democratic process ensures they will have a voice in our government."

Under the program, graduating seniors will receive voter registration cards with their diplomas.

In 2008, 1,032 schools participated, delivering about 145,000 voter registration and information packets to students.

Ms. Brunner said her office received registration forms back from more than 2,200 of those students, and added that many other forms were returned to county election boards.

The secretary also underscored the important role that high school students played in last year's elections, noting that many students took on new responsibilities as poll workers.

Those young poll workers helped spur participation from friends and family members, she said.

Steve Harsman, director of the Montgomery County Board of Elections, said he initially had concerns about how teens volunteering at the polls would behave. He said, however, the students provided crucial assistance that was well received by veteran poll workers and voters alike.

OHIO ETHICS COMMISSION OPINIONS

No. 2009-01. SYLLABUS:

(1) Division (E) of Section 102.03 of the Revised Code prohibits a public official or employee from accepting, and Division (F) prohibits any person from promising or giving a public official or employee, anything of value, including a gift, if it is of such a character as to manifest a substantial and improper influence upon the official or employee with respect to the performance of his or her public duties;

(2) R.C. 102.03(E) does not prohibit a public official or employee from accepting a gift or other thing of value from his or her spouse, which the spouse received from his or her employer, provided that the employer did not give the item to the official's spouse for the purpose of providing it to the official, and subject to the factors discussed in this opinion;

(3) R.C. 102.03(F) does not prohibit a company from giving anything of value to an employee, which the employee may share with his or her spouse who is a public official or employee, provided that the company is not giving the item to its employee for the purpose of providing it to the public official or employee, and subject to the factors discussed in this opinion;

(4) A public official or employee who files a financial disclosure statement pursuant to Division (A) of Section 102.02 is not required to disclose his or her spouse as the source of a gift, unless the gift was given to the spouse on the condition that he or she will provide it to the official or employee.

No. 2009-02. SYLLABUS:

(1) Division (A)(1) of Section 2921.42 of the Revised Code prohibits a public official from authorizing a public contract if a family member has a definite and direct interest in the contract;

(2) R.C. 2921.42(A)(1) prohibits a public official from authorizing a contract to the employer of a family member if the official's family member has a definite and direct interest in the contract as an employee of the company;

(3) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a public official or employee from participating in any matter before the public agency that affects the interests of the employer of a family member if the family member will receive anything of value as a result of the agency's decision on the matter;

(4) Neither R.C. 2921.42(A)(1) nor 102.03(D) and (E) prohibit a public official or employee from participating in any matter before his or her public agency that affects an employer of a family member if the family member is an "ordinary employee," as defined in this opinion, and does not have a personal interest in or receive anything of value from the regulatory matter.

SENATE COMMITTEE HEARING

Environment & Natural Resources

SB 100 HOUSEHOLD SEWAGE (Grendell) To revise the Household Sewage and Small Flow On-Site Sewage Treatment Systems Law, to establish the Household Sewage Treatment System Revolving Loan Program and the Household Sewage Treatment System Grant Program in the Department of Health, to make appropriations, and to declare an emergency. (3rd Hearing-Proponent)

CONTINUED

Geauga County Health Commissioner Robert Weisdack gave a one-hour presentation and answered committee member questions regarding his support for the legislation and opposition to SB 110, a more restrictive measure. Sen. Grendell began questioning on technical points before introducing what he labeled as a startling topic of witness intimidation by the Department of Health.

Ms. Weisdack confirmed that he has been "threatened, intimidated" by some he would not name. He said he was told there would be repercussions for his testimony. When asked it that would be from the Department of Health, he responded, "Yes sir." He added that if it were not for the health department, the hearing room would be jammed with county health officials.

The issue of septic systems is at the root of the two bills and Mr. Weisdack listed several northeastern counties that agree with him that the current gravity systems are adequate and that the bill would allow the flexibility counties need to continue allowing them when practicable.

Ms. Weisdack's testimony focused on the high cost of systems that could be required unnecessarily under HB 110, which he said the county cannot support.

Jerry Petersen, an attorney and former Geauga County prosecutor, said he has been a partner in the building of real estate developments that use on-site septic systems and that they have caused few problems. He faulted some systems that are expensive but unnecessary for most lots.

Mr. Petersen said the legislation is designed to retain local control that is to be exercised within broad state-mandated parameters. On the other hand, he noted SB 110 shifts the mandate and control to the state while imposing local burdens and attempts to resolve problems within all 88 counties with the use of a one-shoe-fits-all basis. "We prefer the scientific approach set forth in Senate Bill 100 over the Senate Bill 110 statewide assault on theoretical problems," he said questioning that if local problems can be handled better at the state level why wouldn't it follow that they would be even better handled at the federal level?

Richard Noland a registered professional engineer from Marysville, said any legislation should recognize that through soil science, microbiology, geology and engineering at any given site, any number of combinations of using those characteristics can result in an appropriate system for treatment and/or disposal. "This can be done in a way which protects public health and the environment," he said adding that it also can be done in a way to minimize energy, operation and maintenance costs.

Mr. Noland also said there must be public involvement as a means of informing everyone, every property owner, of what ODH and the Ohio EPA are finding in different counties on the actual pollution, what is being discussed as solutions, what individual homeowners could do to improve the situation and what level of cost the ODH and the OEPA are considering is justified for individual homeowners to bare.

SB 110 HOUSEHOLD SEWAGE (Niehaus) To revise the Household Sewage and Small Flow On-Site Sewage Treatment Systems Law, and to declare an emergency. (3rd Hearing-Proponent)
CONTINUED

James Luken, Miami County Health Commissioner and testifying also on behalf of the Association of Ohio Health Commissioners, reported a sewage task force believes that the provisions in SB 110 most accurately reflect the work of the task force. He said the bill recognizes the difference between high and low risk along with a variable vertical separation distances, one of the biggest drivers of cost.

Regarding costs, Mr. Luken said other drivers include soil types, distance to gravel pits, local competition, knowledge of installers and regulations among others. He told the panel that in all his years of public service, never had homeowners been offered anything but the least expensive system that would service perform the intended job.

Mr. Luken said language in the bill requiring that a board of health give homeowners prior notice when investigating complaints of sewage malfunctions was not agreed to in the sewage work group. He said prior notice of inspections and town-hall type meetings have served both health commissions and the public well but a prior notice to complaint and malfunction investigations would only be costly and a hindrance to the public good.

And finally, Mr. Luken said the appeals process included in the bill is rather cumbersome and prescriptive. He concluded generic appeals language to laws and rules have handled appeals very well. He suggested adding language to allow boards of health to grant a variance from the requirements of rules as long as any variance it not contrary to the public interest, where a person shows that because of practical difficulties or other specific conditions their strict application will cause unusual and unnecessary hardship.

THURSDAY, MAY 14 2009

ELECTRIC AUCTION RESULTS LOWER RATES IN FIRSTENERGY TERRITORY

State utility regulators on Thursday accepted the results of a wholesale auction that produced prices that will cut residential electric consumers' rates in the FirstEnergy service territory.

The auction price of \$61.50 per megawatt hour will be in place from June 1 through May 31, 2011, the Public Utilities Commission of Ohio said.

"We are more than pleased that ratepayers in northern Ohio, many of whom have been victimized by the economy, will benefit from the outcome of this energy auction," PUCO Chairman Alan Schriber said. "We're proud of the way the auction was conducted and commend the participants, the auction manager and our consultant for making this such a success."

While the commission said rates will vary among customer classes, it said prices for the typical residential consumer in the Ohio Edison territory will fall by 16%. Rates for those in Toledo Edison will fall by 12.6% and charges for those in Cleveland Electric Illuminating will drop by 7.4%, the commission said.

The auction results drew support from Consumers' Counsel Janine Migden-Ostrander, who noted that the final price is lower than FirstEnergy's first rate proposal under the new law, and the interim rate proposed by the commission.

"This is a great outcome for consumers in Northern Ohio, who have struggled with high rates for too long," she said. "While utility rates are increasing around the state, a rate decrease is welcome news. The efforts the OCC has made to ensure customers receive the benefits of the lowest prices possible have been a success."

Twelve bidders registered for the auction and nine submitted winning bids, the commission said.

In the order, commissioners directed FirstEnergy to file tariffs for rates consistent with the auction results.

NUMBER OF H1N1 FLU VIRUS CASES NOW AT 13 IN OHIO

Less than three weeks ago, Ohio was reporting a single mild case of what was then called the swine flu virus. On Thursday, the Ohio Department of Health said the number of laboratory confirmed cases stood at thirteen.

Franklin County reported the most cases statewide - five - of what is now called the H1N1 virus. An additional case from Franklin County is listed as "probable."

Two infections were confirmed in Cuyahoga County.

One case each was listed from Butler, Hamilton, Fulton, Holmes, Lorain, and Portage counties.

Test results are being awaited on 40 additional samples designated as suspect.

In Atlanta, the Centers for Disease Control and Prevention said Thursday there have been 4,298 cases of the H1N1 virus in 46 states and the District of Columbia. Three deaths have been reported in the U.S.

"It's uncertain at this time how severe this novel H1N1 outbreak will be in terms of illness and death compared with other influenza viruses," the CDC said.

"The fact that novel H1N1 activity is now detected through seasonal surveillance systems is an indication that there are higher levels of influenza-like illness in the United States than is normal for this time of year. About half of all influenza viruses being detected are novel H1N1 viruses," the agency said on its website.

FRIDAY, MAY 15 2009

CHRYSLER, GM CLOSING OF 177 DEALERSHIPS CUTS GOVERNMENT TAX REVENUE; CORDRAY SEEKS TO PROTECT BWC

An auto dealers' analysis showed Friday the planned closure of 177 Chrysler and General Motors dealerships across Ohio would cost the state and local governments an estimated \$290 million per year in lost tax revenue.

A plan Chrysler filed in federal bankruptcy court to close 789 dealerships nationwide includes 47 in Ohio. The development is among several involving the contracting auto industry that are expected to have significant impacts on the state's economy and budget in the coming months.

The Ohio Automobile Dealers Association said General Motors plans to close approximately 130 dealerships in the state.

Timothy Doran, association president, said the Chrysler and GM proposals combined would result in the loss of \$4.4 billion in retail sales in Ohio.

"It's going to create a \$200 million hole in Ohio's budget," he said in an interview, referring to lost tax revenue to the state.

"Think about the impact on the counties that have that piggyback sales tax," he said.

An OADA analysis shows the Chrysler closures alone would result in a loss of \$1.13 billion in retail sales in the state. Job loss was estimated at 2,350, based on an average of 50 employees per dealership. Lost payroll from the Chrysler closings was pegged at \$103 million per year. Payroll loss from the GM closures was estimated at \$286 million.

Mr. Doran predicted the move would make Chrysler a weaker company.

"They admit they will lose market share. They admit that market share will go somewhere else," he said. "If you sell fewer cars ... aren't you emerging as a weaker company?"

Mr. Doran said the bankruptcy filing effectively gives Chrysler eminent domain power over state franchise laws that were enacted to regulate such business relationships.

"They terminated 789 dealers in the country, 47 of which are from Ohio. Are they done? No," he said.

"What they're now going to say to some of these (other dealers) is ... we will allow you to go forward provided you're going to build me a new building, get rid of your other franchises," Mr. Doran said. "That type of coercion is not allowed under the franchise law."

The number of new car dealerships in the U.S. has declined from about 50,000 in 1950 to 18,000 at present.

There were 2,000 new car dealerships in Ohio in 1975. Today, the number is about 900 outlets.

"There's been tremendous consolidation," Mr. Doran said. The gradual decline, however, was a result of a logical progression under state law regulation in which dealers consolidated for economic or other reasons.

While some dealers who sell multiple brands of vehicles may survive the loss of a particular line such as Chrysler, others with a mix may be unable to do so.

"If you take Chrysler, Dodge, Jeep away you can't just arbitrarily say they've still got something else so they'll stay in business," Mr. Doran said. "You may have pulled a foundation out of there that brings the whole house of cards down."

LEGISLATURE ASKED TO INTERVENE IN NORTHEAST OHIO DUSTUP OVER IMPORTED TRASH

A Northeast Ohio dispute over trash spilled into a Senate panel Friday, where members were asked to scrap a House budget amendment that would limit local authority to regulate waste.

Tuscarawas County Commissioner Kerry Metzger, who also serves as president of the County Commissioners' Association of Ohio, told members of the Senate Finance & Financial Institutions Committee that the measure would hamper local efforts to reduce the "inordinate amount of trash coming in from other parts of the state."

Cuyahoga County and Akron officials and waste industry representatives asked senators to retain the provision that they say would protect the free flow of trash and ensure options remain available for entities without sufficient landfill space.

At issue is language the House added to the biennial spending bill (HB 1) that would block solid waste districts from restricting the disposal of waste in privately owned landfills that are within their jurisdiction. The provision was one of several budget-related issues brought to members' attention. (*See separate story*)

Diane Bickett, executive director of the Cuyahoga County Solid Waste District, said the measure was an appropriate response to a rule the Stark-Tuscarawas-Wayne Joint Solid Waste District adopted that bars other counties from using private landfills unless they meet strict recycling requirements.

Cuyahoga County has no space remaining in its landfills so about 60% of its 1.5 million tons of waste is disposed in three private landfills in the Stark-Tuscarawas-Wayne Joint Solid Waste District, she said. While the county has worked aggressively to boost recycling efforts, it cannot meet the waste district's requirement.

"If the rule adopted by the joint district is not checked through the amendments included in House Bill 1, Cuyahoga County manufacturers, businesses and communities will pay the price of trucking this waste to more distant landfills," she said.

Akron City Councilman Michael Williams said the House amendment was necessary to ensure the city's access to nearby facilities.

"Limiting access to these vital facilities will adversely impact our county, which is already reeling from the devastating effects of the economy," he said.

Mr. Metzger said the waste district's rule was necessary because the counties accept enormous amounts of trash from other entities and local private landfills have caused significant problems.

"There are environmental, health and personal impacts to taking that much trash into that small a part of the state," he said, noting 61% of the trash flowing into the area is from out of the district.

The rule was designed to reduce the amount of imported waste, while creating an incentive for other counties to increase recycling efforts, he said. Those unable to comply can apply for a waiver.

Without the ability to use "innovative" ways to regulate imported trash, districts will be forced to increase or even double tipping fees, Mr. Metzger said. "That will have a tremendous impact on solid waste districts across Ohio."

Keith Kimble, president of Kimble Companies, which owns a landfill in Tuscarawas County, said the business would suffer from the waste district's rule.

"This rule serves no practical purpose and imposes an unreasonable burden on municipalities, county governments, and businesses in many parts of Ohio," he said.

LOCAL GOVERNMENT GROUPS, OTHERS MAKE CASE TO SENATE ON BUDGET MATTERS

Counties and other government groups took their turn Friday in pushing for various budget-related initiatives in the Senate, where public testimony on the two-year, \$54 billion plan continued with dozens of witnesses.

Public testimony is set through next week in the Senate Finance & Financial Institutions Committee, with Tuesday's hearing set aside for Medicaid-related issues. Proposed amendments are due to the chairman's office no later than noon on Friday, May 22.

Among the first non-education related groups to weigh in for senators was the County Commissioners Association of Ohio, which relayed a list of priorities and also waded into a debate over a House amendment that restricts solid waste authority rulemaking powers.

CCAO President Kerry Metzger, a Tuscarawas County commissioner, asked the panel to remember that counties face the same budgetary problems as the state and that its decisions "will have an enormous impact on whether counties must continue to make very difficult budgetary decisions in the middle of our county budget cycle to keep the ship afloat or if we will be able to stabilize the ship..."

Mr. Metzger said CCAO's priorities include: retaining the House's restoration of \$50 million in Temporary Assistance for Needy Families Title XX transfer funds for protection services for children and the elderly; removal of "an expansion of counties' responsibility to fund services the state traditionally covers for medically handicapped children; support the increased county reimbursements for indigent defense; back recommendations of the group's management improvement committee; and remove the solid waste-related amendment.

Past CCAO President Dan Troy, a Lake County commissioner, asked that the panel preserve the House's addition of \$11.2 million to maintain full reimbursements to counties and other government entities to offset revenue losses from the phase-out of the tangible personal property tax. "We are also encouraged that the Senate is cognizant of the need for permanent replacement revenue and is considering measures to address this," he said in reference to pending legislation that would permanently extend the hold-harmless provisions (SB 111).

The County Auditors' Association of Ohio prompted a response from Sen. Chris Widener (R-Springfield) with its request for law changes impacting county boards of revision, with the lawmaker stating that Athens County Auditor Jill Thompson had "hit a cord" with her testimony.

County auditors and boards of revision in some cases have "done a great disservice to our communities," he said. "Our taxpayers in Ohio expect the ability to go challenge the valuation county auditors put on their property."

Among other things, Ms. Thompson had asked that the Board of Tax Appeals be authorized to "consider only evidence contained in the record and certified to it by the county BOR. If any party who appeals to the BTA requests to present additional evidence, the BTA shall remand it back to the county BOR."

CAAO, according to Ms. Thompson, also requested: support for the extended TPP tax hold-harmless provision; rulemaking requirements for the motor fuel quality testing program; a reduction in certified mail requirements; authority for counties to publish public notices on websites and run "display notices" in newspapers that direct readers to the Internet sites; and tax exemption reforms.

She also asked for county authority to: furlough employees and reduce work hours due to economic reasons; state provision of data on deaths; allocate "indirect costs to special revenue funds"; require quarterly budgets for their offices; and "for

commissioners to declare a surplus in certain special funds during times of fiscal distress and to move money from those funds to the county general fund."

CorJus, Inc., an association of community-based corrections facilities, reiterated opposition to language in the budget that extends collective bargaining to employees of such facilities statewide.

"With the exception of Lucas County, CBCFs have always been exempt from the collective bargaining statute as a matter of operation," CorJus Executive Director Bill Hite said. "This budget allocates an additional \$7 million over the biennium to fund an additional 220 (CBCF) beds. We remain committed to retaining each dollar increase to directly assist the prison overcrowding issue, but requiring CBCFs to be subject to collective bargaining will jeopardize our ability to do so."

ATTORNEY GENERAL'S OPINIONS

No. 2009-013. Requested by Greene County Prosecuting Attorney Stephen Haller. SYLLABUS:

1. Pursuant to R.C. 505.37(B), if it seems advisable to a board of township trustees to provide the township with a mobile communication center for fire-fighting purposes, the board and the legislative authority of a municipal corporation may, through joint action, unite to establish the mobile communication center. R.C. 505.37(B) does not, however, authorize a township fire chief and the legislative authority of a municipal corporation to take such joint action.

2. R.C. 9.60 authorizes a board of township trustees, but not a township fire chief, to enter into a contract with the governing board or administrative head of a municipal corporation whereby the township and municipal corporation each provide equipment to establish a mobile communication center for providing fire protection services.

3. A township fire chief may not enter into a memorandum of understanding with officials from a municipal corporation whereby township fire equipment is installed in a motor vehicle of the municipal corporation. A township fire chief may, however, participate in the preparation of such a memorandum of understanding.

No. 2009-015. Requested by Greene County Prosecuting Attorney Stephen Haller. SYLLABUS:

If a board of county commissioners, in accordance with R.C. 305.171, has established a health care benefit for county officers and employees that requires the county to pay 80% and enrollees to pay 20% of the premium for such health care coverage, and thereafter implements an incentive plan that offers enrollees, in return for completion of certain goals, a month of health care coverage without payment of their 20% share of the premium, Ohio Const. art. II, § 20 prohibits a county officer enrollee from receiving, for the remainder of the term the officer was serving when the incentive plan was adopted, the one month of premium-free health care coverage under the incentive plan.

No. 2009-017. Requested by Hocking County Prosecuting Attorney Laina Fetherolf. SYLLABUS:

1. Pursuant to R.C. 4931.45, a county's final 9-1-1 plan may be amended to change how a countywide 9-1-1 system is managed through an addendum approved by a majority of a 9-1-1 planning committee, provided the change does not concern a matter delineated in R.C. 4931.45(A)(2), (4), (6), or (7). An amendment to a county final 9-1-1 plan for a purpose set forth in R.C. 4931.45(A)(2), (4), (6), or (7) must be made in accordance with the procedures set forth in R.C. 4931.42-.44 or R.C. 4931.45(C)(1).

2. There is no limitation on the number of changes that may be made to a final county 9-1-1 plan. (2008 Op. Att'y Gen. No. 2008-014, approved and followed.)

COMMITTEESCHEDULE FOR WEEK OF MAY18

WEDNESDAY, MAY 20

Senate Finance & Financial Institutions, (Chr. Carey, 466-8156), Finance Hearing Rm., 9:30 a.m.

HB 1 STATE BUDGET (Sykes) To make operating appropriations for the biennium beginning July 1, 2009, and ending June 30, 2011, and to provide authorization and conditions for the operation of state programs. (17th Hearing-Public testimony)

House Transportation & Infrastructure, (Chr. Hagan, 466-9435), Rm. 017, 10:30 a.m.

HB 166 TRANSPORTATION AUTHORITIES (Carney, McGregor) To authorize the creation of transportation innovation authorities by specified governmental entities and to establish the powers and duties of such authorities. (1st Hearing-Sponsor)

House Environment & Brownfield Development, (Chr. Mallory, 466-1645), Rm. 113, 10:30 a.m.

--Organizational business

- HB 54 DITCH MAINTENANCE (Morgan) To allow a board of county commissioners to adjust the permanent base of a ditch improvement that is used for maintenance fund assessments and to allow a board to use certain ditch maintenance procedures to maintain soil and water conservation district improvements. (1st Hearing-Sponsor)
- HB 141 HOUSEHOLD SEWAGE (Dodd) To revise the Household Sewage and Small Flow On-Site Sewage Treatment Systems Law, and to declare an emergency. (1st Hearing-Sponsor)
- Senate Environment & Natural Resources**, (Chr. Schaffer, 466-5838), North Hearing Rm., 11:15 a.m.
- SB 110 HOUSEHOLD SEWAGE (Niehaus) To revise the Household Sewage and Small Flow On-Site Sewage Treatment Systems Law, and to declare an emergency. (4th Hearing-Proponent & interested party)
- SB 100 HOUSEHOLD SEWAGE (Grendell) To revise the Household Sewage and Small Flow On-Site Sewage Treatment Systems Law, to establish the Household Sewage Treatment System Revolving Loan Program and the Household Sewage Treatment System Grant Program in the Department of Health, to make appropriations, and to declare an emergency. (4th Hearing-Proponent & interested party)

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