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## Legislative Update

Friday, September 18, 2009

TUESDAY, SEPTEMBER 8 2009

### **BUSINESSES CHALLENGE NEW LIMITS ON ENVIRONMENTAL APPEALS HEARINGS**

One-hour hearings limits and other restrictions on cases pending before the Environmental Review Appeals Commission are unconstitutional, according to companies that asked a Franklin County court to block the changes Tuesday.

More than a dozen businesses, including AEP Ohio, Duke Energy Ohio, First Energy Corp., Ford Motor Company, and the Proctor & Gamble Company, challenged ERAC's new expedited hearing schedule saying it violates constitutional due process protections.

The companies asked the 10<sup>th</sup> District Court of Appeals to issue a writ of mandamus forcing ERAC to offer more time to hear their cases. The commission issued orders limiting "de novo" hearings to one hour divided equally between both parties.

"Given the patent unlawfulness of the Commission's hearing process, Relators should not be required to appear and present only a very small part of their evidence, obtain a flawed final order that is based on an incomplete record, then appeal to this Court to obtain a reversal and remand for a proper hearing," the complaint says.

"Such a process is wasteful and unfair to the litigants, the Commission, and this Court, which will be faced with potentially hundreds of such appeals," it says.

ERAC Chairwoman Lisa Eschleman said limits on hearings were necessary to comply with new deadlines for ERAC to issue rulings, which were included in the biennial budget bill

Under the new deadlines, the commission must issue final decisions in 339 appeals by Dec. 15, she said, noting hearings were scheduled through Dec. 1.

"We took 339, divided it by the number of days, minus the number of holidays. It means we had to do six de novo hearings a day," she said. "Physically we had to put a limit on the amount of the time the people can have."

Previously, average de novo hearings at ERAC lasted about five days, she said.

Ms. Eschleman said she had not yet seen the complaint challenging the commission's expedited hearing order, which also requires parties to submit case summaries and findings limited to five pages. In addition, ERAC will no longer entertain discovery motions.

David Northrop, an attorney with Porter, Wright, Arthur & Morris LLP who filed the complaint, said such strict time limits conflict with constitutional due process rights.

"The due process clause of federal and state constitutions comes into play here and the commission needs to administer its cases consistently with the requirements of due process," he said.

Environmental attorney Joe Koncelik, a former director of the Ohio Environmental Protection Agency, said new hearing limits would likely impact the ability of ERAC to adequately review cases.

"It's an absolute radical change that has a lot of people very concerned and up in arms about in both the business community and environmental groups," he said.

While environmental groups first unsuccessfully asked Gov. Ted Strickland to veto ERAC deadlines from the budget, the measure cuts both ways, he said.

"In some cases, sure a business group would love if an environmental group was limited to a one-hour hearing if they're challenging a permit they like," he said. "But if the roles are reversed and a business has got a major issue with decision of the agency and they want their day in court, then they're equally upset."

Ms. Eschleman said commissioners expressed concerns over the deadlines with the Governor's Office and would welcome revisions that allow more time to review cases.

"We would have a conversation with anybody who would call us up and want to have the discussion," she said.

## **STRICKLAND TOUTS ECONOMIC DEVELOPMENT AT OHIO EVENTS; GOP ISSUES LABOR DAY CRITIQUE**

Gov. Ted Strickland spent the day Tuesday traveling across the state to cheer on a business expansion and recognize a region's focus on aerospace and technology initiatives.

The Ohio Republican Party, on the other hand, has found little to get excited about regarding the state's economy as evidenced by a Labor Day critique that noted Ohio's struggles to emerge from its job-challenged malaise.

**Scotts Expansion:** Mr. Strickland kicked off his post-holiday trip with a stop at the ScottsMiracle-Gro headquarters in Marysville, where the company announced that it is expanding its existing manufacturing plant and has purchased a new 550,000 square-foot manufacturing and distribution facility in Orrville.

The projects, assisted by a \$500,000 incentive package provided by the state, is expected to lead to the creation of 100 new jobs.

"ScottsMiracle-Gro was founded here in Marysville in 1868 and I am proud that the company's leaders have chosen to expand their commitment to this community and the State of Ohio," Gov. Strickland said during a ceremony to mark the company's plans. "This has been one of Ohio's most successful companies for more than a century and I am hopeful this planned expansion will create new jobs and contribute to the overall success of our economy."

The incentives include Job Creation Tax Credits, two Workforce Guarantee grants, and a Roadwork Development grant to the City of Marysville. The new manufacturing capacity will be used to process a key ingredient in Scotts EZ Seed, described in a news release by the company as "one of its most successful new products ever."

The launch of EZ Seed was such a success this year that at times we had to scale back our advertising, because we couldn't make the product fast enough to keep up with consumer demand," company Chairman and CEO Jim Hagedorn said. "We are confident that the expanded manufacturing capacity will allow EZ Seed to continue to be an important product offering for ScottsMiracle-Gro for years to come."

**Dayton Hub:** Later in the day, the governor traveled to the Dayton area where he first announced the Designation of the Aerospace Hub of Innovation and Opportunity and then was to take part in an Israel trade mission dinner billed as the "formal launch of a new collaborative relationship" between the region and city of Haifa, Israel that focuses on technology exchange, research and development.

In conjunction with his Hub of Innovation announcement - the first of its kind, Mr. Strickland issued an executive order creating "an advisory group of aerospace and aviation industry leaders to assist with efforts to maximize aerospace and business aviation opportunities in Ohio," according to his office.

Under the administrations Hub strategy, a region must "identify core strengths and develop a strategic plan for urban revitalization. The goal is to "attract clusters of connected businesses, encourage new investments and an influx of talented workers, and create new opportunities to grow jobs and develop Ohio's key industries."

"To accelerate Ohio job growth and economic recovery, we must work in strategic partnerships toward a common vision," Mr. Strickland said. "The designation of Dayton as Ohio's Aerospace Hub positions the region for near and long-term growth by building on its historic strengths in aerospace and technology innovation."

The governor was joined for the announcement by state, local and business officials.

"Today's hub designation further solidifies the strong relationship we have forged between such institutions as the University of Dayton Research Institute, Tech Town, and Wright Patterson Air Force Base," Dayton Mayor Rhine

McLin said. "These relationships have helped create a powerful knowledge center that attracts talented professionals and technical expertise worldwide."

**ORP Questions:** While Mr. Strickland spent Tuesday trumpeting some of Ohio's economic aims, the ORP again questioned the governor's efforts given the state remains mired in a job creation slump.

Republicans said Ohio now ranks second in the nation for jobless claims, as more than 250,000 workers lost their jobs last year, and the double-digit employment rate is the highest in more than 25 years.

ORP also cited statistics showing the state was the worst in the nation for economic performance and manufacturing job losses.

Although spokeswoman Amanda Wurst said the governor chose to spend Labor Day with his family, Ohio Republican Party Chairman Kevin DeWine chided Mr. Strickland for passing on an AFL-CIO rally in Cincinnati attended by President Barack Obama, saying it's "sad that Labor Day has become nothing more than a painful reminder of Ohio's glory days."

"Thousands of Ohioans are out of work this Labor Day, and they want to know when Ted Strickland is going to deliver on his promise to turn around Ohio's economy," Mr. DeWine said in a statement. "Unfortunately, it appears he took the day off."

WEDNESDAY, SEPTEMBER 9 2009

### **LAWMAKERS MULL FAR-REACHING RETIREMENT SYSTEM CHANGES; LEGISLATIVE ACTION EXPECTED**

A series of high-stakes plans designed to improve the funding status of Ohio's multi-billion dollar public employee retirement system officially entered the legislative arena on Wednesday as system leaders detailed a number of potential controversial changes.

Members of the state's public retirement system oversight panel expressed concerns about several aspects of the proposals, but indicated that now is the time lawmakers need to act to shore up the funds' balances.

"It's important that we take a proactive approach to this situation," said Rep. Todd Book (D-Portsmouth), who chairs the Ohio Retirement Study Council. "This is the big day we've kind of all been waiting for."

The council charged each system with having its board approve a series of changes that will help bring the systems within the 30-year funding period. Four of the five systems did so, and a fifth, is continuing its review of the matter. Mr. Book and system leaders observed that many of the proposals will require legislative and retirement board action, saying continued reliance on stock market gains won't get the systems back to the target funding period.

"We cannot invest our way out of this," he said.

Ohio Police & Fire Pension Fund Director William Estabrook reviewed his board's plan, which calls for equalizing and increasing employer contributions for police and fire officials to 25% of salary.

Active members, he noted, would also see their contributions rise from 10% to 12% of salary.

Mr. Estabrook stressed that the system has been able to pay retirement benefits without borrowing any money. "There is not a cash flow problem," he said.

Sen. Keith Faber (R-Celina) raised concerns about increasing the OPF employer contribution rates, noting that some municipalities "pick up" employees' share of the contributions. In that case, he said the change would mean that local governments would pay 37% on top of salary directly to employee retirement accounts.

Sen. Faber also raised the prospect of having disability benefits covered through Ohio's workers' compensation system. Mr. Estabrook said that option was considered in the 1990's, but hasn't been on the table since.

Council member Dale Van Vyven noted that the OP&F indicates that its board will implement discretionary changes only if the General Assembly enacts all of the proposed changes.

"That allows you to cop out of the whole plan," he said.

Mr. Estabrook said the board's plan requires implementation of all changes to bring the funding level back into acceptable range. "It should not be stripped apart because none of these legs are going to stand by themselves," he said.

He said, however, he is certain the board would revisit the issues if the legislature enacts some of the changes. "If the legislature shows good faith, I'm sure the board will show good faith," he said.

Rep. Dan Dodd (D-Licking Twp.) observed that the board could make some changes without waiting for the legislature to act. "I'm not understanding why we have to do everything for you to do something," he said.

Several members questioned the board's decision to not propose changes in the minimum retirement age for active members.

The director said the OP&F plan raises the minimum retirement age from 48 to 52 for new hires, but doesn't adjust the age for current members. Mr. Estabrook added the board considered raising the retirement age for active members, but said its members felt it would be unfair to change promised benefits.

"That would just be an undue hardship," he said. "It was not something that was palatable."

Rep. Lynn Wachtmann (R-Napoleon) said the recent economic downturn has forced many Ohioans to reconsider their retirement plans. "There are very few Ohioans out there that haven't had to rethink retirement age," he said, adding that the board appeared to be protecting its members as a "privileged group."

State Teachers Retirement System Director Michael Nehf detailed his board's plan, noting it increases both teacher and employer contribution rates. The proposal, he said, includes a phase-in period to help avoid a retirement "stampede" that could occur otherwise.

Mr. Nehf said members signaled a strong interest in preserving the current defined benefit plan, and retaining access to the retiree health care program.

Responding to questions, he said the board felt it is no longer necessary to offer an enhanced retirement benefit for those who reach 35 years of service, noting that many teachers are working longer so they can maintain their employer-sponsored health insurance.

He further told Sen. Sue Morano (D-Lorain) that the STRS plan was developed with input from a key stakeholder group: Healthcare and Pension Advocates for STRS.

Chris DeRose of the Ohio Public Employees Retirement System said his board continues to consider a mix of changes that the ORSC asked to have considered, but noted that it has taken a variety of other steps in the recent past to cut expenses.

Mr. DeRose noted that his system is within the 30-year funding period and has seen its investments increase by 10% so far in 2009. "We've taken a balanced approach knowing the markets will come back," he said.

Mr. DeRose said the PERS board is considering a number of items, including requiring full cost purchases of service credit, increasing the minimum earnable salary for service credit, increasing retirement eligibility ages by two years and changing final average salary determinations.

The director added that the way PERS transitions to a new plan is important, noting that members need to be afforded adequate notice about pending changes.

Jim Winfree, director of the School Employees Retirement System, also noted that his system is within the 30-year funding period. He said SERS began to address funding years ago when it pushed for law (SB148) that benefit packages.

Highway Patrol Retirement System Director Dick Curtis discussed his system's plan and also asked for a change in budget language that stripped the board's authority to raise the employer contribution rate.

Rep. Wachtmann offered a sharp criticism of the budget move, saying the language should have first been considered by the ORSC.

"When leadership chooses to not respect the ORSC procedure...it sets a very bad precedent and a very bad environment" to address new challenges, he said.

"That lack of respect shown by you, Mr. Chairman, and the speaker does not bode well."

Chair Book said he regularly points out that issues should be considered through the ORSC process, and said he would review the ORSC's role with caucus officials.

"I know it's important," he said. "We're dealing with big issues here that are important."

### **GAMING FIRM URGES LOTTERY TO BID VLT SYSTEM, HINTS AT LAWSUIT IF PACT IS HANDED TO INTRALOT**

A leading gambling industry supplier cautioned the Ohio Lottery Commission on Wednesday against awarding a \$17.5 million contract for operating video slots at horse race tracks without competitive bidding.

Scientific Games International Inc. said use of a competitive selection process would not delay plans to install 17,500 slot machines by May 1, 2010, and could speed introduction.

The New York-based company objected to the lottery's plan to ask the Controlling Board on Monday to waive competitive bidding for a two-year contract with Intralot, Inc., based in Athens, Greece.

The lottery wants Intralot, which currently operates the state online gambling network, to also supply a central monitoring and communications system needed for operation of slots at the state's seven horse race tracks.

An attorney for Scientific Games said in an Aug. 26 letter to Pam DeGeeter, the lottery's chief legal counsel, that the non-competitive award was reportedly based "upon the misapprehension that Intralot" was the only company that could deliver a VLT system within an accelerated timeframe.

"Scientific Games supplies top-quality VLT systems to lotteries and racing facilities around the world," Kevin Cogan said in the letter.

"It believes it has a superior product and could deliver it within the same timeframe as the commission desires," he said.

"(If) the commission elects to simply give Intralot a contract on a non-competitive basis, Scientific Games reserves its right to pursue all avenues open to it, including a legal challenge to that contract award," Mr. Cogan said.

He said Wednesday the lottery had indicated in response to his letter that it would seek approval of a contract addendum with Intralot. The item is on the agenda for the Controlling Board meeting Monday.

"I believe that the company was clear in its letter that it's reserving all of its rights," Mr. Cogan said in an interview, when asked about the possibility of a lawsuit.

Such litigation, if it occurs, would be the third lawsuit filed in relation to the track slots plan.

Awaiting a decision from the Ohio Supreme Court is a complaint in which LetOhioVote.org is asking justices to declare that the move to expand gambling is subject to a potential voter referendum.

Last week, the Ohio Policy Roundtable asked the Supreme Court to find that the Ohio Constitution does not authorize operation of video lottery terminals. Marie Kilbane, a lottery spokeswoman, said Wednesday the Intralot contract before the Controlling Board is for a two-year period ending June 30, 2011.

"From the lottery's perspective it makes sense, in order to meet the express time line, that we move forward with Intralot," Ms. Kilbane said in an interview.

"We are looking, after this period June 30 of 2011, to possibly go out for an RFP for another vendor to operate the system. We are keeping our options open. We are purchasing the actual system because it gives some flexibility looking ahead," she said.

Scientific Games already holds a separate contract with the lottery as primary vendor to supply instant tickets and related services. The contract, awarded in July 2007 through a competitive process, was expected to generate about \$14 million over the initial two-year term. Scientific Games said the agreement includes options to extend for three additional two-year periods, not to extend beyond June 30, 2015.

Lorne Weil, chairman and CEO of Scientific Games, said at the time the Ohio Lottery was one of the largest in the U.S. and had been "a great customer" for many years.

"We work hard on both our new contracts and our bids for renewal, and appreciate the vote of confidence from one of our most important customers," Mr. Weil said in a 2007 news release.

Scientific Games previously held another contract with the Ohio Lottery for instant ticket warehousing and distribution. However, Ms. Kilbane said Intralot was awarded that contract effective July 1 through competitive selection.

### **GOVERNOR'S ECONOMIC ADVISORS SEE UNEMPLOYMENT REMAINING HIGH THROUGH FY 2011**

Ohio's unemployment rate will continue to rise and push 12% by fiscal year 2011, Gov. Ted Strickland was told Wednesday by a group of forecasters. It remains unclear how soon or quickly Ohio's economy will recover from the recession.

The Governor's Council of Economic Advisors told Mr. Strickland, top aides and legislative staff in a private meeting that Ohio's employment will drop another 3.5% this year and 0.8% in FY 2011 based on a consensus forecast.

The group, which includes private company economists, predicted Ohio's unemployment rate - already above 11% - would hit 11.9% in the next fiscal year, according to documentation released to the public after the meeting.

Ohio's personal income levels are projected to remain flat in FY 2010 and increase by 1.7% in the following year.

"The Council of Economic Advisors indicated that after the rapid national economic decline experienced over the past six months, the economy is stabilizing," Strickland spokeswoman Amanda Wurst said.

"While there are positive signals of recovery, it is not clear how soon or how fast the state and national economies will emerge from the recession. Credit markets remain tight for both consumers and businesses, which is a risk to the pace of recovery."

"The council believes that unemployment will remain high even as the economy begins to recover and that the impact of the federal Recovery Act has been positive in stemming the economic decline," Ms. Wurst said.

The council's unemployment projections were much lower in March, when the group projected Ohio's rate would only hit 9.7% in FY 2010 before dropping slightly in the next fiscal year.

### **STATE TREASURER UNVEILS LOAN INCENTIVE FOR HOME ENERGY SAVINGS PROJECTS**

Homeowners could be eligible for discounts of 3% on loans to improve energy efficiency under a new program announced Wednesday by State Treasurer Kevin Boyce.

Under the ECO-Link program, the state invests in local banks at a discounted rate and the banks pass on their savings to customers through 3% interest reductions for up to five years.

"ECO-Link is a unique partnership between the Ohio Treasury and our partners to provide reduced rate financing opportunities for Ohioans who complete energy efficient projects on their homes," Treasurer Boyce said in a news release.

"Aside from providing savings to the consumer, this program will help stimulate our economy and create green jobs, while encouraging smart energy consumption."

Mr. Boyce unveiled the latest offering under the state's Linked Deposit program during an event at Owens Corning's world headquarters. Community banks that have joined the program include: First National Bank of Pandora, First National Bank of Bellevue, Cortland Savings and Banking Company, Fort Jennings State Bank, The Republic Banking Company, and St. Henry Bank. KeyBank is also participating.

"As a smaller community bank, we are always seeking out programs to benefit our customers and communities," said Larry Ward, Vice President of Commercial Lending for First National Bank of Pandora. "ECO-Link is a 'win-win' program for many different groups. Our customers benefit by realizing lower energy costs, our communities benefit from the creation of new jobs, and we all benefit from decreased energy consumption."

Mr. Boyce's office said businesses involved in energy efficiency and renewable energy improvements plan to market the program.

THURSDAY, SEPTEMBER 10 2009

### **PANEL AUTHORIZES BID FOR \$400 MILLION PASSENGER RAIL LINE, CHAIRMAN SEES RIDERSHIP AS 'BEYOND WILDEST DREAMS'**

The Ohio Rail Development Commission authorized its staff Thursday to apply for up to \$400 million in federal stimulus money to begin cross-state rail passenger service, although the application still is under development. Estimates from Amtrak of potential riders and revenue on the proposed line from Cleveland to Cincinnati, via Columbus and Dayton, are due Tuesday.

The ORDC, in conjunction with the Ohio Department of Transportation, faces an Oct. 2 deadline for submitting the state's funding application to the Federal Railroad Administration.

Thomas McOwen, acting chairman of the rail panel, said preliminary data he has seen eliminates any doubt about success of the plan to provide passenger service at speeds of up to 79 miles per hour.

"I don't know any official numbers yet. But I've had a peek at some of the preliminary numbers that outside experts have told us would ride this train," Mr. McOwen told the commission.

"And frankly, it blows my mind. I think it's beyond our wildest dreams, the numbers that we're seeing," he said.

"So my point is if you had any doubts that passenger service could be successful in the state of Ohio, that's long gone. This thing is going to happen and we need your support to make it happen," Mr. McOwen said.

He urged individuals and organizations to contact U.S. Transportation Secretary Ray LaHood and members of Ohio's congressional delegation to back the state's funding request. Development of a conventional speed intercity system is viewed as a necessary step toward a goal of creating the Ohio Hub, a more extensive network of high-speed passenger rail lines in the Midwest. About \$8 billion in federal stimulus money is available nationwide for high-speed intercity passenger rail. Projects costing in excess of \$100 billion are being proposed.

Matthew Dietrich, the ORDC executive director, said federal rules require that the state commission authorize submission of the application.

Mr. Dietrich said there had been "significant changes" in the past two months in Federal Railroad Administration mandates regarding environmental assessments needed to advance the project.

"First and foremost, the FRA has stated that a prerequisite to eligibility is that applicants must have completed environmental documentation for the project proposed," he said.

"For those of you who do these type of things, you realize that's a pretty strong hurdle. This came up rather recently," Mr. Dietrich said.

"This was clarification of previous guidance that we had received that suggested that environmental documentation could be in process at the time of the application," he said.

As a result, Mr. Dietrich said, the ODOT Office of Environmental Services had been "extremely supportive" in conducting field inspections and public meetings necessary to complete the environmental assessment work. Additionally, he said, the environmental assessment requirement has forced a modification in the station location and selection criteria. The revised federal rules require more stringent documentation, leading to a new round of public meetings.

"This is a great deal of work in a very short amount of time ... so we have conducted two stakeholder meetings with another planned," Mr. Dietrich said.

"We are also going to have three public meetings in the corridor next week, in the evenings, Cleveland, Columbus and Cincinnati," he said.

Results of the Amtrak study next week are expected to contain differing estimates of potential ridership based on such factors as the number of stations, express service, conservative and aggressive timetables.

"It's all necessary as part of the environmental process to gauge the level of ridership that we need to achieve," Mr. Dietrich said.

Acting on other agenda items, the commission Thursday:

**US Railcar:** Authorized its staff to submit an application for an \$8.7 million federal grant on behalf of US Railcar LLC to help establish a factory on a brownfield site in Gahanna to build self-propelled passenger rail cars.

Cost of the manufacturing and maintenance facility is \$14.5 million, with the federal grant representing 60% of the total. Another \$3.6 million will come from the state, and 15% from private sources.

An additional \$23.3 million in private match boosts total project costs to \$35.7 million. The development is expected to create 162 manufacturing jobs with an average wage of \$22 per hour.

The state faces a Tuesday deadline to apply for the \$8.7 million grant in a competitive process for transportation infrastructure projects.

**National Gateway:** Authorized its staff to seek \$258 million in federal transportation funds on behalf of Ohio, Pennsylvania, Maryland, West Virginia, North Carolina and Washington D.C. to help the CSX Corporation haul double-stack cargos.

Ohio components of the National Gateway project include \$60 million in bridge removals or replacements, bridge raisings and track lowerings, and \$175 million in terminal capacity developments.

"CSX Corporation estimates the National Gateway will bring nearly \$700 million in public benefits to Ohio by creating more than 20,000 jobs, saving more than \$400 million in shipping and logistics costs, saving more than \$80 million in highway maintenance costs, and lowering CO2 emissions by nearly 1.5 million tons," the ORDC staff said.

**Scenic Railway:** Agreed to lease a 14-mile section of state-owned track known as the Glass Rock Branch in Muskingum and Perry counties to the Zanesville & Western Scenic Railroad.

The line has been out of service for over a decade, but the Z&WSR intends to restore it to sufficient condition to operate passenger excursions.

The commission previously authorized a one-year lease to permit the volunteer organization to clear brush in order to allow for rail and bridge inspections.

The new lease will run for two years, at an annual cost of \$250.

**Rail Spur:** Approved a grant of \$30,000, and a loan of up to \$120,000, to the Ohio Basic Minerals Co. to pay for warning flashers and gates at a new grade crossing on a 600-foot rail spur in Jackson County.

OBM, which produces dried sand for the environmental, glass, oil and gas, and industrial markets, is spending \$6.9 million on an expansion project of which the rail line is a part.

The ability to ship sand via rail was a prerequisite for the expansion.

OBM has committed to ship at least 100 cars per year within three years of project completion. An ORDC review said there was a potential of up to 1,000 cars annually.

### **BALLOT BOARD SETS HEARING ON PROPOSAL TO ELIMINATE ESTATE TAXES**

The Ohio Ballot Board will meet next week on the latest proposal to eliminate Ohio's estate tax - an initiated statute backed by the Ohio chapter of a national conservative group. Although the proposal would first go to the General Assembly for consideration, Board members will determine whether the language submitted by the group Americans for Prosperity constitutes a single proposed law.

The Ballot Board meets 9 a.m. Sept. 17 in the North Hearing Room of the Senate Building.

If approved by the board and certified by the attorney general's office, which is expected to issue its findings this week, the group must collect 120,683 signatures, or the amount equivalent to 3% of the last gubernatorial election, in order to submit it to the legislature early next year.

If the measure does not become law in four months - a likelihood considering the split legislature and Democratic governor - supporters would have to collect an equal number of signatures to place the statute before voters. Although generally difficult to pass, two recent initiated statutes were successful: a crackdown on strip clubs passed by an all-GOP legislature and a statewide smoking ban approved by voters.

The Americans for Prosperity proposal would eliminate all Ohio estate taxes as of December 31, 2012. Revenues from the tax vary from year to year because of its nature. According to the Department of Taxation, in FY 2008 the state collected \$61.4 million and local governments took in \$255.7 million from the tax, which is levied in increasing percentages on individuals' estates depending on their wealth at the time of death. In FY 2007, state collections totaled \$72.1 million and the local share was \$287.3 million, DOD reported.

Under the highest rate, for estates exceeding \$500,000, the tax is \$23,600 plus 7% on the amount over \$500,000. For estates below \$40,000 in value, the estate tax rate is 2%, however the General Assembly nine years ago beefed up exemptions against the tax that mitigate fiscal impacts on the lower-valued estates.

While recent legislative attempts to eliminate the tax met with failure, Republicans reduced it considerably in 2000 with a measure that, while retaining 80% of the local government share, reduced the state's collections by an estimated \$200 million a year (SB180, 123<sup>rd</sup> General Assembly).

### **OHIO'S UNINSURED RATE RISES AS MEDIAN INCOME FALLS, CENSUS BUREAU SAYS**

The number of uninsured Ohioans in 2007-2008 rose nearly a percentage point over the previous two years, according to information the U.S. Census Bureau released Thursday. About 1.3 million Ohioans, 11.6% of the population, were uninsured in 2007-2008, compared with 10.7% in 2005-2006, the bureau said.

Meanwhile, Midwesterners' real median income in 2008 fell 4.0% to \$50,112 since the start of the recession in December 2007, according to the report. The nation's official poverty rate in 2008 also rose from 12.5% in 2007 to 13.2% in 2008. There were a total of 39.8 million people living in poverty in the U.S. last year. Health care advocates in Ohio pointed to data showing the percentage of Ohioans with employer-provided coverage decreased to 67.9% from 74.1% in 2000-2001.

"It is no surprise that Ohio lost ground on health insurance coverage last year. And with the severity of job loss we've seen in this recession and the continuing fiscal crisis in our state, the numbers for 2009 are bound to be much worse," said Emily Campbell, of the Center for Community Solutions. "Congress needs to act now on comprehensive health care reform."

The number of uninsured Ohioans would have been even higher if coverage under public programs such as Medicaid, Medicare, and military health care had not increased from 12.5% of the population in 2000-2001 to 17.6% in 2007-2008, the organization said.

Ohio's uninsured rate is likely to rise in 2009 as a result of increasing job loss due to the recession, Community Solutions said. The state lost more than 50,000 jobs in 2008 compared to late 2007, and has already lost an additional 245,000 jobs through July of this year.

Ohio Consumers for Health Coverage said the uninsured rate is even higher among working aged adults who generally don't qualify for public coverage.

"These are our family members, friends, and neighbors that are forced to gamble that they won't get sick or injured and are just one health crisis away from financial ruin," Co-Chairs Cathy Levine and Col Owens said in a joint statement. "Our commitment to health reform must remain undaunted."

### **ENVIRONMENTAL GROUPS PUSH FOR ENERGY EFFICIENCY IN CLIMATE CHANGE BILL; MANUFACTURERS SEEK 'BORDER ADJUSTMENTS'**

As Congress resumes work on legislation designed to curb global warming, environmentalists sought to increase the focus on energy efficiency while a manufacturing group called for 'border adjustments.'

Adding stronger energy efficiency requirements to climate change legislation pending in the U.S. Senate could help Ohio consumers save money and create jobs in the state, environmental groups said Thursday.

Strengthening energy efficiency requirements in the American Clean Energy and Security Act could save Ohio households an average of \$244 per year and create nearly 25,000 jobs, according to an American Council for an Energy-Efficient Economy report. Moreover, it would reduce carbon emissions by 14 tons.

By contrast, the current version of the bill would create an estimated 16,400 Ohio jobs, save the average household \$183 a year, and reduce annual carbon emissions in the state by 9 tons by 2020, the report says.

"Americans know that energy efficiency is the cleanest, quickest, cheapest way of reducing our energy use and pollution," said Amanda Moore of Environment Ohio, which released the report. "These common sense solutions will put cash back in our pockets and help protect the air we breathe, the water we drink and the future of the planet."

The group urged senators to increase the proposed Energy Efficiency Resource Standard to require utility companies to reduce their energy consumption by at least 10% through incentives for customers to make their homes and businesses more efficient. The current proposal would require a 5% reduction.

"While the House bill is a critical first step in harnessing the power of energy efficiency, this report shows we can save even more money, create more jobs and reduce more pollution," Ms. Moore said. "Senators Brown and Voinovich should lead the fight for common sense energy efficiency policies and jumpstart the transition to a clean energy economy."

Separately, the Alliance for American Manufacturing commended a group of 28 members of the U.S. House, including several from Ohio, for sending a letter urging President Barack Obama to support a provision to protect U.S. manufactured goods.

Among those signing the letter were U.S. Reps. Betty Sutton (D-Chardon), Marcy Kaptur (D-Toledo), Dennis Kucinich (D-Cleveland), John Boccieri (D-Alliance), and Tim Ryan (D-Niles).

"A poorly designed border adjustment mechanism will result in a net increase in global emissions and will put millions of energy-intensive manufacturing jobs here in the United States at risk," AAM Executive Director Scott Paul said in lauding lawmakers' letter to the president.

"We hope the president gets the message that these provisions are essential to preventing a shift of our domestic manufacturing base to industrialized nations such as China, the world's largest emitter of carbon dioxide, and India, which has publicly rejected efforts to control emissions," he said.

MONDAY, SEPTEMBER 14 2009

### **LAWMAKERS AND CONSERVATIVE CHRISTIAN GROUP FILE THIRD LAWSUIT TO BLOCK SLOT MACHINE PLAN**

The Ohio Christian Alliance and three House Republicans filed a lawsuit Monday to block Gov. Ted Strickland's administration from implementing a plan to install video lottery terminals at Ohio's seven horse racetracks.

In an eight-part argument, filed at the Ohio Supreme Court with a request for a temporary restraining order, the group alleges constitutional violations both with the processing of the biennium budget bill (HB 1) that contained related language and the administrative approach to expanding the scope of the Ohio Lottery.

Joining in the suit are: Rep. Ron Amstutz (R-Wooster), Rep. John Adams (R-Sidney) and Rep. Seth Morgan (R-Huber Heights). Sen. Timothy Grendell (R-Chesterland) is the group's attorney in the matter.

The lawsuit is the third to be filed involving the slots plan, which the administration is counting on to provide \$933 million in state revenue over the biennium. Racetrack owners must each pay the first of five \$13 million licensing fee installments on Tuesday.

The suit names the governor, the Ohio Lottery Commission and OLC Director Kathleen Burke as defendants.

Although the legislature is not named in the suit, Ohio Christian Alliance President Chris Long said his group wants the slots plan scuttled in part because it was included in the budget in violation of the constitution and so late in the process that policymakers didn't have a chance to read the voluminous statutory language.

"That is, simply put, bad government," he said during a news conference in Columbus.

"Four times in the past two decades Ohio voters have resoundingly defeated ballot measures attempting to expand gambling in Ohio," Mr. Long said. "By the action of Gov. Strickland through his executive directive, the Ohio voters have now been cheated in the process. That is why we are appealing to the court."

The lawmakers also questioned the legislative and administrative processes, cited societal problems with expanded gambling and reiterated their doubts that it would provide the necessary revenue as projected.

"This is the only recourse that we have," Rep. Adams said.

Rep. Amstutz said voters never anticipated "casino-style gambling" when they approved the lottery in the early 1970s through a constitutional amendment. "I believe we need to stand up to the interests that are really mocking Ohio voters with this action," he said.

Rep. Morgan described the slots proposal as a "wrong to the people of Ohio."

In addition to asking the court to immediately block the slots implementation until the case can be fully heard, the group's lawsuit argues that justices should throw out the plan for several reasons:

- Its inclusion in the budget was in violation of the constitutional "single subject" limitation for legislation.
- Because the budget bill was "substantially rewritten" by the conference committee the measure should have been reconsidered by each house on three different days.
- The state's plan runs counter to prohibitions against joint ownership of a private venture.
- The governor failed to "see that the laws (of Ohio) are faithfully executed" as required by the constitution.
- By splitting proceeds from the VLT machines with private track owners the arrangement unlawfully uses lottery revenues for a purpose other than K-12 education.
- The lottery commission and director have a legal duty to comply with the Ohio Constitution and state laws.
- Implementation of the slots would cause "irreparable harm" to Ohioans "for which monetary damages cannot adequately compensate."
- The governor indicated the slots revenues would free up other state money for social services.

Strickland spokeswoman Amanda Wurst said the administration believes the constitutionality of the VLTs is "on solid ground."

"The Ohio Constitution authorizes the General Assembly to establish the terms under which the lottery is operated. In the budget the General Assembly expressly acknowledged the lottery's authority to provide VLT games with a statutorily established definition of VLT activity," she said.

"In addition, in the budget the General Assembly appropriated all if the net proceeds from VLTs for education programs as required by the constitution," Ms. Wurst added. "We don't think the VLT opponents have a credible legal argument to make."

Sen. Grendell, who unsuccessfully sued the legislature in 1999 for deleting a local airport earmark from the biennium budget measure, said of his pro bono involvement in the case, "This is a constitutional quest for me."

The lawmaker said there is precedent for the court overturning budget bill laws based on procedural shortcomings if the measure has been "vitaly altered." Asked how this year's conference committee process different from others in terms of late additions to the bill, Sen. Grendell said, "The fact that a process was done and not challenged does not make the process constitutional."

Sen. Grendell, who served on a panel that separately reviewed Gov. Strickland's slots plan said he doesn't see any conflict with his legal participation in the case because the group isn't suing the legislature and he did not help write the statutory language in question. The senator said his part in the related budget discussions was focused on a failed plan to instead place the matter before voters.

Ms. Wurst said Gov. Strickland opted for VLTs in because he did not want to raise taxes, and that the lawmakers involved in the suit should identify what taxes they would like to increase in lieu of the gambling revenues.

Rep. Amstutz said during the news conference that his preference was to further reduce state government spending or identify alternative revenue sources.

### **STRICKLAND CHANGES MIND, WANTS 21 AS MINIMUM AGE FOR PLAYING LOTTERY SLOTS**

New high school graduates won't be able to play the Ohio Lottery-operated slot machines at horse racetracks under a change to the plan requested Monday by Gov. Ted Strickland.

The original proposal called for the minimum age to be 18 years old, the same age at which citizens can place bets on horse races. However, that facet of the planned gambling expansion prompted concerns from some groups as well as Senate President Bill Harris (R-Ashland).

Gov. Strickland issued a statement announcing his request and the lottery director said later that it would be honored.

"After careful consideration of articulated concerns, and the views of the directors of the Ohio Lottery and the Department of Public Safety, I am requesting that the Lottery Commission consider a rule revision to raise the minimum age to play video lottery terminals at Ohio's racetracks from age 18 to age 21," Gov. Strickland said.

Lottery Commission Director Kathleen Burke said the age change is a good idea because it responds to concerns from interested parties and would mesh better with liquor law enforcement at the upgraded track facilities.

Lottery officials don't think the change would have a major impact on VLT revenues, she said. "I don't think it's expected that it would cut it significantly."

Strickland spokeswoman Amanda Wurst said the change would not place Ohio facilities at a competitive disadvantage with those in other states. The administration is unaware of any track owners that are concerned with the change, she said.

In another recently announced change to the slots initiative, OLC agreed to lower fidelity bonds required for track owners from \$30 million to \$1 million and scrapped a planned performance bond requirement.

In a related development, Ms. Burke said she may allow the new owners of Cleveland's Thistledown racetrack more time to submit their deposit toward the VLT license fee, but said she wouldn't want to see any "foot dragging" on the matter.

An auction for the track was set for Monday. The first of five required \$13 million licensing fee installments is due to the state from the track operators on Tuesday.

### **MAINE TRAIN SHOWS ECONOMIC DEVELOPMENT POTENTIAL FOR '3C' LINE, RAIL ADVOCATES SAY**

A plan to build a new passenger rail line in Ohio could drive the same boom in jobs and commerce that northern New England experienced if the state proceeds with the "3C" rail project, proponents said Monday.

Creation of a rail line from Boston to Portland, Maine produced a 220% return on the \$100 million in public spending, according to real estate developer Robert Martin.

The project has generated more than \$7 billion in construction investment, 17,800 new jobs in the region, \$76 million in tax revenue, and \$2.4 billion in consumer purchases, he said during a news conference.

The proposal to build a rail line from Cleveland, Columbus, Dayton and Cincinnati, which would serve a much larger population than the Amtrak Downeaster, would have a far greater impact, he said.

"The numbers here in Ohio are substantially greater," he said. "This can be accomplished here, it can be a game changer here in Ohio."

The event was part of rail proponents' "whistle stop" tour of cities along the 250-mile proposed route as the state plans to apply for \$400 million in federal stimulus funding early next month.

Separately, Amtrak is scheduled to release its operations proposal and ridership projections this week.

The Ohio Department of Transportation and Rail Development Commission are also slated to announce their recommended route and station alternatives and travel-time estimates this week. The agencies are holding public hearings on the 3C plan in Columbus, Cleveland, and Cincinnati this week.

Jack Shaner, deputy director of the Ohio Environmental Council, said showing enthusiasm for the project in Ohio was critical since competition for the \$8 billion in federal stimulus money was intense.

Forty states have submitted pre-applications totaling \$102 billion in proposed spending, he said, noting the U.S. Department of Transportation is expected to announce its decision this fall.

"Ohio cannot afford to be stuck at the end of the line," he said. "It's high time for Ohio to get on board modern passenger rail service. We urge every Ohioan who supports the 3C plan to tell their lawmakers to get on board today."

Chester Jourdan, executive director of the Mid Ohio Regional Planning Commission, said the 3C plan would not only spur economic development in Ohio, but would also produce environmental benefits for the state.

"We've been talking and planning this for 30-plus years. Now the time for talking and planning is over," he said.

Ken Sislak, associate vice president of AECOM Transportation and board member of All Aboard Ohio, said last year's spike in gas prices showed the need to develop alternative means of transportation that were less dependent on oil. "We need to change the way we travel," he said.

TUESDAY, SEPTEMBER 15 2009

### **AMTRAK SAYS 3C LINE WOULD REQUIRE \$343 MILLION IN CAPITAL COSTS, \$17 MILLION OPERATING SUBSIDY**

A proposed passenger rail line linking Cleveland, Columbus, Dayton and Cincinnati would cost about \$29.2 million a year to operate, while generating \$12.2 million in annual revenue, according to a draft feasibility study Amtrak released Tuesday.

That means the state would have to supply a \$17 million a year operating subsidy, says the Amtrak study, which the Ohio Department of Transportation will use as part of the state's application for federal stimulus funding due Oct. 2.

ODOT plans to cover annual operating costs with non-gas-tax dollars, such as revenues from advertising on the trains, franchise fees and existing grant money, the agency said.

The state would also need to spend an estimated \$342.6 million to improve infrastructure and upgrade track, signals, and mechanical facilities, the study says.

The Ohio Rail Development Commission recently authorized its staff to apply for up to \$400 million of some \$8 billion for high-speed intercity rail projects available through the federal stimulus bill.

About 478,000 people annually would ride the 255-mile proposed route that would take about 6 and a half hours between Cleveland and Cincinnati.

The ridership projections show 3C "Quick Start" service would rank as the nation's 12<sup>th</sup> largest generator of passenger rail traffic, comparable to other successful state-supported passenger rail programs in Michigan, Maine, and Illinois, ODOT said in a news release.

Demand for passenger rail prompted Amtrak to increase rider capacity, recommending Ohio purchase five train sets consisting of a locomotive and control car, 5 coach cars and a food service car with business class seating. That would cost an estimated \$175 million. One set would be for reserve.

"This long-awaited report from Amtrak proves that Ohioans want true travel choice and will use passenger rail service," ORDC Executive Director Matt Dietrich said in a statement.

"The report shows that 478,000 passengers would board the train each year in Ohio, if it were running today. Other studies estimate that the ridership rate would jump to nearly 600,000 riders by 2014 using the same schedule and stops," he said.

### **STRICKLAND APPROVAL UP DESPITE BUDGET, ECONOMIC CONCERNS**

Gov. Ted Strickland's job approval rating has increased from early July despite concerns voters have about the way the state's economy is moving, according to an independent poll released Tuesday.

Forty-eight percent of respondents to the Quinnipiac University Polling Institute survey said they approve of Mr. Strickland's work, compared to 42% who disapproved. In July, the governor's approval rating stood at 46%-42%.

"Gov. Ted Strickland's slide has stopped and there is a little upward movement in the public's view of him over the summer, but his numbers remain far below where they were before the state's budget impasse," said Peter Brown, the institute's assistant director. "While final approval of a budget has helped him in the public's eyes, he still bears some political scars from that prolonged fight."

The survey also found that Mr. Strickland is increasing his lead over GOP gubernatorial opponent John Kasich, moving from a 43%-38% edge to a 46%-36% margin.

Still, voters said they disapprove 54%-33% of the way Mr. Strickland is handling the economy and disapprove 47%-36% of the way he handled the budget.

Voters also said they support - by a 56%-37% margin - opening the state to casino gambling and back adding video lottery terminals at race tracks by a 60%-34% margin.

"Gambling opponents, who have beat back previous efforts to bring casinos to Ohio four times, have their work cut out for them if they are to prevail this time," said Brown.

A full 60% of respondents said they are not likely to go to a casino.

And 9% of respondents said they would be more likely to visit a race track if VLTs were there, while 12% said they would be less likely to go to a track. Nearly 80% said that factor wouldn't make a difference.

Additionally, the poll shows voters overwhelmingly back a ban on use of cell phones while driving. "Support for limiting cell phone use while driving has become a motherhood and apple pie issue," Mr. Brown said.

One-third of respondents aid they approve of the legislature's job performance, compared to 48% who said they disapprove of lawmakers' work.

Sixty percent said they are somewhat or very dissatisfied with Ohio's direction, compared to 39% who said they are somewhat or very satisfied with the direction.

The results are based on the responses of 1,074 voters collected between Sept. 10 and Sept. 13. The poll has a 3% margin of error.

### **THIRD FRONTIER CREATING TEN-FOLD INVESTMENT, NEW JOBS, REPORT SAYS; SPEAKER EYES EXPANSION**

The state's \$681 million in Third Frontier investments have prompted \$6.6 billion in economic activity and more than 41,000 jobs, according to a report on the program released on Tuesday.

The findings came with a renewed commitment from Speaker Armond Budish (D-Beachwood) to seek voter approval of a renewal and expansion of the bond component of the \$1.6 billion initiative.

The study issued by SRI International for the Ohio Department of Development, notes that those jobs have produced \$2.4 billion in wages and benefits.

"This report shows that the Third Frontier has made a major impact on job creation in Ohio," Board of Regents Chancellor Eric Fingerhut said. "Clearly we need to build on these efforts if we are to accelerate the economic rebirth of the State of Ohio."

Overall, the report said each state dollar invested in the program has produced nearly \$10 in private investments.

"By cultivating an entrepreneurial ecosystem in our state, Ohio Third Frontier is laying the foundation for technology-based economic development, capitalizing innovative companies and creating 21<sup>st</sup> century jobs for Ohioans," Interim DOD Director Lisa Patt-McDaniel said. "Ohio Third Frontier's efforts to build world-class research programs, nurture early-stage companies, and foster technology development are making existing industries more productive and spurring job creation today and continued growth for years to come."

The report, authored by SRI International and the Georgia Institute of Technology's Enterprise Innovation Institute, also indicates that the Third Frontier program has helped increase early-stage capital, enhanced the environment for technology entrepreneurs, enhanced research and development collaboration and boosted Ohio manufacturers' competitiveness and diversity.

Speaker Budish meanwhile reiterated his desire to expedite a spring ballot issue to renew the bond component of the Third Frontier initiative, saying it was among his top priorities for the fall session.

"I believe that hundreds of new businesses have been created with the help of Third Frontier and tens of thousands of new jobs - high-paying jobs - have been generated as a result," he told reporters after the House session.

Speaker Budish said he would like to seek authority for more bonds than the \$500 million that voters approved in 2005, however he declined to state his goals in that regard because the package remains under development in conjunction with the GOP-controlled Senate.

"I think that a significant expansion would be prudent in light of the fact that we've seen a track record of success here in creating high-quality, high-paying jobs," he said.

Speaker Budish said he would prefer a spring ballot issue in part because the bond proposal would be less likely to be affected by politics than if it was put before voters in the fall of 2010. He said he was not concerned about increasing the state's debt load with an expansion of the program.

"Clearly we have to be watchful whenever we incur debt for the state - we want to be fiscally responsible," he said. "But we also have to look at investing in the future of Ohio and the Third Frontier has paid for itself ten-fold, is my understanding."

WEDNESDAY, SEPTEMBER 16 2009

### **U.S. EPA PLANS TO REVISE SMOG STANDARDS AFTER APPROVING OHIO COMPLIANCE WITH CURRENT LIMITS**

The day after federal regulators declared two Ohio regions in compliance with national smog standards, the U.S. EPA announced plans Wednesday to revisit ozone limits that health and environmental advocates say are too weak.

U.S. Environmental Protection Agency Administrator Lisa Jackson said the agency would reconsider the 2008 national ambient air quality standards for ozone to ensure they are scientifically sound and protective of human health.

"This is one of the most important protection measures we can take to safeguard our health and our environment. Smog in the air we breathe can cause difficulty breathing and aggravate asthma, especially in children," she said in a statement.

"Reconsidering these standards and ensuring acceptable levels of ground-level ozone could cut health care costs and make our cities healthier, safer places to live, work and play," Administrator Jackson said.

The announcement comes after the agency approved Tuesday the state's request to redesignate portions of northeastern and central Ohio as in attainment with the federal eight-hour ozone standard.

U.S. EPA said air quality monitoring data for 2006, 2007, and 2008 meet the requirements and approved the redesignation for: Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit, Delaware, Fairfield, Franklin, Knox, Licking and Madison counties.

The agency also approved Ohio's plan to continue to meet the eight-hour health-based ozone standard through 2020, including the motor vehicle emissions budgets included in the plan.

Tighter federal smog standards could impact the state, prompting additional controls on air pollution sources.

Administrator Jackson said the agency would reconsider both the primary and secondary ozone standards, which are designed to protect public health, welfare and the environment. U.S. EPA will propose revisions by December 2009 and will issue a final decision by August 2010.

In addition to some 1,700 scientific studies and public comments submitted during the 2008 rulemaking process, U.S. EPA will review the findings of the agency's independent Clean Air Scientific Advisory Committee, which recommended stronger smog standards.

The American Lung Association said the development could rectify a "serious misjudgment" the agency made previously in setting the ozone standard too low.

"Previously, the EPA ignored the advice of its expert science advisors and the consensus of the health and medical community when it set this official national limit on the amount of ozone pollution that can be in the air," said Charles Conner, president and CEO of the American Lung Association, which challenged the 2008 rules in court.

"Ozone smog threatens the health of infants, children, seniors and people who have asthma, emphysema, chronic bronchitis and other lung diseases. For these people, breathing smog-polluted air can make them cough and wheeze, restrict their airways, worsen their diseases, force them to the hospital and even kill them," he said.

### **GOVERNOR CONFIDENT ON SLOTS DESPITE FEE ISSUES; OEC COMPLAINT, SECRET VIDEO LATEST IN CASINO DEBATE**

Gov. Ted Strickland said Wednesday he remained confident in his plans for racetrack-hosted "video lottery terminals" despite track owner difficulties in coming up with initial licensing fees.

Only two of seven horse tracks were able to come up with a \$13 million payment, one of five license fee installments due to the state, by Tuesday's deadline.

"There are a variety of issues involved here but... we are in frequent, nearly constant communication with the track owners," the governor said after a Statehouse event.

"I feel rather good about the fact that at this point there is good faith efforts to comply and to meet their obligations regarding the licensure fee," Mr. Strickland said.

"There are some understandable issues that are in the process of being resolved, but at this point I am not concerned or worried that there will not be compliance."

David Paragas, the attorney for the Ohio Legacy Fund, which is comprised of the seven track owners, said there are no second thoughts over moving forward despite the legal issues.

"Not from what they have shared with me. All seven of the track owners filed their applications for licensure as VLT agents" and paid the non-refundable \$100,000 application fee, he said in an interview.

In terms of paying the larger fee installments, Mr. Paragas said, "What they have said is they all intend on making the required initial licensure fee payment of \$13 million in accordance with the lottery commission's rules.

"Some of them have encountered difficulty in obtaining outside investment or loans for that payment, part of that as a result of the legal challenges that are out there. But their plan at this point is to continue moving forward."

Sen. Mark Wagoner (R-Toledo) and Sen. Jon Husted (R-Kettering), who sat on a special panel to review the slots plan, issued a joint statement reiterating their argument that the proposal should have gone before voters.

"As we said in July, there was no need to rush this. As we predicted, a competing ballot initiative and multiple lawsuits has created greater uncertainty and placed the already fragile state budget in greater peril," the lawmakers said.

"The combination of voters deciding the issue at the ballot and competitively bidding the licenses would have eliminated the threats of litigation, given the taxpayers of this state a better deal and created more confidence in the outcome. As it stands now, the future of gambling in Ohio is more uncertain than ever and our state's budget is adrift at sea and depending on the gambling industry to bail us out."

**Issue 3 Debate:** On a separate gambling front, opponents of the fall casino ballot issue offered video evidence Wednesday of cash-operated slot machines to amplify their argument that supporters purposefully wrote the constitutional amendment to avoid paying taxes on their full revenue intake.

A spokesman for the group Ohio Jobs and Growth Committee's Issue 3, however, again dismissed the claims as "an abject lie" perpetuated by a "front group" for rival casino interest MTR Gaming.

Also on Wednesday, Pasquale "Pat" Manzi, executive secretary-treasurer of the Columbus and Central Ohio Building and Construction Trades Council, filed a complaint against TruthPAC with the Ohio Elections Commission claiming false statements.

The charges target TV and radio spots that make claims regarding the employment of Ohio workers at the casinos.

Rep. Lou Blessing (R-Cincinnati), co-chair of TruthPAC, said the anti-casino campaign followed up his own visit to the Hollywood Casino in Lawrenceberg, Indiana with a hidden camera to show slot machines accepted cash in up to \$100 bill denominations.

The Indiana casino is owned by Penn National Gaming, which along with mortgage lending mogul and Cleveland Cavaliers owner Dan Gilbert, is behind the Nov. 3 ballot issue to authorize casinos for Cincinnati, Cleveland, Columbus and Toledo.

The proposal includes a 33% tax on gross casino revenue, defined in the amendment as money "exchanged for the purchase of chips, tokens, tickets, electronic cards or similar objects."

Mr. Blessing, an attorney who has chaired judicial committees in the legislature, said the crafters of the amendment language purposefully left out cash put into slots to bolster their bottom line. If voters approve the issue, he added, the General Assembly would be powerless to statutorily require that taxes be paid on those casino revenues because the language will be in the Ohio Constitution.

"It's very clear what the intent is here," he said during a news conference in Columbus. "They knew that when they drafted this."

In secretly filming \$1 bills being inserted into a slot machine, TruthPAC was following up on a published statement made by the spokesman for Issue 3, who indicated that cash wasn't used in casinos. Bob Tenenbaum's comment, reported by *The Columbus Dispatch*, was published in late August when opponents first raised concerns about what they view as a "gaping loophole" in the proposal.

"That response piqued my interest," Mr. Blessing said. "It just didn't sound right."

Mr. Tenenbaum said Wednesday that although cash can be used to begin playing slots, it is instantly converted into taxable credits by the machine. To underscore his argument, he noted that in Indiana, where the TruthPAC video was shot, cash wagering at casinos is prohibited.

"There is absolutely no question and as far as I know no legal analysis to dispute that every penny wagered in a slot machine or a table game is fully taxable under our proposal," Mr. Tenenbaum said. "To continue to say otherwise with no proof is an abject lie."

Maintaining that TruthPAC is "a front group for MTR Gaming, he said, "Their interest is in protecting their revenue in West Virginia. They could care less about Ohio.

He noted the company, which owns Scioto Downs, failed to meet Tuesday's deadline for a \$13 million initial licensing fee installment to operate slots under the governor's plan while Penn National's Raceway Park did so.

Mr. Blessing indicated the video or the group's counter-argument on the cash-operated slots would likely end up in campaign material.

He acknowledged some worries, however, given that the pro-casino group appears to be off to a significant head start in terms of TV ads.

"There's a huge concern that they will overwhelm us," Mr. Blessing said. "The only chance that we have is to tell the public: 'This is the truth. Make up your own mind.'"

THURSDAY, SEPTEMBER 17 2009

### **COMMERCIAL ACTIVITY TAX ON GROCERS UPHELD BY OHIO SUPREME COURT**

In a huge victory for the state and its budget solvency, the Ohio Supreme Court upheld the relatively new commercial activity tax on food, which had been challenged by state grocers.

The 6-1 ruling, written by Justice Maureen O'Connor, said the Ohio Constitution "does not prohibit the state from using gross receipts to compute the amount of a privilege-of-doing-business tax, even if those gross receipts include proceeds from the sale of food."

Justice Paul Pfeifer in his dissent agreed with the argument of the Ohio Grocers Association that the CAT as applied to food sales amounted to an excise tax prohibited by the constitution.

The state's victory is also a win for schools and local governments that under current law receive most of the proceeds from the CAT. Had the grocers prevailed, they would have been exempt from about \$188 million a year in taxes and due about twice that much in refunds.

The CAT was enacted in 2005 as part of a budget bill (HB66, 126<sup>th</sup> General Assembly) that overhauled the state's tax code. As part of the sweeping changes, two other major business taxes - the corporate franchise tax and the tangible personal property tax on equipment and inventories - were phased out.

Nevertheless, grocers throughout the budget deliberations and beyond argued that the CAT was unfair to businesses with high sales volumes and low profit margins.

OGA subsequently challenged the CAT as a violation of the constitutional prohibition against excise taxes on food sales, and the state defended it as an equitable, broad-based levy applied to businesses for the privilege of operating in Ohio.

The gross receipts-based tax, which has a rate of 0.26%, is applied to annual receipts exceeding \$1 million. Enterprises pay a flat \$150 tax on receipts totaling between \$150,000 and \$1 million, and businesses that gross less than \$150,000 a year don't have to register or pay the tax.

Thursday's decision reversed a 10<sup>th</sup> Ohio District Court of Appeals ruling in favor of grocers. The appellate court had overturned a prior Franklin County Common Pleas Court ruling in favor of the state's argument. Grocers bore a "heavy burden of persuasion" given that laws are entitled to a "strong presumption of constitutionality," Justice O'Connor said in her opinion. "Moreover, the constitutional provisions that the grocers rely on to invalidate the CAT are tax exemptions and therefore must be strictly construed."

In reviewing the history of the constitutional sections at issue in the case, Justice O'Connor said the "wording suggests that only those excise taxes *that resemble* sales taxes fall under its prohibition-and a privilege-of-doing-business tax is not like a sales tax. If the drafters had desired to outlaw excise taxes of every stripe, they simply could have prohibited 'excise taxes.'"

The majority opinion also found precedent in case law in regards to the use of gross receipts to determine tax liability for the privilege of doing business in Ohio.

"The value of the privilege may be determined using gross receipts, among other measures," Justice O'Connor wrote. "Indeed, where the General Assembly, in levying a tax on the privilege of conducting a public-utility business, chose to use 'gross earnings' to measure the value of the privilege as opposed to net earnings, we characterized that choice as wise."

Justice Pfeifer disagreed with the majority's conclusion in citing that example and other case law.

"This court has again cobbled together incongruent cases with an implausible rationale to conclude that a straightforward provision of the Constitution is inapplicable to the situation before it," he wrote.

"In distinguishing between excise and "privilege of doing business" taxes, the majority opinion blithely ignores the fact that franchise taxes are excise taxes, as conceded by the Attorney General," Justice Pfeifer said, while also taking issue with the "presumption of constitutionality" argument along with other aspects of the majority opinion.

"Implication and conjecture are the building blocks of the majority opinion," Justice Pfeifer concluded. "Clear and strong conviction that an excise tax collected by the state based on the sale of food is prohibited by Section 3, Article XII of the Ohio Constitution flows naturally from any fair reading of its provisions."

**Reaction:** Gov. Ted Strickland, who inherited the tax reforms from the prior Republican administration but has embraced the changes as a platform for improving Ohio's business climate, said in a statement that he was pleased with the ruling.

"I am thankful for the Supreme Court's decision, which protects the integrity of Ohio's reformed tax code and upholds the broad-based, low-rate structure that gives Ohio the lowest business taxes in the Midwest," he said.

OGA President and CEO Tom Jackson said in a statement, "This is a sad day for consumers in the state of Ohio."

"Obviously the Supreme Court of Ohio did not recognize the constitutional argument that the grocers were making on behalf of Ohioans purchasing food for off premise consumption," he said.

"In our opinion, the Ohio Constitution and the intention of the legislature were not upheld by this court today - it is very disappointing. Our goal was to make sure that any tax dollars would not affect the price of food. It is a sad to think that the consuming public will continue to be taxed one way or another on food for off premise consumption. Today, the Ohio consumer lost."

Tax Commissioner Rich Levin called the ruling "an important victory for those who are working to improve Ohio's business tax climate and lower the tax burden in Ohio."

"I'm pleased to see that the Ohio Supreme Court recognized that the commercial activity tax is not a tax on the sale or purchase of food. It is, as we've said, a broad-based tax that applies to all businesses in Ohio, measured by gross receipts," he said, adding that the CAT was a key component of the 2005 tax changes that add up to more than \$2 billion in annual tax relief.

"Had this case gone the other way, all of these changes to Ohio's tax laws may have been at risk," Mr. Levin said.

Attorney General Richard Cordray said the court "made clear today that all businesses in the state of Ohio are expected to pay their fair share."

"This is a clear victory for state and local governments, as well as our public schools, which depend on this revenue to provide critical services to countless Ohioans," he said.

The Ohio Manufacturers' Association, which backed the tax system restructuring four years ago, also welcomed the result.

"Defense of the tax reform package has been a high priority for the OMA since its enactment in 2005," President Eric Burkland said. "All Ohioans will benefit from this decision since it helps protect the competitive enhancements made to Ohio's tax structure."

"With today's fierce global marketplace, it is imperative that Ohio create and maintain the most competitive environment possible for manufacturers - an environment that encourages industry growth, supports necessary government services and protects Ohio's economic future."

### **CONSERVATIVE GROUP GETS CLEARANCE TO CIRCULATE PETITION FOR INITIATED STATUTE TO REPEAL ESTATE TAX**

Americans for Prosperity got the go-ahead Thursday to begin collecting signatures for a plan to completely eliminate the estate tax.

The Ohio Ballot Board agreed in a hearing that the proposed initiated statute constitutes a single law. Attorney General Richard Cordray last week certified the language as "fair and truthful."

The group has roughly three months to gather 120,683 signatures, or the amount equivalent to 3% of the last gubernatorial election, in order to submit it to the legislature early next year. The deadline for submitting the signatures to the Secretary of State's office is 10 days prior to the start of the 2010 legislative session in early January.

If the legislature as expected does not pass the bill within four months, the group must collect an equal number of signatures to qualify the statute for the Nov. 3 ballot.

Enactment of the repeal would mostly affect local governments, as the General Assembly in 2000 considerably increased exemptions against the state's share of estate tax collections while retaining about 80% of the local share.

According to the Department of Taxation, the state collected \$61.4 million and local governments took in \$255.7 million from the tax in FY 2008.

### **STATE PROGRAM HELPS PREVENT FORECLOSURE FOR 3,200 HOMEOWNERS, REPORT SAYS**

The state's foreclosure prevention effort helped about 3,200 Ohioans, or 23% of those who sought housing counseling, to obtain loan workouts that helped them remain in their homes, according to the program's 2009 annual report issued Thursday.

Gov. Ted Strickland, who helped launched the Save the Dream Foreclosure Prevention Program, lauded the initiative's first year results.

"I am very pleased with the extensive tools and resources we have developed to make the first year of the Save the Dream program a great success, and look forward to doing more in the coming year to help Ohioans maintain homeownership," he said in a statement.

Grants from the Department of Development totaling more than \$7.5 million help fund a housing counseling effort that referred more than 10,000 callers to counselors, the report said.

Out of 14, 038 homeowners in the housing counseling program, 3,519 resulted in loan workouts, the report said. Included in those, were 250 pre-foreclosure sales and 41 executed deeds-in-lieu.

The largest outcome was continued housing counseling for 3,867 homeowners, or 28% of participants. Eight percent were referred to Legal Aid and another nine percent were referred to other social services. Another 182 resulted in foreclosed mortgages and 289 went bankrupt.

### **ATTORNEY GENERAL'S OPINION**

No. 2009-034: Requested by Erie County Prosecuting Attorney Kevin J. Baxter.

#### **SYLLABUS**

Pursuant to R.C. 121.22(C), meetings of a public body of a township are public meetings that must be open to the public at all times and conducted in a location that is open to the public. In order to be considered present at a meeting of a public body of a township, and for the purpose of determining a quorum, R.C. 121.22(C) requires that a member of a public body be present in person at a public meeting. These requirements preclude the possibility of a public body of a township conducting a meeting by teleconference or by any other means that would limit the ability of the public or a majority of the members of a public body to attend the meeting in person.

A township may pay its employees by direct deposit of funds by electronic transfer provided the board of township trustees authorizes such automatic payments by resolution. However, pursuant to R.C. 5705.41(B), (C), and (D)(1), a township may not make any expenditure of money unless a warrant has been issued against a proper fund, moneys have been appropriated properly to fund such expenditure, and the township fiscal officer has certified the amount. Furthermore, pursuant to R.C.

507.11(B), a board of township trustees is required to approve each payroll and township financial obligation with an order signed by at least two of the township trustees and the township fiscal officer.

The provisions of law pertaining to (1) the authority of a township to limit public attendance at meetings of a public body and (2) the authority of a township to meet financial obligations without prior approval by the board of township trustees are not repealed or otherwise affected as a result of whether a federal, state, or local governmental official declares a state of emergency in a township or as a result of the type of emergency a township is confronting.

FRIDAY, SEPTEMBER 18 2009

### **OEPA SUGGESTS C&D LANDFILLS POLLUTE GROUNDWATER, SAYS NEW RULES WILL SETTLE THE DEBATE**

Nearly four years after passage of a law regulating construction and demolition debris landfills, the state is still devising rules it hopes will conclusively settle the question of whether the facilities are polluting nearby groundwater.

While the industry asserts C&D landfills contain mostly inert building materials, the Ohio Environmental Protection Agency has completed two studies that suggest otherwise. The reports will help inform revised draft rules the agency is writing to enforce a 2005 law designed to prevent the facilities from polluting (HB 397, 126<sup>th</sup> General Assembly).

One report issued in June found arsenic, lead, manganese, mercury and other toxins in the water that accumulates within the landfills. An earlier internal OEPA study indicates that leachate may be tainting nearby groundwater in 31 out of the 47 facilities for which there was sufficient data.

Scott Heidenreich, of the agency's Division of Solid and Infectious Waste Management, said while its clear leachate in C&D landfills contains toxic chemicals, the study of groundwater impacts was "inconclusive."

"In order for it to be conclusive, we would have to do site-specific assessment and apply statistical analysis. It's a much more rigorous scientific review," he said in an interview.

Rather than undertake a more rigorous study, rules still under development will require C&D landfill operators to expand their groundwater monitoring so they can detect when a toxic release occurs, he said. That will provide conclusive evidence as to whether the facilities pollute groundwater, but it could take several more years.

"The methodology we're going to be using is the rules. It's an expense issue, time issue, resource issue," he said. "With the budget the way it is, we don't have the staff or the money to go out and monitor all the facilities we have."

Mike Cyphert, general council for the Construction and Demolition Association of Ohio, said the study was flawed and didn't appropriately test groundwater upstream of the facilities, which has been previously tainted by nearby mining or old solid waste landfill operations.

Rules requiring additional monitoring are unnecessary since current C&D landfill regulations already grant OEPA the ability and funding to conclusively settle the question of whether the facilities are tainting groundwater, he said. The industry pays a \$0.10 per ton tipping fee specifically to fund the agency's monitoring expenses.

"If they have a site that they believe current groundwater monitoring is either insufficient or tends to indicate a pattern that ought to be investigated further, they have the authority to come in there and poke as many holes in the ground as they want to prove their point," he said.

"To my knowledge they have not done that," he said. "To Ohio EPA, as long as it's industry's money, the sky's the limit. But when it's their own money, they don't do anything, which may indicate that they don't really believe it's a true impact."

Mr. Heidenreich said the agency was still devising a list prioritizing which landfills should be studied using the groundwater monitoring fund.

Meanwhile, OEPA continues the rulemaking process on a whole host of C&D issues contained in the 2005 legislation, he said. The regulations were stalled after the industry objected to the original draft rules,

"We've been studying their comments and talking with them and doing what we can to create revised draft rules that meet our statutory obligations for protecting public health and the environment... as well as make it as easy to do for the owner-operators as we can," he said.

Mr. Heidenreich said he didn't know when the new rules would be ready. "We're working seriously on it, but we don't have a timeline."

### **UNEMPLOYMENT RATE FALLS TO 10.8% AS LABOR FORCE DROPS**

Ohio's unemployment rate in August fell to 10.8%, a decline from 11.2% in July as fewer Ohioans were actively seeking jobs, the Department of Job & Family Services announced Friday.

It was the first time in several months that the unemployment rate fell.

"A decrease in Ohio's labor force was a primary factor in drop of the August unemployment rate," ODJFS Director Douglas Lumpkin said. "The unemployment rate declined as the number of service-providing and goods-producing jobs decreased and fewer Ohioans were actively seeking work."

The national unemployment rate for August was 9.7%, up from 9.4% in July.

Overall, 641,000 Ohioans were employed last month, compared to 666,000 who were working in July. Over the past year, the number of unemployed Ohioans has increased by 239,000, as the unemployment rate increased from 6.7% one year ago.

Overall, service industries shed 26,400 jobs over the last month, while goods producers cut 3,700 positions.

Leading the service decline were professional and business services, down 7,500 jobs, government, down 7,000 jobs and trade, transportation and utilities, down 6,800 positions. Educational and health services led the service sector last month, adding a total of 2,400 jobs.

Among goods producers, construction dropped 5,700 positions while manufacturers added 2,000 jobs. Mining and logging employment remained steady.

With the latest round of unemployment figures came another critique from the Ohio Republican Party, which said Ohio lost 30,000 jobs in August alone.

"It's obvious to everyone by now that Ted Strickland has no plan to reverse Ohio's economic decline," ORP Chairman Kevin DeWine said in a statement. "Thousands of Ohioans are losing their jobs every month, and the Strickland administration thinks everything is magnificent. It only took them eight months to hire an economic development director, and all they could come up with was someone they had already passed over."

### **FEDERAL GOVERNMENT FUNDING FLOWS TO FORD, AIRPORTS**

Ford Motor Company's factories in Ohio and nearby states will begin producing more fuel efficient vehicles with the help of a federal \$5.9 billion loan, the U.S. Department of Energy said this week.

The loan is the first from the Advanced Technology Vehicles Manufacturing Loan Program, for which Congress appropriated \$7.5 billion last fall to support up to \$25 billion in loans to automakers with U.S. factories that boost fuel efficiency at least 25% over 2005 levels, the agency said.

"This investment is part of our commitment to creating the clean energy jobs of the future while supporting American innovation," U.S. Energy Secretary Steven Chu said in a statement. "We can revitalize the American auto industry and at the same time reduce our dependence on oil and cut our carbon pollution."

The loan follows the Obama Administration's recent decision to hike average fuel standards to 35.5 miles per gallon in the year 2016. The agency said the loan proceeds will enable Ford to raise the fuel efficiency of more than a dozen models, totaling nearly 2 million vehicles annually to save more than 200 million gallons of gas a year.

U.S. DOE's conditional loan commitment in June was designed to help Ford finance up to 80% of expenditures to improve internal combustion engine and transmission efficiency, reduce vehicle weight and drag with more aerodynamic designs, and develop hybrid and plug-in electric vehicles.

The Department has also made conditional loan offers to Tesla Motors and Nissan Motors and plans to lend more money in coming months to large and small auto manufacturers and parts suppliers.

**Airports:** U.S. Sen. George Voinovich (R-Cleveland) recently announced \$9.9 million in funding for five Ohio airports from the Federal Aviation Administration.

Sen. Voinovich said the money would encourage economic development in the state.

"I'm pleased that the FAA is investing in Ohio to help our airports improve their services," he stated. "It is critical that we continue to improve the safety and efficiency of our airports, as well as overall transportation infrastructure."

The awards include:

- \$5.9 million for the James M. Cox-Dayton International Airport to acquire land and upgrade security.
- \$3 million for Cleveland Hopkins International Airport to acquire snow removal equipment.
- \$474,000 for Port Columbus International Airport to acquire land for development.
- \$304,000 for the Pike County Airport to update its airport layout plan, construct a building and improve drainage.
- \$190,000 for Marion Municipal Airport to design the rehabilitation of a runway, improve drainage, construct a taxiway and acquire an easement.

**AGENCY BRIEFS: ENERGY EFFICIENCY GRANTS OFFERED; UNIVERSITIES FOCUS ON COLLABORATION**

State Development Director Lisa Patt-McDaniel and Mark Shanahan, Gov. Ted Strickland's energy advisor, announced that \$10 million in energy-related grants are available through the federal stimulus law.

"These Recovery Act resources can be used to strengthen Ohio industries by realizing energy savings and trimming emissions," Director Patt-McDaniel said. "Ohio can create sustainable jobs and experience long-term economic growth by helping drive down energy costs for our manufacturers and other industry producers."

Mr. Shanahan said the funds will help manufacturers improve energy efficiency. "These types of projects create long-term jobs and improve our environment by reducing carbon emissions," he said.

The competitive grants will range from \$250,000 to \$1 million. Project summaries are due by Oct. 12. Full proposals are due by Oct. 16.

DOD also noted that the State Controlling Board approved the release of \$2.6 million in grants through the Thomas Edison Program.

"We are committed to helping innovative companies grow in Ohio," Gov. Strickland said of the release. "Supporting entrepreneurs in high-growth industries like advanced technology will position the state for new jobs and long-term growth."

The funds will go to JumpStart, Inc., Manufacturing Advocacy and Growth Network and PolymerOhio, Inc.

The agency also announced it is partnering with the Governor's Office of Women's Initiatives and Outreach and Sinclair Community College to hold a conference focused on women entrepreneurs.

The event is scheduled for Sept. 29 at Sinclair.

"The Governor's Office for Women's Initiatives and Outreach is delighted to partner with the Ohio Department of Development and Sinclair Community College to bring important messages to women about building a successful business," said Hollie R. Hinton, director of the Governor's Office for Women's Initiatives and Outreach. "The workshop can help women establish an economically secure household for themselves and their families."

**Budget & Management:** Fitch Ratings recently announced it had assigned an "AA" rating with an outlook of "stable" to some \$252 million in Ohio general obligation refunding bonds that include: \$147,675,000 higher education series 2009C; \$80,525,000 common schools series 2009C; \$19,325,000 conservation series 2009A; \$4,745,000 natural resources series M.

"The 'AA' rating reflects the state's careful financial management, ongoing record of maintaining fiscal balance, and a moderate, rapidly amortizing debt burden, tempered by a severely weakened economy that remains closely tied to the troubled manufacturing sector," Fitch stated in announcing the rating.

The bonds are slated for sale next week.

**Ohio EPA:** EPA said it has issued mini-grants to offer training programs on a variety of issues.

Among them are sessions on stormwater issues held by the Cuyahoga County board of health and a train-the-trainer event held by the Ohio Federation of Soil and Water Conservation Districts.

The programs are supported by the Ohio Environmental Education Fund, which distributes about \$1 million per year.

**COMMITTEE SCHEDULE FOR WEEK OF SEPTEMBER 21**  
**TUESDAY, SEPTEMBER 22**

**Senate Energy & Public Utilities**, (Chr. Widener, 466-3780), Finance Hearing Rm., 9 a.m.

SB 152 UNDERGROUND PROTECTION (Buehrer) To modify the call before you dig notification system and to create the Underground Protection Commission of Ohio and the State Underground Protection Advisory Committee. (1st Hearing-Sponsor)

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