



## Ohio Township Association

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## Legislative Update

Friday, August 14, 2009

MONDAY, AUGUST 10 2009

### **SENATE GOP PANEL RECOMMENDS REP. JONES TO FILL SCHULER SEAT**

A Senate Republican screening committee recommended Monday that the caucus elect Rep. Shannon Jones of Springboro to fill a vacant southwest Ohio Senate seat.

If selected, Rep. Jones would assume the 7<sup>th</sup> District seat held by the late Sen. Bob Schuler, who passed away earlier this summer.

Ms. Jones earned the recommendation over former Reps. Michelle Schneider and Tom Brinkman, and Patrick McQuiddy of Lebanon, a candidate who described himself as a "common citizen."

"When it comes to public policy, Shannon Jones has a reputation for being a heavy lifter," Sen. President Bill Harris (R-Ashland) said. "She has a passion for public service and a strong sense of responsibility to do what is best for the people she represents. Her brand of leadership is just what we need in the Senate during extremely challenging times."

Rep. Jones is ranking minority member of the House Consumer Affairs & Economic Protection Committee. She is a former government and non-profit consultant and served as an aide to prominent GOP elected officials.

The Senate majority caucus is scheduled to meet Tuesday to officially seat Ms. Jones in the Senate. The move will create a vacancy in the House's 67<sup>th</sup> District that the House Republican Caucus will fill.

### **EDUCATION GROUPS ASK SUPREME COURT TO DISMISS LAWSUIT SEEKING VOTE ON SLOT MACHINES**

Three groups that represent school system employees urged the Ohio Supreme Court on Monday to dismiss a lawsuit from a conservative group that wants to place Gov. Ted Strickland's slot machine plan before voters.

The education organizations said the effective nullification of \$933 million from the state's education fund would "wreak havoc" on budgets of school districts that already have adopted their spending plans for the fiscal year.

Filing a friend of the court brief in support of state defendants in the lawsuit were the Ohio Federation of Teachers, the Ohio School Business Officials Association, and the Ohio Association of Public School Employees.

Pending before the court is a complaint from LetOhioVote.org, a three-member ballot issue committee.

It asks justices to declare a state budget provision authorizing the Ohio Lottery to install slot machines at horse racetracks is not subject to a referendum. Legislators included the enabling language as a companion to a directive Gov. Strickland issued.

The education groups said in a memorandum Monday that they do not advocate an expansion of the lottery to fund public schools.

However, they oppose any relief that LetOhioVote is seeking that would delay implementation of the plan to raise money required for the biennial budget.

"The stakes for Ohio's school children are too high, and the time is too short to allow any further delay in establishing the level and source of funding for Ohio's schools for a school year that has already begun in some Ohio (school) districts," attorney Donald Mooney Jr. said in the brief.

He contended that drafters of the Ohio Constitution did not intend that the right to a referendum should disrupt and delay the state's ability to raise revenues and appropriate funds for current expenses of state government.

"When the drafters of Ohio's Constitution obligated the General Assembly to raise and appropriate state revenue that would provide a "thorough and efficient system of common schools" ... they did not contemplate allowing such appropriations to be placed on hold for the lengthy time required to collect signatures and conduct a referendum," Mr. Mooney said.

The education groups initially wanted to intervene as a party in the LetOhioVote case, but the court denied the request last month.

Also filing a brief Monday in support of the state were the Ohio Council of Retail Merchants and the Ohio Farm Bureau Federation.

### **TURNPIKE PREPARING FOR TOLL HIKE, EXCEPT FOR E-ZPASS DRIVERS**

The Ohio Turnpike Commission is hoping to boost participation in E-ZPass by granting drivers with the electronic toll collection equipment a reprieve from increases going into effect Oct. 1.

Motorists traveling the full length of the 241-mile turnpike will pay \$15 unless they participate in the electronic toll collection system, in which case they will pay the current \$10.25, the commission said recently.

However, those with E-ZPass won't have to pay extra until 2012, according to spokeswoman Lauren Hakos.

"The OTC is committed to maintaining the highest level of services and amenities for the traveling public who choose to use the Ohio Turnpike," Executive Director George Distel said in a statement.

"The OTC staff continues to work diligently to ensure the smooth and timely implementation of E-ZPass, a long-requested customer service, by Oct. 1, 2009," he said.

E-ZPass automatically computes and deducts toll money from drivers' accounts as electronic transponders attached to their windshields pass under detection equipment in toll plazas, Ms. Hakos said. Ohio's system will be compatible with those already in use in more than a dozen states.

In addition to the toll increase, the Ohio Turnpike Commission will also implement a new vehicle classification system that is generally based on the number of axles, rather than gross vehicle weight, she said.

"It's modifying the classification to make it a more simplistic system that allows for the E-ZPass as well," she said.

Overweight and over-sized vehicles will also see new permit fees with reduced rates for customers that obtain permits in advance through the commission's website, the agency said.

Turnpike revenues are expected to jump from an estimated \$184 million in 2009 to nearly \$216 million in 2010 as a result of the changes, Ms. Hakos said.

Toll income had been declining in recent years, from about \$198 million in 2007 to \$188 million in 2008, she said.

Drivers can participate in the E-ZPass program by opening a pre-paid \$25 account with the Turnpike Commission, Ms. Hakos said. Turnpike customers will also pay \$0.75 a month to lease the E-ZPass transponder.

Most trucking customers using the turnpike already have an E-ZPass transponder from other states, she said.

TUESDAY, AUGUST 11 2009

### **STATE IMMEDIATELY APPEALS JUDGE'S ORDER SNUFFING OUT RAID ON \$258 MILLION ANTI-SMOKING FUND**

A smoldering dispute over the state's attempt to divert for other purposes a \$258 million trust fund created to curb tobacco use arrived in an appeals court Tuesday hours after a final order from a trial judge.

Judge David Fais of Franklin County common pleas court permanently blocked state leaders from liquidating the Ohio Tobacco Use Prevention and Control Endowment Fund.

Gov. Ted Strickland said in response that the judge had "interjected himself quite inappropriately" into the business of the legislative and executive branches.

Later on Tuesday, Attorney General Richard Cordray asked the 10<sup>th</sup> District Court of Appeals to issue an emergency stay of the judge's order. He also asked the appellate court for an expedited briefing schedule and oral argument in the case.

**Trial Court:** Judge Fais said emergency legislation (HB544, 127<sup>th</sup> General Assembly) that took effect May 6, 2008 authorizing transfer of the money was invalid because it violated a prohibition in the Ohio Constitution against retroactive laws.

"The General Assembly cannot pass retroactive, substantive laws even if there is purportedly an important public purpose for doing so," he said.

The judge's 16-page opinion ordered that money the state received from the national tobacco settlement remain in the endowment fund, but not be considered part of the state treasury and not subject to re-appropriation.

Judge Fais said the General Assembly plainly intended to create the endowment fund as an irrevocable trust, without reserving any right to revoke it, and by expressly establishing it outside the state treasury.

He ordered State Treasurer Kevin Boyce to retain custody of the fund, and said parties could apply to the court for use of some of the money only for the purpose of reducing tobacco use.

"Granting permanent injunctive relief actually benefits the state and the public by permitting the endowment fund monies to continue to be used to carry out life-saving tobacco prevention and cessation programs in Ohio, which also reduces the state's cost of providing health care to its citizens," he said.

The General Assembly initially diverted the tobacco money last year for high-tech industrial development as part of the state's \$1.57 billion economic stimulus plan.

However, the money subsequently was earmarked for various health care initiatives in the current Medicaid budget.

When the General Assembly and Gov. Strickland agreed last year to move the funds, the tobacco foundation balked. It tried to transfer about \$190 million to the American Legacy Foundation, which seeks to counter smoking and tobacco use.

State officials responded by eliminating the foundation and moving anti-smoking efforts to the Ohio Department of Health.

Judge Fais on Tuesday entered judgment against Legacy on its claims for relief, finding the contract between it and the state foundation was not valid or enforceable.

**Reaction:** Separately, Gov. Strickland said he was "terribly disappointed" that the judge took 18 months to decide the case.

"There are no complex legal issues in this decision. I think he made the wrong decision and the reason I'm glad that we finally have a decision is so we can get it to another court," he told reporters.

"I continue to feel very confident that when this is finally resolved that it will be in a way that will enable us to use these precious resources to continue to provide the auxiliary services - oxygen for people who need oxygen, dental services for adults who are poor and without dental coverage," Mr. Strickland said.

"This judge has, in my judgment, no right to say how the legislature and the governor should be expending public tax resources. He had a legal decision to reach and I think he interjected himself quite inappropriately in an area that was rightfully the responsibility of the legislature and the executive," the governor said.

Senate President Bill Harris (R-Ashland) agreed with the governor's decision to appeal the ruling, and said he is confident the decision will be overturned.

Sen. Harris said he was "very surprised" at the judge's ruling, which was issued on the same day as a federal government report that found Ohio leading the nation in illegal tobacco sales to minors. (*See separate story*)

**Appeals Court:** In its appeal later Tuesday, the attorney general's office said the trial court's decision rested on two erroneous legal premises. Mr. Cordray argued that none of the plaintiffs in the case has standing to bring the suit.

"Second, the legislature did not create an irrevocable trust or in any other way place the funds at issue beyond the control or governance of any future General Assembly," he said.

Mr. Cordray said the legislature has abolished the Ohio Tobacco Foundation, and no court has found any basis for invalidating that action.

The attorney general said the trial judge had seized \$258 million that the General Assembly and Gov. Strickland determined were needed to help fill a \$3.2 billion budget shortfall.

"Not only has the common pleas court prohibited this money from being used according to the will of the political branches of government, it has set itself up as trustee over a defunct fund and allowed 'any party' to apply to the trial court 'for use or disbursement of monies in the endowment fund,'" Mr. Cordray said.

He said that in the absence of an immediate stay of the trial court's decision, it is possible that one or more persons may ask to move all \$258 million to the American Legacy Foundation.

### **JONES TAKES SENATE OATH AS HARRIS PLEDGES '100 PERCENT' SUPPORT IN CASE OF PRIMARY; BUDGET CORRECTIONS LIKELY AT SOME POINT**

Senate Republicans returned to a full complement of 21 members Tuesday when they officially elected former Rep. Shannon Jones of Springboro to the 7<sup>th</sup> Senate District.

Ms. Jones succeeds the late Sen. Bob Schuler (R-Cincinnati), who passed away earlier this summer.

Sen. Jones said the appointment - made official at a brief session - "came as a bit of a surprise," but said she would work hard to represent the citizens of the 7<sup>th</sup> District. The lawmaker said she considers herself a mother and a wife first, but noted that she was prepared to stay in Columbus to do serious business for the state.

She acknowledged that she was joining the Senate with a "heavy heart" because she was replacing Sen. Schuler, but said she would strive to fill his shoes.

Sen. Tom Niehaus (R-New Richmond) and Sen. Keith Faber (R-Celina) both said Sen. Jones was selected from a group of four high-quality candidates, while Sen. Faber said the new senator has demonstrated her ability to balance her family while tackling difficult policy issues.

Most notably, he said, is Sen. Jones' work on electric restructuring, pension system investments and health care.

She earned the seat by securing a recommendation over former Reps. Michelle Schneider and Tom Brinkman, and Patrick McQuiddy of Lebanon. Ms. Schneider said she is meeting with supporters in Hamilton and Warren counties to determine her next step. Mr. Brinkman said Tuesday he had planned to run for the seat when there was going to be a three-way primary for the open seat, but noted he is now evaluating the potential for entering the race.

He said he'll be closely watching Sen. Jones' votes on upcoming legislation and will also look for an explanation on some of the senator's fund-raising efforts. He also raised concern that Ms. Jones' appointment represents a "tremendous shift of power" from Hamilton County to Warren County, saying Hamilton County Republicans have done more for the Senate GOP Caucus than leaders from any other area of the state. Mr. Brinkman said he urged Senate Republicans to select a person who would hold the seat only until next year's primary, but said that proposal was rejected.

Sen. President Bill Harris (R-Ashland) said he hopes there is not a primary for the Republican-leaning seat next year, but said the majority caucus will defend Sen. Jones "100 percent" if there is. He said the early appointment will give the new senator time to get better known outside of the 67<sup>th</sup> House District, but said he's confident she will be working hard in the new territory.

Four Republicans - Sens. Steve Buehrer, Kevin Coughlin, Tim Grendell and Bill Seitz - were absent from the session and three Democrats - Sens. Capri Cafaro, Shirley Smith and Eric Kearney - attended the session at which only Republicans could vote.

House Minority Leader Bill Batchelder (R-Medina) has yet to set a schedule, or establish a screening committee to replace Ms. Jones in the 67<sup>th</sup> House District, spokesperson April Corbett said. She noted that the minority leader has indicated his desire to keep the process fair and open to all contenders for the seat.

### **GOVERNORS OBJECT TO INCREASED MILITARY PRESENCE FOR DISASTERS**

A recent U.S. Defense Department proposal to expand the military's authority to respond to domestic emergencies has drawn alarm from the nation's governors, including Gov. Ted Strickland.

The National Governors Association said any plan to allow the military to operate independently in states during natural disasters or terrorist attacks could cloud the chain of command and stymie an effective response.

"Governors must retain command and control over the domestic use of their own National Guard forces," NGA Chairman and Vermont Gov. Jim Douglas, and West Virginia Gov. Joe Manchin said in a letter to Paul Stockton, assistant secretary of defense for Homeland Defense.

"We are concerned that the legislative proposal you discuss in your letter would invite confusion on critical command and control issues, complicate interagency planning, establish stove-piped response efforts, and interfere with governors' constitutional responsibilities to ensure the safety and security of their citizens," they said.

The governors say the Sept. 11 terrorist attacks and Hurricanes Katrina and Rita showed the need for "clear chains of command to avoid duplication of effort and to ensure the most effective use of response resources."

Congress removed a similar measure that was included in the National Defense Authorization Act for federal fiscal year 2009, advising the Defense Department to work on an agreement with governors, the letter said.

Strickland spokeswoman Amanda Wurst said the governor shares the NGA's concern.

"He believes it is important that clear command and control of the Ohio National Guard is maintained when state emergencies occur," she said.

### **OHIO PHYSICIAN SURVEY SHOWS PRACTICE OF MEDICINE NOT 'RECESSION PROOF'**

A survey the Ohio State Medical Association released Tuesday shows 91.7% of members who responded said their practices have seen an increase in the number of patients losing insurance due to the recession.

Majorities of respondents also have recorded a decrease in business over the last nine months, and growth in the number of patients who have trouble paying their bills.

"Once believed to be 'recession proof,' the current economic conditions are taking their toll on the practice of medicine in Ohio, for both physicians and their patients," the OSMA said.

"With a decrease in operating revenue and continually compressed reimbursements from public and private payers, the question arises of when the breaking point may come for the physician community," it said.

The OSMA represents about 20,000 physicians, residents, medical students, and practice managers.

It sent an e-mail survey during June and July to 3,124 addresses of its statewide physician members who subscribe to its weekly electronic newsletter. A total of 559 members completed the survey, for a 17.9% response rate.

Seventy percent of respondents said their practices have experienced a decrease in patients and/or an increase in cancellations since October 2008. Thirty percent recorded no decrease.

"Not only does this mean that the majority of those who responded are most likely operating on less revenue because of the drop in business in recent months, but also patients are delaying or skipping care during the recession," the survey said.

Among other results:

- 91.7% said their practice has seen an increase in the number of patients who have lost their insurance due to economic conditions.
- 86.6% have seen an increase in the number of patients who have had trouble paying their bills, or are asking for help in meeting their financial obligations.
- 75.9% of physicians said they offer payment plans for patients who are struggling financially. Fifty-eight percent offer discounts for self-pay patients; 55% provide charity care; and 62% write off balances that cannot be collected.

The OSMA said the survey sample was not drawn randomly, and may be subject to multiple sources of error. However, it said the results indicate trends among Ohio's physician population.

"The reality is that the cost of running a medical practice has increased about 20 percent this decade while reimbursements have not kept pace. The current economic recession has made things worse for physicians," the OSMA said.

"However, the survey results indicate that physicians remain dedicated to providing access to care, if at all possible, for their patients despite the increasing difficult financial realities of the practice of medicine," it said.

WEDNESDAY, AUGUST 12 2009

### **BALLOT BOARD ADOPTS LANGUAGE ON VETERANS' BONUSES, LIVESTOCK STANDARDS**

The Ohio Ballot Board Wednesday adopted the language that voters will see when deciding whether to offer bonuses for veterans and create the Livestock Standards Board. But the word-smithing for a casino issue proved more difficult.

**Livestock Standards:** The panel adopted ballot language for Issue 2, the proposed constitutional amendment that would create the Livestock Care Standards Board, which the General Assembly proposed prior to summer recess.

Faith Williams, legal counsel Ohioans for Livestock Care, which supports the proposal, said it was important to include language that describes the members of the proposed board.

"Its essential for voters to understand who will serve on this board, that the board will be bipartisan," she said. "There's been some concern that there could be a board that could be partisan."

Secretary Brunner expressed concern that language claiming the measure would "protect Ohio farms and families" was designed to encourage voters to support the issue. After Sen. Faber noted that the same phrase was contained in the actual proposed amendment, the board agreed to preface the phrase with "endeavor," which is also included in the proposal.

**Veterans Bonuses:** The board quickly adopted language for Issue 1, a constitutional amendment that would authorize the state to issue bonds to pay bonuses to veterans of Iraq, Afghanistan and the Gulf War.

No witnesses testified on the proposal.

### **DELAY IN RESIDENCY RULING PROMPTS HUSTED TO FILE SUPREME COURT COMPLAINT AGAINST BRUNNER**

A drawn out dispute over the voting residency of Sen. Jon Husted (R-Kettering) that is awaiting a ruling from Secretary of State Jennifer Brunner surfaced in the Ohio Supreme Court on Wednesday.

Sen. Husted asked justices to order Secretary Brunner to immediately dismiss the matter because no proper challenge was made and because of an unlawful delay in determining the outcome.

In the alternative, Mr. Husted said justices should order Ms. Brunner to deny "the purported challenge" consistent with her previously announced conclusion about a lack of sufficient evidence in the record to support it.

"(This) matter has been debated, investigated, reviewed and delayed far beyond any allowable statutory limits or reasonable timeframe," Mr. Husted said in the complaint.

Mr. Husted is seeking the Republican nomination for secretary of state in the 2010 election. Ms. Brunner, a Democrat, is seeking the Democratic Party nomination for the U.S. Senate next year.

Secretary of State Jennifer Brunner said Wednesday Mr. Husted's case involved several factors that delayed a ruling.

"The reason this has taken the time that it has is because we wanted to be careful, we wanted to deal with the integrity of the election process, while at the same time protecting individual rights," she said.

The fact that the law presents three separate residency standards has complicated and delayed the office's findings, she said, citing language about fixed habitation, where an individual's family resides, and voting location.

"Trying to harmonize those three sections of the code under his specific fact situation has been problematic," she said. "It may be best to for the Supreme Court to decide it."

Secretary Brunner said she believed the Senate had the authority to determine the qualifications of its members. "But I don't think it would preclude someone who wanted to to file some sort of action that would challenge his ability to hold the office. But that's not my concern."

The Supreme Court filing traced the procedural history of the matter to Oct. 28, 2008 when Progress Ohio, Inc. and an individual sent correspondence to the Montgomery County Board of Elections questioning whether Mr. Husted was eligible to vote as a resident.

On Feb. 25, 2009 board members deadlocked 2-2 on the residency issue. The board notified Secretary Brunner, who is required under state law to break the tie vote.

She requested additional documents from Sen. Husted, and subsequently sent the matter back to the board for reconsideration. On June 29, the county panel again deadlocked.

Attorney Maria Armstrong of Columbus, representing Sen. Husted, said in the Supreme Court complaint that a secretary of state is required under statute to "summarily" decide such matters.

Ms. Armstrong said there is "overwhelming and uncontroverted" evidence that Sen. Husted is a resident of Montgomery County for voting purposes. She said his absences have been due in large part to his state service.

The complaint acknowledged Mr. Husted's wife owns a house and is employed in Franklin County. He stays with his family there "when he is in Franklin County on public business."

"At no time since he entered state service has (Mr. Husted) abandoned his residency in Montgomery County or ever intended to permanently reside anywhere else," the filing said.

#### **PUCO ORDER CALLS FOR NEW WOOD COUNTY INTERMODAL TERMINAL**

CSX Transportation will build a Wood County intermodal terminal that seeks to link East Coast ports with the Midwest, under an order approved Wednesday by the Public Utilities Commission of Ohio.

Establishment of the terminal will result in three grade crossings and the addition of flashing lights and roadway gates at several nearby crossings.

The PUCO said the rail company will be required to complete the North Baltimore project - to which the state has contributed \$5 million - within one year.

The commission also said it will contribute up to \$5,000 to assist with other safety improvements, including rumble strips, lights and enhanced signage.

Separately Wednesday, the commission approved a multi-agency agreement that will close the Township Road 256 grade crossing in Hancock County's Washington Township.

The agreement, reached by Norfolk Southern, the township, the Ohio Rail Development Commission and the PUCO staff, also calls for the installation of flashing lights and gates at another township crossing.

Norfolk Southern must provide cost estimates and site plans by Nov. 12 and is expected to finish the work in one year.

THURSDAY, AUGUST 13 2009

#### **SENATE PRESIDENT EYES AMBITIOUS AGENDA FOR FALL SESSION**

Redistricting, elections, the Third Frontier program, and limits on cell phone use and gambling campaign money are some of the issues Senate President Bill Harris plans to take up when the legislature reconvenes next month.

During a recent interview in which he laid out his legislative agenda for the remainder of his final term, Sen. Harris (R-Ashland) predicted the GOP-led chamber would agree with House Democrats and Gov. Ted Strickland on a number of his priorities, but expected to clash over others.

"I think on some things we're probably on the same wavelength and other things we're probably flopping out there all by ourselves," he said. An example of the latter is the chamber's intentions to take up legislation limiting prevailing wage.

Sen. Harris agrees with members of his caucus who say the 2010 election may be the last opportunity in many years to amend the constitution to make the redistricting process fairer. He wants the chamber to pass a measure in September.

"When you're in the majority, you're not nearly as interested in doing reapportionment," he said. With the outcome of the next election and control of the Apportionment Board in question, "I think it's a good time to try to bring people together and do this."

Two separate proposals are currently pending in the Senate, but Sen. Harris said he favors the one championed by Sen. Jon Husted (R-Kettering), who is running for secretary of state. That measure (SJR 5) would transfer responsibility for drawing district to a new bipartisan redistricting commission.

Sen. Kevin Coughlin (R-Cuyahoga Falls) and Sen. Gary Cates (R-West Chester) also proposed a constitutional amendment (SJR 4) that would add the House speaker, Senate president and the two minority leaders to the Apportionment Board.

"What I would hope is Sen. Coughlin and Sen. Cates would join forces with Sen. Husted and work together," Sen. Harris said.

Like the House, the Senate will also deliberate on its version of legislation to overhaul the elections process (SB 8), he said.

While there was some similarity, he predicted the two chambers would revisit the old debate over whether individuals must show a photo ID before casting their ballot - a requirement not included in the House measure (HB 260). Sen. Harris said the provision was critical for preventing voter fraud.

And with the recent expansion of gambling at racetracks and the ballot issue authorizing construction of four casinos, the Senate president said he's anxious to begin work on campaign finance limits from gambling interests. Language in the biennial budget (HB 1), which authorized the implementation of video lottery terminals at tracks, sets a deadline the legislature to address the issue.

Senate staff is currently reviewing how other states that expanded gambling prevented gaming money from unduly influencing the political process, he said. Sen. Harris expressed support for prohibiting text messaging while driving and said the legislature should further consider setting certain limits on drivers' use of cell phones.

"If you're going use a cell phone, it ought to be hands-free," he said, voicing support for a requirement for drivers to use technology that allows them to keep both hands on the wheel.

Sen. Harris generally agrees with Speaker Armond Budish (D-Beachwood) that the General Assembly should start work soon on reauthorizing and possibly expanding the Third Frontier in the near future. However, the Senate president expressed some concern about funding the state's high-tech development program.

"We don't have the tobacco money, so it's going to have to be bonded dollars," he said, noting the original \$1.6 billion program is funded in part through tobacco settlement money that's currently tied up in court. As for whether the state can afford to take on the additional debt necessary to fund a renewal or expansion, Sen. Harris said, "That's something I think we're going to have to wrestle with."

Nonetheless, legislative action to put the ballot issue before voters in the May primary election, as Speaker Budish has called for, was a possibility, he added. Another priority for the Democratic speaker - a bill to ban discrimination based on sexual orientation (HB 176) - is not very high on the Senate's to-do list.

"My gut feeling is our existing laws ought to be able to accomplish what he wants to accomplish. I'm not sure exactly what it is that he thinks we're not doing now," Sen. Harris said. "I'm a firm believer that if you don't need a law, don't create a law just for the sake of having another law. Revised Code is getting too big as it is."

Sen. Harris is also hesitant to revisit payday lending regulations, although many House Democrats want to pursue legislation (HB 209) to shore up a law passed last session that cracked down on the short-term lenders.

The senator said there was evidence that the new law was starting to have the desired effect and some of the major lenders were abandoning the practice of issuing loans as checks for which they then charge large check-cashing fees.

"The payday lending people are starting to move back towards the Small Loan Act," he said, noting the law prevents lenders from compounding interest and charging excessive fees.

"They're having a harder time existing, so I think they're trying to become legitimate," he said. "There is a market, you can't deny that. People will use those facilities and its much better that they're using legitimate facilities that are not trying to take advantage of them."

Sen. Harris, who is term-limited next year, said he had no intention of retiring before the end of this session.

"By God's grace and as long as I'm able to crawl in here, I'm going to," he said.

### **STATE'S DEBT REDO FOR BUDGET FIX TO TOP \$735 MILLION; PAYMENTS GET PUSHED BEYOND FY 2011**

The state will continue in the next few weeks with a bond-refinancing plan that will eventually push more than \$735 million in current debt off the books for fiscal years 2010 and 2011. Deferring those payments beyond the current biennium will cost the state, depending on future interest rates, about \$190-250 million more to pay off through 2025, according to the Office of Budget and Management.

However, the "present value" of the transaction, or cost of the restructuring in today's dollars, is closer to \$10 million, administration officials say. And the vast majority if not all of the debt will be repaid within the time frames determined under the prior bond issuances.

The debt restructuring, some of which has already been implemented, was part of a package of financial fixes deployed by policymakers to address a large revenue shortfall in the budget (HB 1) enacted last month. While criticized in some circles for delaying the paybacks into future years - State Auditor Mary Taylor continues to object to the strategy - Gov. Ted Strickland's administration defends the moves as financially prudent given the currently low interest rates.

The governor's original plan envisioned \$400 million in debt restructuring, however the additional refinancing was added late in the budget process after the legislature balked on a proposal to delay payments into the Public Employees Retirement System fund.

OBM Director Pari Sabety and state Debt Manager Kurt Kauffman said following a recent discussion with bond rating agencies that Ohio is still viewed as having a relatively conservative approach to its debt management because bonds are paid off well within the constitutional time limits.

"Our state has a very conservative debt profile," Ms. Sabety said. "It has a very minor impact."

Mr. Kauffman said, "They're OK with it in that it is a tool within a number of tools that you have to do to deal with these kinds of significant shortfalls. They've described it as relatively modest."

While acknowledging the restructuring plan is probably the largest Ohio has ever executed, Mr. Kauffman noted that it amounts to only about 8.5% of the state's total of \$8.6 billion in outstanding general revenue fund-backed debt. The savings realized by the transactions equate to only about 1.4% of the \$50.5 billion two-year spending plan.

At least six or seven other states have plans to defer debt payments in addressing current budget problems, he said, and of those California, Illinois, Kansas, Kentucky and New Jersey are believed to be pursuing refinancing proposals that entail larger percentages of their budgets.

The Ohio Public Facilities Commission has already refinanced \$200 million of the debt, along with a separate \$53 million restructuring transaction that helped to balance the FY 2009 books.

Auditor Taylor, through the vote of her representative on the panel, Senior Policy Advisor Tim Keen, opposed the moves last spring. Mr. Keen said Thursday that the auditor would likely continue to vote against the remainder of the restructuring plan, which is expected to move forward early next year.

"This is a budget that is built on significant one-time revenue and this is a large piece of that," he said. "We are essentially borrowing money to pay for operating expenses in the current biennium. That's not acceptable to Auditor Taylor."

As part of the \$735 million plan and along with additional OPFC-issued debt to be refinanced, Mr. Kauffman said the Ohio Building Authority would also restructure \$256 million in debt, including a transaction to be executed within a few weeks. That total is the amount the state would have otherwise saved had policymakers moved forward with the plan to delay retirement fund payments.

The restructured OPFC debt will be issued through 2021 and the OBA debt through 2025, Mr. Kauffman said.

Despite the current refinancing activity, the state still has more room to restructure debt in the current and upcoming biennia, Mr. Kauffman said. However the transactions could get more administratively complex depending on the nature of debt in question.

## **SENATE, ADMINISTRATION CONSIDER PREVAILING WAGE REVISIONS AFTER SUPREME COURT RULING**

Debate over union pay scale requirements might return to the Senate this fall as Republicans, bolstered by a recent Ohio Supreme Court decision, try again to curb an administration policy expanding prevailing wage.

Senate President Bill Harris (R-Ashland) said recently that he wants to reintroduce a measure that would prevent the administration from requiring prevailing wage on private development projects that receive public funding.

"The Supreme Court just ruled that the administration's expansion of prevailing wage was unconstitutional," he said in an interview, referring to guidelines the administration issued last year that set up a showdown between the GOP-led legislature and Democratic Gov. Ted Strickland.

In a unanimous ruling earlier this summer the court found that prevailing wage applies only when a public authority spends public funds to construct a public improvement.

Last winter the Senate eventually backed off a bill that would have limited the application of prevailing wage to private development projects (SB376, 127<sup>th</sup> General Assembly) after the administration agreed to draft rules for the guidelines. In the meantime, the policy has remained in effect.

"We're not objecting to the prevailing wage. We just didn't feel that it ought to be expanded," he said. "Now I feel even more that way since the Supreme Court said it's unconstitutional."

Sen. Harris said he recently spoke with Sen. John Carey (R-Wellston), chairman of the Senate Finance & Financial Institutions Committee, about reintroducing his prevailing wage measure this fall.

Strickland spokeswoman Amanda Wurst said the administration was reviewing its policy in light of the court's recent ruling.

"The Ohio Supreme Court decision shed new light on the court's view of the proper interpretation of when the prevailing wage law applies. So we'll be working to reconcile this new direction from the court with the guidelines and the Department of Commerce's regulatory obligations," she said.

Ms. Wurst said the administration drafted the policy to provide greater clarity on how to interpret prevailing wage laws, which had been applied unevenly throughout the state.

"We now have more information about what the court says the law means," she said. "The Supreme Court has, through their decision, provided new direction and we'll work to ensure our activity comports with that decision."

Sen. Carey said he had plans to meet with administration officials and discuss the court decision and changes to the policy before introducing a bill.

Senate staff believes the court's decision bolsters the caucus's position that prevailing wage doesn't apply to privately funded projects, he said.

However, local economic development officials say they haven't seen any change in how the administration is applying the guidelines since the court ruling, he said.

Department of Commerce spokeswoman Cara Keithley said the agency, which is charged with enforcing prevailing wage law, was actively working on drafting rules.

"We certainly will comply with the court. Currently we're considering many different interpretations of the ruling," she said. "Any necessary changes would be hopefully incorporated when the rules package is issued."

**Construction Regulations:** Sen. Harris said he also wanted to pursue changes to the law that requires separate bidding on public sector construction projects.

"I'm concerned that we're letting construction reform get away from us," he said, referring to efforts to eliminate the "multiple prime bidding" mandate, which requires that each construction project have at least four separate prime contractors.

Sen. Harris recalled the administration appointed a study committee to issue recommendations on revising the law after the Senate proposed changes of its own last session (SB139, 127<sup>th</sup> General Assembly).

"I had different union groups tell me that they didn't have a chance to be at the table during the discussion or they didn't have a chance to vote. So I'd like to see us move forward," he said.

FRIDAY, AUGUST 14 2009

### **DESPITE BUDGET'S 'ONE-TIME' REVENUE RELIANCE, OFFICIALS SAY PUSH FOR SECOND FEDERAL BAILOUT NOT A CERTAINTY**

A recent analysis shows about 13% of Ohio's current budget hinges on "non-recurring" revenue sources and accounting moves, yet state officials and a national advocacy group say its too early to be looking to Washington, D.C. for a second federal cash lifeline.

With Ohio and other states relying on significant chunks of federal money from the American Recovery and Reinvestment Act of 2009 to prop up their budgets, the National Conference of State Legislatures recently characterized the fiscal circumstances states will face in two years as a "cliff."

And Ohio's budget director said in an interview this week that while the economy appears to have bottomed out, economists still predict the climb to normalcy could be "grim" and take several years.

Nevertheless, state policymakers and NCSL maintain that there's no need to start lobbying now for another federal infusion down the road.

"I don't think it's a foregone conclusion at all for a variety of reasons," Michael Bird, NCSL's Federal Affairs counsel, said in an interview.

"For one thing, everyone is hopeful that the revenue decline will at some point finally abate and the economy will recover - even though states always lag behind the national level," he said.

"Two, in terms of federal money, with the exception of the Medicaid money and what they call the stabilization fund, the funds that were sent to the states were sent in straightjackets or silos, in that you can only use those for particular purposes whether its infrastructure money or whether its weatherization money or energy money."

"You're only talking about the flexible money, but that's where the cliff is created because what you do with that money is fill in your budget gap," Mr. Bird added.

Including increased Medicaid matching funds, the current budget (HB 1) deploys as part of the general revenue fund appropriations about \$4.8 billion in what budget crafters have determined is "one-time" federal funding, according to an analysis prepared by the Senate GOP's budget office.

Aside from the federal bailout funds from the ARRA, the current budget also includes: \$285 million in unclaimed funds transfers; \$250 million in borrowing from the Ohio School Facilities Commission; and \$735 million in savings under a debt restructuring plan that's unprecedented for Ohio in terms of its size. All told, the nonrecurring sources in the budget total \$6.4 billion, or 12.67%, according to the analysis. And that total does not include a one-time pickup of \$270 million in savings due to a change in how Medicaid managed care payments are administered.

While some non-tax revenue sources, such as the unclaimed funds and money drawn from rotary account "raids," have been common dipping pots for budget crafters over the years, rarely if ever have so many different avenues been tapped to this extent.

House Speaker Armond Budish (D-Beachwood) said in a recent interview that he wasn't concerned about the use of one-time monies generated through various accounting maneuvers.

"We did not do anything that was not fiscally responsible under standard accounting standards," he said. "I don't have any second thoughts. I wish that the tax revenues hadn't fallen off the cliff so that we would have had more funds to utilize in funding services."

Among various critics of the budget package were House Republicans, who argued that the looming budget "hole" for the upcoming biennium could have been addressed by significantly restructuring and streamlining state government, and several advocacy groups who lobbied unsuccessfully for higher taxes to boost Ohio's bottom line moving forward.

Gov. Ted Strickland acknowledged last month the possibility of another federal bailout to states if the national economy remains in reverse, but more recently said there's no hurry to start advocating for such an approach.

"I think it's a little early for that," Gov. Strickland said. "Embryonic signs of an economic recovery" that could eventually serve to boost the state's flagging tax base have been encouraging, he added.

"I remain hopeful, but I remain vigilant," he said. "We are watching the situation very closely and I will attempt to make appropriate decisions as events unfold."

Similarly, Office of Budget and Management Director Pari Sabety said the "dramatic measures" taken by the federal government to address the economic fallout that began last fall are starting to have an effect.

"Obviously the economy is showing some signs of revival," she said. "It seems like a majority of (economists) are thinking the economy has turned the corner, although everybody is pretty unanimous in realizing sort of that the way forward is pretty grim."

"It's going to take four or five years for the national economy and Ohio's economy to return to the levels that we enjoyed before the collapse of Lehman Brothers in September."

Still, Ms. Sabety said that doesn't necessarily equate into a definite need for more federal stabilization funds - at least at this point. "It's a little bit early for us to be thinking about this," she said.

Senate President Bill Harris (R-Ashland) said he hoped states could avoid seeking additional funding from the federal government.

"How do you offset that one-time money? If there was some assurance that the federal government was going to provide money... But when that happens, that's when you start losing states' rights and you start having a very strong federal government," he said.

However, he predicted the state would likely face the same budgeting problems in two years without any additional help from the Washington.

"Our economy would really have to turn around much faster than its ever turned around to even get close to being able to fund what has been funded with the stimulus money," he said, adding the new Evidence-Based Model for school funding will also add to the burden.

Speaker Budish said that while state leaders haven't discussed the possibility of securing additional federal funding, another stimulus bill would be a welcome development.

"There would be ways that we could utilize additional funds to again create jobs for the state so that we would be in a better position in two years to deal with the next budget," he said.

Mr. Bird said NCSL is not currently engaging in any lobbying for a general federal bailout even though the group's most recent State Budget Update found that legislative budget officers in at least 15 states were already projecting gaps for FY 2012. The total for the nine states that provided amounts was \$21.1 billion.

"The bulk of federal ARRA funds for state and local governments are expected to be disbursed by the end of this year, nearly \$100 billion worth, NCSL's report states. "Half as much money will be available in 2011, nearly \$51 billion. What holes will be left in state budgets once the ARRA funds are exhausted?"

Many states expect to continue dealing with their budget problems in the conventional fashion, through cuts and revenue enhancements, into the foreseeable future, Mr. Bird said. "We don't see any of that stopping at least for the next two or three years."

"Knowing that you're going to have to continue to do that, most states are being very careful in how they utilize the ARRA money," he said. "Everyone knows the cliff is out there - it's no mystery. So what you've done in some states is you've postponed some of the pain but not all of the pain."

Mr. Bird did identify two specific areas of federal assistance that NCSL will be monitoring closely in the coming months: the unemployment insurance benefit extension that expires at the end of the year and infrastructure assistance that could be part of the next transportation budget reauthorization.

"That's not something you use to balance your budget with," he said, "but you do stabilize and juice your economy with that kind of stuff."

### **SUPREME COURT WILL HEAR LAWSUIT OVER GOVERNOR'S LOTTERY SLOT MACHINES SEPT. 2**

The Ohio Supreme Court on Friday scheduled oral arguments for Sept. 2 in a lawsuit that will decide if voters are given a chance to weigh in on the installation of state lottery slot machines at horse racetracks.

Justices, acting on their own and without dissent, ordered lawyers for LetOhioVote.org and the respondents - Secretary of State Jennifer Brunner and the Ohio Lottery Commission - to appear in person.

The court already had set aside Tuesday Sept. 1 and Wednesday Sept 2. for hearing arguments in other pending cases.

Previously set for Sept. 1 is a case in which the Ohio Grocers Association is challenging application of the Commercial Activity Tax to sales of food.

A ruling in favor of the grocers could cost the state \$188 million per year in lost tax revenue, plus at least \$355 million in refunds.

Considerably more money is at stake for the state in the slot machine litigation.

LetOhioVote, a ballot issue committee the state believes is funded by pro-casino interests, wants justices to declare that the lottery slot machine plan is subject to voter review at a referendum.

Gov. Ted Strickland is moving forward with his initiative to install up to 17,500 video lottery terminals at the state's seven horse race tracks. The intent is to raise \$933 million to help offset a projected shortfall in the new biennial budget.

The Ohio Lottery Commission on Monday is to consider a package of initial administrative rules to implement the slots proposal. Among other things, the rules would require players to be at least 18 years old, and would let the slots parlors operate 24 hours a day, seven days a week.

LetOhioVote accuses the General Assembly of trying an end-run around the Ohio Constitution's referendum provision by declaring in the budget that the slot machine section was part of an appropriation that took effect immediately.

The group wants justices to rule otherwise, and to give them the standard 90-day window in which to gather signatures on petitions to put the question before voters in 2010.

In the event the court agreed, slots opponents would have to file at least 241,366 valid signatures, equaling 6% of the 2006 gubernatorial vote, and in at least 44 of the state's 88 counties.

Assistant attorney general Richard Coglianesi, representing Secretary Brunner, told the court earlier this week that she acted correctly in refusing to accept initial referendum petitions from slots opponents.

"In the absence of judicial direction to the contrary, it is entirely appropriate that the secretary defer to the effective dates of legislation as determined by the General Assembly and as signed into law by the governor," Mr. Coglianesi said.

"The secretary has no clear legal duty to *ignore, second guess, or override* these legislative determinations, and the secretary has no clear legal duty to accept referendum petitions against laws that the General Assembly has deemed exempt from the referendum process," he told justices.

### **\$119 MILLION IN FEDERAL ENERGY CONSERVATION BONDS AVAILABLE FOR COUNTIES AND CITIES**

Local governments trying to make their facilities more energy efficient can seek a portion of Ohio's \$119 million allocation of federal tax credit bonds for energy conservation, the state's energy chief said recently.

The Ohio Air Quality Development Authority signed off this week on a program that makes \$91 million in Qualified Energy Conservation Bonds available to Ohio counties and cities with populations of more than 100,000. The remaining \$28 million could be used by either smaller local governments or the state, he said.

The program, which was created as part of the federal stimulus bill, is designed to help local entities upgrade facilities to reduce their energy consumption, such as replacing windows in a county courthouse, OAQDA Executive Director Mark Shanahan said in an interview. However, it can be applied to a broad array of projects.

"It can be used for mass commuting facilities connected to mass transit. It can be used to support research for things like cellulosic ethanol and even for carbon capture and sequestration," he said. "The key is you can use it for capital expenditures if you're going to reduce consumption in publicly owned buildings by at least 20%."

Rather than interest payments, the bonds offer the purchaser a tax credit funded by the federal government.

While local entities can issue their own bonds, OAQDA is planning to structure a program that could be more effective for those that chose to participate, he said.

For example, the cost savings from implementing energy efficiency measures could be used to pay down debt service, he said. "We think that's the most attractive model because then in effect you're having the project pay for itself. You're not paying interest and you're getting all your principal back from your savings.

"So if you can identify projects where the energy savings are going to reduce your utility bills by the amount of your payments, you're obviously in better shape," he said.

Mr. Shanahan said it was unclear whether the federal government will renew the program, since it was created in separate legislation, but funded through the stimulus bill. "The guidelines from the feds right now are not clear whether they'll institutionalize the program."

### **STATES TRIMMED RETIREMENT BENEFITS, OFFERED EARLY OUT INCENTIVES TO BALANCE BUDGETS, REPORT SHOWS**

While Ohio lawmakers rejected a Strickland Administration proposal that would have impacted state employee retirement benefits, legislators in several other states made changes to their employee retirement systems to help balance their budgets, according to the National Conference of State Legislatures.

NCSL found in a report that leaders in six states - Georgia, Louisiana, New Mexico, Rhode Island and Texas - cut benefit packages for new state workers.

And officials in Nebraska, New Hampshire, New Mexico and Texas increased the employee contribution rate.

Both of those strategies are among several options that Ohio's five public employee retirement systems are considering to bring their funding status within the 30-year guideline.

"This report will help policymakers know how their colleagues have addressed issues that could arise in any state," said Ron Snell, the NCSL's director of state services. "Almost every state will have to address pension funding and security in the near future."

The report notes that officials in Connecticut, Louisiana, Maine and Vermont created new early retirement incentives to help cut state employment rolls. Those incentives offered retirement to those close to retirement age or increased benefits for those taking the early option.

Fewer states reviewed the prospect of a loss of retirement credit due to required unpaid state worker furloughs, NCSL said. Although seven states - Iowa, Louisiana, North Carolina, Tennessee, Vermont, Washington and Wisconsin - guaranteed the retirement benefits of employees impacted by furloughs.

Among the enacted benefit reduction strategies were preventing or reducing post-retirement cost of living adjustments for new hires, and increasing age and service requirements for qualify for retirement.

The report notes that Illinois allowed for the issuance of \$3.5 billion in bonds to cover state contributions in FY 2010, while Colorado halted some employer contributions in FYs 2009, 2010 and 2011. New Jersey authorized local governments to cut employer contributions in the short term.

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