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Legislative Update

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WITH SLOTS DEAL OUT OF REACH, SENATE APPROVES SEVEN-DAY INTERIM BUDGET

As deliberations on the state's two-year budget remained at a standstill for a third straight day, the Senate on Monday approved a one-week spending plan that would keep government operating from July 1 through July 7.

The interim budget, which also authorizes Gov. Ted Strickland's administration to transfer rainy day balances, funds government programs at 70% of fiscal year 2009 spending - a level the majority Republican caucus said is in line with estimates budget negotiators have been using.

The stop-gap measure is expected to clear the House on Tuesday.

Sen. President Bill Harris (R-Ashland) maintained that the interim plan was needed to give legislative officials time to process the final two-year spending plan, but insisted that his chamber wouldn't vote for a budget that includes a statutory provision allowing the installation of video lottery terminals at Ohio horse tracks.

He said Mr. Strickland, who proposed the idea as a way to raise state revenues, should implement the plan administratively.

House Speaker Armond Budish (D-Beachwood) said it is regrettable that the Senate has not accepted a balanced budget framework that Gov. Strickland detailed.

"Although we have made progress over the last few weeks, we must now pass a seven-day interim budget, which will only prolong a difficult and painful process for many Ohioans," the speaker said.

"House Democrats and Gov. Strickland have offered difficult, but needed solutions to address the \$3.2 billion budget shortfall," Speaker Budish added. "Since the Senate does not agree with our approach, they have a responsibility to come forward with an alternative plan to balance the budget. So far, they have failed to do so."

Gov. Strickland said immediate resolution of the budget impasse was critical to ensure the stability of state operations. Taking a break before passing the two-year measure would be "unseemly, unconscionable even."

"I think we should stay here and work through the weekend. I think working on this budget is more important than participating in a parade or eating hot dogs at an outdoor cookout," he told reporters.

Despite frustration over the gambling issue, the sides have made considerable progress on other contentious issues, he said. "I still have hope, realistic hope I think, that we can reach an agreement."

Slots Debate: Mr. Strickland said the budget debate could be settled quickly if the Senate would approve the VLT language.

"Quite frankly, I think we could solve the budget dilemma by this afternoon if there was a willingness on the part of Sen. Harris to bring the VLT issue to a vote in the Senate because, in my judgment, the only remaining hurdle to bringing this budget to a conclusion is the VLT issue," he said.

Gov. Strickland questioned Sen. Harris's opposition to the plan and noted he was one of seven Republican senators that voted in favor of the 2007 proposal to install video racing terminals at racetracks.

"They are machines where people sit and gamble. I don't see any moral distinction really. In fact, I don't see any significant distinction between what these seven senators previously voted on and what we are asking to be included in this budget," he said.

"There doesn't seem to be any objection to using the resources to balance the budget," he said, referring to Sen. Harris's willingness to factor slot machine revenue projections into the budget.

The governor expressed frustration with a lack of a counter proposal from Senate Republicans as alternatives his slot machine plan.

"I said to Sen. Harris this is a shared responsibility. I'm willing as governor to take the lead and I did. But if you won't accept what I put forth as the path forward, then you've got a responsibility to do more than just say no."

Sen. Harris said Mr. Strickland initially told him he would add the VLTs to the tracks through the lottery, and said the Senate will hold him to that position.

"When the governor told us that he intended to put the VLTs in the race tracks, it was not a question," he said. "His statement was, 'I've decided to do this.'"

"We realize that leadership causes you to make decisions that sometimes you don't want to make," he said, but noted that Mr. Strickland had committed to the action. "I encourage him to move forward with that plan and stop procrastinating."

He also rejected assertions that VLT investors won't get in the business in Ohio without having the industry specifically allowed in law. "As I recall, the people who were bidding for keno never came to the legislature and asked for approval or asked for support," he said. "They invested millions of dollars on the hope that they could get that contract."

Sen. Harris said there is a difference between VLTs and video racing terminals, saying the racing terminals give bettors an opportunity to study odds and other factors before they decide to bet.

Weekend Maneuvering: In the days leading up to the weekend, the parties mostly kept a lid on the rhetoric over the lingering differences. That changed on Saturday. *(Subscribers note: A version of the following budget report was published and distributed in email format over the weekend)*

Frustrations over the failure of the Democrats and GOP to come to terms on a budget agreement spilled over into the public arena Saturday and led to the scrapping of planned weekend committee action as the governor put pressure on the Republican Senate to offer up alternatives to his slots revenue.

"The legislature is responsible for sending the governor a balanced budget by Tuesday, June 30," Gov. Strickland said in a statement issued late Saturday. "It has now been more than one week since I outlined a balanced budget framework to address the \$3.2 billion state budget gap without raising taxes and without undermining our commitment to K-12 education."

"Regrettably, Senate President Bill Harris informed me this afternoon that he does not support my balanced budget proposal. I believe that he and the Senate Majority have an obligation to say what taxes they would increase or what services they would further reduce in order to balance the budget."

The slots provision is key to the budget negotiations because projected state revenues from the machines would fill more than a quarter of the massive shortfall facing policymakers as they finalize the two-year spending blueprint.

Senate Republicans want the governor to issue an executive order to implement slots like he did when the state began running keno games at bars and other locations. Gov. Ted Strickland argues that the gambling expansion must be statutory for several reasons, among them a legal comfort level for investors who would be asked to pay large licensing fees for the seven racetracks.

"Let's be clear: The issue that divides us is whether or not the legislature should authorize expanded gambling without a vote of the people," Sen. Harris said.

"I have acknowledged many times that the Governor has the authority to expand the lottery," Sen. Harris added. "He has done it before and should he decide to exercise his authority again in allowing VLTs at racetracks around the state, the Senate will account for the revenues to balance the budget."

"However, I cannot get past the fact that the voters of Ohio - our constituents -- have spoken on expanded gambling time and again. Asking the General Assembly to circumvent their will in such a short time frame when there has been no formal public debate and there are so many questions left unanswered is unreasonable."

Gov. Strickland said he had been pleased with the budget talk progress up to this point and as recently as Friday was holding out hope for an on-time plan enacted by June 30.

Since then, further closure has reportedly been made in other major areas of disagreement, such as K-12 education and funding for nursing homes and other Medicaid-backed programs.

"I look forward to hearing from the Senate what other source of revenue, or what additional cuts, they will suggest in the three remaining days of the legislative conference committee," The governor said. "I continue to be available around the clock and will remain accessible to the legislative leadership."

The governor remains opposed to any temporary budget that extends beyond a few days to accommodate administrative paperwork involved with enacting the measure.

DEADLOCKED ELECTIONS BOARD SENDS HUSTED RESIDENCY CASE BACK TO SECRETARY OF STATE

For the second time this year, the Montgomery County Board of Elections split 2-2 Monday on the question of whether Republican Secretary of State candidate and Sen. Jon Husted is a qualified elector in Kettering.

As a result, the matter again returns to Democratic Secretary of State Jennifer Brunner for resolution.

Jeff Ortega, spokesman for Ms. Brunner, said the county board has 14 days in which to forward the paperwork to the secretary of state's office. There a staff lawyer will review the material and make a recommendation to Secretary Brunner. The tie-breaking vote rests with her. Mr. Ortega said state law sets no timetable for the secretary of state to reach a decision. "However, Secretary of State Brunner understands the urgency of these matters and acts accordingly," he said.

Sen. President Bill Harris (R-Ashland) observed Monday that the Ohio Constitution gives the Senate the ability to determine whether its members are qualified to serve.

"Jon Husted is a duly elected Senator from Kettering; end of story," he said. "After eight months of foot dragging and wasting tax dollars, it is time to put an end to this political witch hunt and let Jon Husted get on with the job his constituents elected him to do, especially considering the great challenges this state is facing."

The county elections board began an investigation last year into the voting residence of Sen. Husted, who has homes in both Montgomery and Franklin counties. On Feb. 25, the board reached a tie vote on a motion to find that Mr. Husted is a resident of Montgomery County. The matter then was referred to Secretary Brunner. State law provides that while an individual may have more than one home, only one may be declared a residence for voter registration.

However, it also says, "should the person enter the employment of the state, the place where such person resided at the time of the person's removal shall be considered to be the person's place of residence." Ms. Brunner initially concluded there was not enough evidence to properly determine residency. She issued six subpoenas for documents related to utility consumption, occupancy, and ownership of property in Kettering, as well as his ownership of property in Franklin County. Ms. Brunner said it is undisputed that since 2001, the former Speaker of the Ohio House has spent "considerable" time living outside Montgomery County on a regular basis. Earlier this month, she sent the case back to the panel in Dayton for reconsideration in view of the additional information.

Director Steven Harsman said the board examined the additional material Monday. Members, voting along party lines, wound up in another tie.

Sen. Husted is seeking the GOP nomination for secretary of state in 2010. Secretary Brunner is challenging Lt. Gov. Lee Fisher for the Democratic nomination for the U.S. Senate next year.

TWO OHIO DEMOCRATS JOIN U.S. HOUSE REPUBLICANS IN VOTING AGAINST FEDERAL ENERGY BILL

With two exceptions, members of the Ohio delegation voted along party lines as the U.S. House approved an energy bill that Democrats said would reduce dependence on foreign oil while helping protect the climate.

Republicans branded the measure as a "national energy tax" that would have a negative impact on small business and middle class consumers.

The American Clean Energy and Security Act of 2009 passed Friday night on a 219-212 vote.

In Ohio's 18-member delegation, all eight Republicans opposed the measure.

Among the 10 Democrats, all voted for the legislation with the exception of U.S. Reps. Dennis Kucinich (D-Cleveland) and Charlie Wilson (D-St. Clairsville) who opposed it.

Kilroy: U.S. Rep. Mary Jo Kilroy (D-Columbus) said the bill would add about 67,000 jobs in Ohio.

"This initiative secures Ohio's strong position to make the solar panels and wind turbines that will power our nation in the very near future. It will also benefit Ohio's agricultural sector, which can provide the plant material needed for the bio mass products that boost energy production," Rep. Kilroy said.

She said parts of the bill would "make dramatic investments in a regional energy effort for the Midwest that is long overdue and create a fund to lift Ohio manufacturers in difficult times."

Space: U.S. Rep. Zack Space (D-Dover) said Monday the bill was "a giant step" toward breaking the nation's dependence on foreign oil.

"I worked with and also stood up to members of both parties to make sure this bill protects Ohio businesses while laying the ground work for new jobs and lower prices for Ohio consumers," he said.

Rep. Space said the bill would spend billions on clean coal technology, ensure savings would be passed directly on to consumers, and increase energy efficiency to provide an average household in his district a savings of \$130 a year.

Boehner: U.S. Rep. John Boehner (R-Cincinnati), the House minority leader, assailed Democrats for what he described as a 1,500-page national energy tax bill that no one had an opportunity to read.

"This is a tax on anyone who drives a car, buys an American-made product, or flips on a light switch. It will drive up energy costs, send millions of jobs overseas to countries like China and India, and place an especially heavy burden on rural America," Rep. Boehner said in a news release.

Driehaus: U.S. Rep. Steve Driehaus (R-Cincinnati) said he and other Midwest Democrats ensured that provisions of the bill would not disproportionately affect ratepayers in areas of the country that rely on coal power.

He said he chose to support the bill after the original version was modified to prevent cost spikes and protect consumers. He said the measure also would provide "fair, measured controls" to reduce carbon emissions 83% by 2050.

"Ohio has the resources and workforce to be at the cutting edge as we move our nation toward a clean energy economy, and this bill will promote investments that will bring the potential of clean energy development into our community," Rep. Driehaus said.

"At the same time, this bill will help us end our addiction to imported oil, which threatens our security and sends too much American money overseas," he said.

Latta: U.S. Rep. Bob Latta (R-Bowling Green) predicted the bill, which now goes to the Senate, would establish the largest national energy tax in the nation's history.

"I have firmly opposed Cap and Trade, also known as Cap and Tax, since the legislation was first introduced," Rep. Latta said.

"Under Cap and Tax, jobs will be shipped overseas where the United States already competes with countries such as China and India who have lower energy and manufacturing costs," he said.

"China and India will continue to steal American jobs since they have made it clear that they will not follow any policy similar to Cap and Tax," Rep. Latta said.

Cap and trade generally refers to a policy that assigns an economic value to emissions and permits trading in them, giving owners an incentive to reduce pollution.

The U.S. Environmental Protection Agency characterizes the process as a mandatory cap on emissions that provides sources of the pollution flexibility in how they comply.

"Successful cap and trade programs reward innovation, efficiency, and early action and provide strict environmental accountability without inhibiting economic growth," the agency said.

Coal: The Ohio Coal Association said the legislation would have "a drastic impact" on the state's economy, eliminating jobs in eastern and southern counties and increasing consumer costs in all regions.

"The mandatory carbon-emission reductions outlined in this bill will bring deep cuts in coal production," said Mike Carey, association president.

"Not only the coal industry is impacted, but all Ohio companies dependent upon competitive utility costs and all Ohioans who would pay higher electricity costs alike will see the far-reaching negative effects of this legislation," he said.

The association represents about 40 coal producing companies.

Climate: The Alliance for Climate Protection called the House vote "a momentous victory for our nation and our planet as we seek to build a clean energy economy."

Maggie Fox, president and CEO, called for the Senate to move ahead quickly in passing climate and energy legislation that President Barack Obama could sign into law.

"We want to thank those members of the House of Representatives who stepped up to make history and move our nation and the world forward. They truly do represent the best of what this nation can do when confronted with great challenges and the opportunity to lead," Ms. Fox said.

Brown: U.S. Sen. Sherrod Brown (D-Cleveland) said the House legislation incorporates a separate bill he introduced to help small and medium-size manufacturers transition to a "clean energy economy."

Sen. Brown's bill would create a \$30 billion revolving loan fund to provide eligible manufacturers with access to credit. They could use the money to improve energy efficiency, retool as a clean energy industry, and expand the nation's clean energy manufacturing operations.

He applauded U.S. Reps. Space and John Bocchieri (D-Alliance) for including the proposal in the House bill.

"By creating a funding source to help Ohio manufacturers retool, we can revive Ohio manufacturing through investments in clean energy. This will go a long way toward making Ohio the Silicon Valley of clean energy manufacturing," Sen. Brown said in a statement posted on his website.

TUESDAY, JUNE 30 2009

SECOND CONTINUING BUDGET BILL INTRODUCED IN HOUSE; IMPASSE EXTENDS TO OTHER MEASURES

Just how bad is the partisan wrangling at the Statehouse these days? In the latest chapter of "he said-he said," the House and Senate can't even agree on who gets the main sponsorship credit for a non-controversial blood donation measure (HB 67 & SB 57) let alone whether or not to deploy slot machines at horse racetracks to help resolve a huge revenue shortfall in the biennium budget (HB 1).

Responding to what Speaker Armond Budish (D-Beachwood) described as a "stalemate" with the Senate GOP the slots proposal, the House passed and Gov. Ted Strickland later signed a one-week budget plan tucked into the non-controversial spending blueprint for the Ohio Industrial Commission (HB 16). The governor signed the bill a few hours later.

However, in another sign that a quick resolution over the slots disagreement isn't likely, House Finance Chairman Rep. Vernon Sykes (D-Akron) introduced a stand-alone measure to fund state government operations for another week, from July 8-14. That bill (HB 245) was slated for Wednesday committee and floor votes.

The anticipated extension of the budget delay came as policymakers continued the second week of disagreements over Gov. Strickland's balancing "framework," namely the slots plan estimated to address nearly a third of the \$3.2 billion hole in the fiscal year 2010-2011 document.

"I continue to believe that the budget proposal I put forward provides a way through this recession and positions Ohio for job growth and recovery," Gov. Strickland said in a statement. "Not only is my budget proposal balanced, it supports our schools and does not raise taxes on Ohio families or businesses."

"It is troubling that Senate Republicans are still refusing to say what they would do to fill the budget gap," he added. "Because of this, I have no other option but to sign a temporary budget that only delays the inevitable hard choices before us."

The new temporary budget measure mirrors the one passed Tuesday in that it provides funding for most agencies at 70% compared to current levels. Exceptions are made for K-12 and higher education programs, debt service and the Medicaid entitlement.

Speaker Budish said the latest extension measure was a backstop, as he remained hopeful that the additional week wouldn't be needed.

"Overall, our conference committee discussions have been ... productive and we have moved forward and made progress," he said.

Senate President Bill Harris (R-Ashland) said much the same, yet for another day there was no conference committee action. The panel's Tuesday meeting canceled and it is slated to reconvene at 7 p.m. Wednesday.

The speaker reiterated Democrats' contention that the ball is in the Senate's court in terms of offering up an alternative.

"We have a balanced budget plan. We have worked with the administration. We have worked with the Senate. We believe there is a good plan that can be passed today, but unfortunately the Senate is refusing to authorize a key part of the plan, which generalers over \$900 million of revenue," he said. "The Senate's rejection has put us in the spot we are today with a continuing resolution. I believe it's now the Senate's responsibility to come forward with an alternative."

Sen. Harris continued to argue that Gov. Strickland could and should implement the slots plan administratively as he did when expanding the Ohio Lottery Commission's offerings to include keno at bars and other locales.

In sticking to his script of late, the lawmaker said the governor should administratively order slots like he said he would - a contention on which Democrats disagree.

Policy differences aside, part of the ongoing debate has revolved around a disagreement between Messrs. Harris and Strickland over whether the governor ever said he would move unilaterally and install the slots on his own without legislative approval.

Speaker Budish weighed in on that argument Wednesday, saying it has been his understanding from the get-go that the legislature would have to act to implement slots.

Asked about the possibility of a Big Three meeting Wednesday to try and reach a compromise, the speaker suggested that while legislative leaders and staff have been meeting regularly to iron out other differences in the budget package, that process had mostly run its course.

"At this point, until the (video lottery terminal) issue has been resolved or until the Senate comes forward with an alternative, we have a stalemate," he said.

Sen. Harris, meanwhile, pointed to a story in *The (Cleveland) Plain Dealer*, which reported that the new lottery vendor as of Wednesday, Intralot, had a state contract stipulation that allowed it to "handle the software applications" for VLTs.

"I just want the governor to do what he said he would do. He has the authority to do it. He knows he has the authority to do it," Sen. Harris said.

The Senate president also questioned reports that there were seven members of his caucus that would support slots at racetracks, while saying he wouldn't completely draw the line in the sand over having a vote on the budget with the provision in the bill.

House Minority Leader Bill Batchelder (R-Medina) said about eight members of his caucus "favor slots" but he expects most would still be opposed to the budget over concerns about its sustainability moving beyond the next biennium due to extensive one-time monies in the plan.

Mr. Batchelder said leaders should adopt House Republican proposals to streamline government and Medicaid, which would entail well over \$1 billion in cost savings.

Companion proposals on the government reorganization plan (SB 52, HB 25) have been pending in the legislature for months. The Senate plan is sponsored by Sen. Tim Grendell (R-Chesterland), while the House plan was offered by Rep. John Adams (R-Sidney).

In other business Tuesday, the House accepted the conference report on the Bureau of Workers' Compensation budget.

Temporary Budget Redux: Tuesday's action marked the first temporary budget passed by the legislature since 1991, which was also amidst a difficult economic period for the state.

That interim plan (SB206, 119th General Assembly) had a duration of a month, but the House and Senate would later come to terms on a full two-year budget and enact it on July 11 of that year. Then-Gov. George Voinovich signed the measure (HB298, 119th General Assembly) into law on July 26, 1991.

"As the fiscal year ended, lawmakers approved a 30-day interim budget for the first time since 1981 after House and Senate conferees failed to agree on how to deal with a \$100 million shortfall in the \$27 billion budget," Gongwer News Service reported in the 1991 year-end wrap-up.

In July of that year, according to the report, "Both chambers approved a \$27 billion biennial state budget. Spending was increased by \$2 billion over the previous biennium, with most of the increase going to social services. The sales tax was extended to various services, including lawn care, 900-telephone calls, detective work, certain cable TV purchases and maintenance contracts.

"Other revenue came from delaying or eliminating various tax credits. Lawmakers transferred funds from various accounts into the general fund and took \$200 million from the Budget Stabilization Fund, also known as the rainy day fund. Money for 12 regional development offices was appropriated, even though Democrats called them "political outposts" for the administration.

"Governor Voinovich vetoed 30 line-items, including language that maintained student subsidies for fiscal 1992 at 1991 levels. He also vetoed language allowing state colleges to bypass the Department of Administrative Services when undertaking certain capital improvements."

CHAMBERS FINALIZE BWC BUDGET AS GOVERNOR STRIKES GOP PRIORITIES; SENATE APPROVES 'CAP AND TRADE' OPPOSITION

The House and Senate were able to agree on a budget Tuesday, but the spending plan signed later in the day by Ted Strickland funds just the Bureau of Workers' Compensation for the next two years.

Both chambers overwhelmingly adopted a conference report on the agency's budget (HB 15) as a stalemate over the general operating budget continued (*See separate story*).

Gone from the final report is GOP-backed language that would have created a panel to review the possibility of opening workers' compensation to private sector competition. Retained - at least in legislative proceedings - were Republican-supported provisions that allow continued drug-free workplace and workplace safety premium discount programs.

Shortly after passage, Mr. Strickland signed the measure, but not before deleting Republican priorities through a line-item veto.

"The Bureau of Workers' Compensation plays a critical role in serving our state's workforce by ensuring effective services, accurate rates and safe workplaces," the governor said upon signing the bill. "The BWC has made tremendous strides in reforming the system to ensure transparency and accountability. I am pleased with the leadership of Administrator Marsha Ryan and the Board of Directors, who have made the agency run more effectively and efficiently."

In his veto message, Mr. Strickland struck the workplace safety and drug-free workplace discounts, saying the provisions "threaten the integrity and autonomy of the BWC Board of Directors."

"In addition, they disrupt the BWC goal of providing balanced, fair and stable rates for all Ohio employers," the governor said in his veto message. "Additionally, the provision includes all employers, including self-insured employers who do not pay into the state insurance fund and have never been eligible for these programs. Furthermore, the specific details of discount levels are better suited to rule-making authority because of the changing nature of the rate structure which must include all discounts in order to sustain actuarial soundness."

Mr. Strickland also removed provisions that:

- Set timelines for the notification of discounts
- Required the BWC Administrator to advise new employers of available discount programs
- Directed merging companies to notify group workers' compensation sponsors of the consolidation

Each of the provisions removed were items approved by the Senate and included in conference committee negotiations.

In the House, where the report was adopted 96-1, Rep. Dann Dodd (D-Licking Twp.) said the plan appropriately resolved issues of difference between the chambers.

Rep. Dodd said the drug-free workplace and workplace safety provisions will offer 3% and 2% discounts, respectively, for participating employers.

"I think this is a good budget," he said. "Not quite as bare bones as I would have liked, but you don't get everything you want in life."

Rep. Lynn Wachtmann (R-Napoleon) welcomed the legislature's retention of the premium discount programs, which he said the BWC board had attempted to "dismantle."

"These two things are very important for employees and small business owners who strive every day to have a safe workplace," he said.

House Minority Leader Bill Batchelder (R-Medina) raised concerns about the lack of provisions to limit BWC investment opportunities, saying the agency continues to have the ability to invest in derivatives.

"We need to pay attention to what's going on up there in the investment area," he said, noting that legislation on the subject will be introduced in the future. "I hope we have a look at this before the train hits us," he said.

Rep. Gerald Stebelton (R-Lancaster) was the sole opponent in the House. Sen. Steve Buehrer (R-Delta) drew 32-0 support, saying the conference report funds the agency's operations at similar levels.

He said the budget - as passed by the General Assembly - preserves important discount programs that recognize employer costs and help keep workers safe. Sen. Buehrer said he was disappointed, however, that House Democrats weren't open to establishing a panel to review private sector opportunities.

Among other things, the conference committee also increased an initial transfer of funds for the BWC's Deputy Inspector General; set new requirements on legislative appointments to the Workers' Compensation Council and required the BWC administrator to give employers filing for coverage the first time a list of all groups participating in group rating programs and a list of all premium discount programs offered.

SUPREME COURT REJECTS UNION BID TO EXPAND PREVAILING WAGE; CONTRACTORS SAY GOVERNOR'S POLICY EFFECTIVELY REVERSED

The Ohio Supreme Court on Tuesday rejected a labor union attempt to expand the scope of the state's prevailing wage law to private improvement projects that are partially financed with public funds. Justices said in a 7-0 opinion that prevailing wage applies only when a public authority spends public funds to construct a public improvement. The decision came in a case from Ottawa County.

A contractors association said in response that the ruling effectively reverses an expansion of prevailing wage to such projects that Gov. Ted Strickland instituted last October. Fellhauer Mechanical Systems, Inc., a private electrical, heating, cooling, and plumbing contractor, decided to buy a building and renovate part of it for retail sales. The company obtained a \$300,000 grant from the Ohio Department of Development to finance purchase of the building, real estate, and office equipment. Fellhauer also received a \$36,750 loan for those purposes from the publicly funded Ottawa County Improvement Corporation. The company used private financing to renovate the building.

The Northwestern Ohio Building & Construction Trades Council contended the project should be subject to the prevailing wage law. It filed suit to enforce the statute that generally requires payment of union scale wages to workers.

Ottawa County common pleas court held that prevailing wage was not triggered because the spending did not benefit a public authority, but instead a private corporation.

The 6th District Court of Appeals affirmed the judgment on different grounds. It concluded that no entity defined as an institution in the statute had spent any money on the Fellhauer project. The panel also said that no public money was spent on actual construction.

The Supreme Court on Tuesday affirmed the appellate panel. Justice Evelyn Stratton, writing for the court, rejected the union organization's claim.

"Northwestern's argument that *any* spending of public funds by an 'institution' would require payment of the prevailing wage would unjustifiably expand the scope of prevailing wage to include projects that are not public improvements, that are not constructed by a public authority, or that do not benefit a public authority," Justice Stratton said.

"Therefore, just as with any other public authority, an institution's expenditure of public funds triggers the prevailing wage requirement only when the project meets the statutory criteria for determining the applicability of prevailing wage, i.e., where a public authority using public funds contracts to construct a public improvement," she said.

Justices said the Fellhauer project was not a "public improvement" as defined in statute. The term is limited to buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, and all other structures or works that a political subdivision builds.

"Consequently, because no public funds were used to finance any actual construction of a public improvement that benefits a public authority, the prevailing wage requirement does not apply to the Fellhauer project," Justice Stratton said.

Reaction: The court decision came as the Ohio Department of Commerce was preparing to convert its guidelines on prevailing wage into administrative rules. Guidelines initially released last year said any project receiving public funding was generally subject to prevailing wage requirements.

The Ohio Economic Development Association said earlier this month that changes in the interpretation of prevailing wage law were discouraging private investment. The Department of Commerce had no immediate comment on the effect of Tuesday's ruling from the Supreme Court.

"We just received the opinion and we're still reviewing it," said Cara Keithly, chief of communications.

Separately, the Associated Builders & Contractors construction association welcomed the court's decision. ABC said the ruling effectively overturned Gov. Strickland's expansion of prevailing wage to private construction projects that receive government assistance.

"This is a victory for the Ohio taxpayers," said Ryan Martin, president of the Northern Ohio ABC Chapter. "Private development creates jobs and the government should not impede these opportunities."

It was the second victory for ABC in two weeks. On June 17, the court held that the prevailing wage law applies only to persons whose work is performed directly on the site of a public improvement project, not to employees working on components elsewhere. The merit shop contractors association said it has a third case pending before the court. The litigation against Franklin County Commissioners stems from award of a painting contract for the new Huntington Park baseball stadium.

At issue is whether state law preempts counties from enforcing their own local policy for automatically disqualifying bids from a contractor based on prior settlements of alleged prevailing wage violations.

ENVIRONMENTAL GROUPS FIGHT EXPANSIONS TO RENEWABLE ENERGY STANDARD IN BUDGET

With additional time to make their budget pleas, environmental advocates pressed lawmakers Tuesday to scrap amendments they say would "pollute" the state's newly crafted renewable energy standard.

Environment Ohio made their case with their new report showing the cost of per capita fossil fuel spending will rise nearly 60% over the next 20 years unless policymakers take steps to shift energy consumption toward renewable sources, such as wind and solar.

Terrence O'Donnell, an attorney representing the renewable trade association Ohio Advanced Energy, said amendments to the biennial budget (HB 1) that would add trash and tire-burning technologies, coalmine methane, and "black liquor" paper mill by-products to the renewable energy standard would make "true renewables" less viable in Ohio.

While those technologies may be appropriate for the advanced energy requirement, they should not be eligible sources for utilities to meet the requirement to obtain 12.5% of their electricity supply from renewable sources by 2025, he said.

"We're polluting that renewable energy standard really inappropriately," he said. As a result, many wind and solar companies will be discouraged from starting or expanding operations in Ohio.

Supporters of the proposed changes generally argue that broadening the standard would introduce competition and drive down the cost of renewable energy credits.

Unlike the 12.5% requirement for the advanced energy category, definition as a renewable source would eventually make the companies eligible to sell renewable energy credits.

Another Senate change to the budget would be a positive development for the renewable energy industry, Mr. O'Donnell said, pointing to language that would allow cities to create revolving loan funds to lend residents money to help install solar panels. Consumers could then pay back the loan over a number of years as an assessment on their property tax bill.

Geoff Greenfield, president of Third Sun Solar and Wind, said his installation company saw an immediate increase in demand after the General Assembly enacted the renewable energy standard last year (SB221, 127th General Assembly).

"Even in these tough economic times, we have continued to have a thriving renewable energy business," he said. However, attempts to weaken the renewable energy requirement would drive the fledgling industry to other states.

Environment Ohio organizer Jennifer Herron said the group's report shows Ohio will spend nearly \$1 trillion on oil, coal and other fossil fuels by 2030 unless significant state and federal changes are made to shift consumption toward renewable energy sources.

Individual spending on fossil fuels will rise to nearly \$1,700 per person by 2030, an increase of 58%, she said.

"These figures do not include the untold damages to our environment, health and society resulting from the production and use of fossil fuels, such as global warming, air and water pollution, mountaintop mining, and oil spills," she said. "The bottom line is every additional dollar we spend on fossil fuels just buys us more global warming pollution, more smog, and more asthma attacks."

Ms. Herron urged U.S. Sen. George Voinovich (R-Cleveland) and Sen. Sherrod Brown (D-Cleveland) to support legislation to cap carbon dioxide emissions that recently passed out of the U.S. House.

TEMPORARY BUDGET RIPPED AS INDECISIVE, WELCOMED AS REPRIEVE AGAINST CUTS

The one-week state budget approved Wednesday by the House was viewed alternately as prolonging the agony for government service providers about to lose their jobs and as a reprieve for stakeholders seeking more time to make their case for state funding.

Voices for Ohio Children Executive Director Amy N. Swanson said of the impasse between policymakers, "This morning in Ohio, thousands of parents woke up not knowing if they'll be able to go to work next week."

"That's because the current state budget crisis threatens 14,000 quality child care spots as well as the eligibility for working poor families to receive child care subsidies," she said.

"Families who need child care aren't the only Ohioans waiting on leaders to make responsible decisions about the state's FY 2010-2011 budget. The stalemate in Columbus also threatens funding for programs that serve adopted children with special needs; children with disabilities; children at risk of abuse and neglect; and safety net services for pregnant women and children. Hungry families are worried, too, because the Governor's current budget proposal reduces funding for food banks by \$7 million even in the midst of unprecedented demand."

Meanwhile, the National Alliance on Mental Health-Ohio issued an advocacy alert to stakeholders that declared, "The Governor and General Assembly have just given themselves a seven day extension on coming up with a plan to resolve the budget crisis. This means that mental health advocates have one more week to let our Governor and lawmakers know that they need to pass a budget that protects the safety net for individuals with mental illness."

The group attached to its email links for stakeholders to contact key policymakers in a final push to avert significant cuts to mental health services.

Ms. Swanson said the Statehouse gridlock also threatens Ohio's federal funding stream.

"Even Ohio's economy suffers from this lack of leadership, since every day we delay providing more children with access to health coverage is another day that Ohio loses out on federal funds that other states are already receiving," she said.

Also on Wednesday, budget protests continued with the Ohio Olmstead Task Force and Ohio Association of Centers for Independent Living objecting to proposed cuts to various programs.

The groups said in a news release that they were protesting "Ohio's increased funding of costly institutions/nursing homes while cutting more economical home- and community-based supports and services."

INTRODUCED IN THE HOUSE

HB 246 OP&F DISEASE COVERAGE (Yuko) To provide that a firefighter, police officer, or public emergency medical services worker who is disabled as a result of specified types of cancer or certain contagious or infectious diseases is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund to

have incurred the disease while performing official duties as a firefighter, police officer, or public emergency medical services worker Am. 742.38, 4123.57, and 4123.68

INTRODUCED AND REFERRED IN THE HOUSE

HB 245 CONTINUING BUDGET (Sykes) To make operating appropriations for the period beginning July 8, 2009, and ending July 14, 2009.

Rules & Reference; Committee and floor votes set for Thursday, July 2

WEDNESDAY, JULY 1 2009

CONTINUING BUDGET DAY 1: SENATE PLANS HEARINGS ON SLOTS PROPOSAL; HOUSE PANEL TO FIELD CONCERNS OVER 'SENATE'S CUTS'

Partisan maneuvering over the budget gridlock heightened considerably on Wednesday, with the House and Senate separately announcing respective plans for public hearings on potential program cuts and slot machines.

Meanwhile, the House voted 83-11 to approve a second one-week budget extension (HB 245) to cover July 8-14 and give policymakers more breathing room to reach a compromise on one of the most contentious biennium budgets in recent memory (HB 1).

Earlier in the day, the first of fiscal year 2010 under a seven-day temporary budget, Senate President Bill Harris (R-Ashland) announced he would initiate hearings on the governor's slots proposal starting Thursday, when a five-member task force would convene to discuss details of the plan.

"Still missing from this debate are the details," Sen. Harris said in a statement. "Up until eleven days ago, the Governor and I shared the same concerns about expanded gambling in Ohio. Legislative hearings will help Senators better understand the specifics of the gambling proposal the Governor now says he supports."

Speaker Armond Budish (D-Beachwood) said that with the Senate rumored to be preparing a nearly \$1 billion cut scenario in lieu of the slots revenue - a claim the GOP later denied - it was prudent to have government program stakeholders and others weigh in on what that might mean to constituents.

Gov. Ted Strickland in a budget balancing "framework" announced last month suggested about \$2.4 billion in agency cuts and authorizing Lottery Commission-operated slots at Ohio's seven horse racetracks to bridge a \$3.2 billion budget gap.

While the House and Senate have since ironed out most policy differences in the two versions of the \$53 billion-plus spending plan, the slots impasse has proven to be a huge sticking point. Sen. Harris said the governor has the authority to administratively approve the plan and doesn't want his members to have to vote on it. The governor and track owners argue that they need legislative approval for legal cover and other reasons.

Sen. Mark Wagoner (R-Toledo) will chair the Select Committee on Video Lottery Terminals, the Senate president said. The panel also includes Sen. Jon Husted (R-Kettering), Sen. Timothy Grendell (R-Chesterland), Senate Minority Leader Capri Cafaro (D-Hubbard) and Sen. Dale Miller (D-Cleveland).

The VLT committee will meet 2 p.m. Thursday in the Senate Finance Hearing Room. As-needed hearings were set for the same location at 10 a.m. Friday, Saturday and Sunday.

Lottery Commission Executive Director Michael Dolan, Office of Budget and Management Director Pari Sabety and other interested parties are invited to testify, according to the Senate GOP.

The House Finance & appropriations Committee will hold hearings on what Chairman Vernon Sykes (D-Akron) described in a meeting notice as the "impact of potential Senate budget decisions." The chairman said he's opening it up to any group that wants to testify.

The House Finance panel will meet 3 p.m. Thursday, 10 a.m. Monday and 2 p.m. Tuesday in Statehouse Room 313.

Speaker Budish said after session Wednesday, "It's become clear that the Senate has no plans to move forward with our balanced budget bill. And since the Senate has rejected any tax hikes, it's become apparent that the Senate intends to propose deep and painful cuts to programs and services, which are likely to cause great pain for the people of Ohio."

During the hearings, he said, "We expect to hear from real people, people around the state, that are likely to be affected by the Senate's cuts."

Sen. Harris said the administration hasn't provided enough answers regarding the slots-at-tracks plan, and the outstanding questions include: "How did the Administration arrive at the \$933 million estimate? What will happen to school funding if those revenues were not realized? Would the state and the schools realize more money if the licenses were competitively bid? Is the Lottery Commission adequately prepared to take on these new responsibilities especially if they are to begin immediately?"

"I continue to believe that the voters of Ohio should have the say. The governor demands that legislators vote to allow him to expand gambling. How can the governor expect anyone to support him if we don't even know what his plan actually is," Sen. Harris said.

Strickland spokeswoman Amanda Wurst said a great deal of the slots plan has already been detailed in materials released to the public last week. Further details would be worked out in the legislation and agreements with the track operators, she said in calling the Senate hearings a "political charade."

"It's been 20 days since the start of conference committee and one day after the budget was due and we are hearing from the Senate majority that they are disappointingly making another attempt to avoid making any difficult decisions," Ms. Wurst said.

"Given the fact that 17 of the 21 Republican senators voted to expand gambling at racetracks in the past, it's clear that this is little more than a political charade to delay the budget."

Sen. Tom Niehaus (R-New Richmond) dismissed that charge.

"I'm not sure we're delaying at all. It's the day after we had attempted to try to resolve this issue with the administration and its less than 10 days after we were first confronted with the proposal of putting VLTs in the budget," he said.

Given the lack of detail about the proposal and questions about the revenue projections and how K-12 education would be affected if the plan falls short, the Senate is doing its due diligence by working through the holiday weekend to investigate the issue, he said. "We just think it's prudent to ask some questions about how all this is going to work."

House Democrats launched further salvos later on Wednesday, with majority caucus members showing up in force at a news conference to blast the Senate GOP.

Backed by about half of the 53-member caucus, Rep. Jennifer Garrison (D-Marietta), the majority leader, said Republicans must either propose what services they would cut or what taxes they would raise to replace the estimated \$933 million revenue from expanded gambling.

Asked how the House could hold hearings on potential cuts that the Senate has not proposed, Rep. Garrison said Republicans have refused to consider tax increases or gambling. "So that only leaves cuts," she said.

House Session: Passage of the second temporary budget plan - the first was signed by the governor on Tuesday (HB 16) - prompted little debate as members seem resigned to the fact that the budget stalemate will take at least a few more days to resolve.

As with the amendment to the Ohio Industrial Commission's budget, the stand-alone measure funds for one week most agencies at 70% of their current appropriation levels. It includes exemptions for K-12, higher education and Medicaid-funded programs as well as provisions accounting for federal stimulus funds. Non-GRF agencies are funded at 100% of current levels under the bill.

The House suspended rules to fast track the bill, which earlier in the day was reported unanimously from the Rules & Reference Committee.

House Minority Leader Bill Batchelder (R-Medina), a former state appeals court judge, raised concerns in committee about the impact of a 30% cut to the Ohio Supreme Court that's part of the measure.

He said most of the court's funding, well above 80%, is in personnel costs and the high court's budget is mostly passed through to cover the salaries of local judges.

"They may encounter difficulty at some point with cash flow," Rep. Batchelder said.

Rep. Sykes, the bill's sponsor, acknowledged that was an issue to stay on top of and could prompt further adjustments if the budget gridlock extends beyond next week.

Also on Wednesday, Republicans again objected to the informal passage of a blood donation measure and forced a vote on the motion, which passed 51-43.

'RAINY DAY' OFFICIALLY HERE: OHIO'S RESERVE FUND DRAINED TO 89 CENTS; OTHER STATES ALSO STRUGGLE TO ENACT PLANS

The metaphorical storm clouds officially burst in Ohio on the last day of fiscal year 2009, when Gov. Ted Strickland's administration tapped out the bulk of the \$1 billion-plus "rainy day" Budget Stabilization Fund - while opting to keep the change.

Office of Budget and Management Director Pari Sabety notified state leaders Tuesday that \$1,012,289,234.00 had been transferred from the BSF to the general revenue fund so the state could end the fiscal year in balance.

The move, authorized by the legislature with the recently enacted Ohio Industrial Commission budget (HB 16), leaves a rainy day fund balance of 89 cents.

Prompted by the rapid decay of personal income tax intake and other tax revenue in recent months, the transfer is also indirectly tied to the \$3.2 billion hole in the pending biennium spending package (HB 1) because Gov. Strickland had originally planned to use the reserve cash to prop up the FY 2010-2011 budget.

The low BSF total, however, is fairly flush compared to the fund's nadir during former Gov. George Voinovich's administration in the early 1990s. In fact, it's more than six times the 14 cents that remained after reserve coffers were drained some 18 years ago under similarly harsh economic conditions that, like this year, have led to a delay in enacting a full two-year budget plan.

After bottoming out early in that decade, the BSF was built up to more than \$1 billion under state law that requires a reserve balance equal to 5% of the prior year's GRF revenue, with any excess diverted into the Income Tax Reduction Fund. In the economic boom period of the late 1990s, the state actually returned money to taxpayers through the ITRF, however that mechanism has been idle in recent years as Ohio continues to trail the rest of the nation in terms of economic recovery.

Former Gov. Bob Taft's administration also nearly tapped out the BSF earlier this decade, but better-than-expected revenues at the end of FY 2003 allowed officials to bolster the fund to \$280 million, a total that would grow for a couple of years before topping out at just above \$1 billion before the state's economy got stuck in neutral.

Similar Situations: Elected leaders in several other states missed a June 30 fiscal year-end deadline to enact biennium budgets and are also struggling to come to agreement, the National Conference of State Legislatures reported.

Pennsylvania's circumstance - including the same budget shortfall of \$3.2 billion - appears to most mirror Ohio's partisan gridlock. Gov. Ed Rendell has proposed tax hikes and other measures to resolve the problem, but as of Wednesday no deal was in sight and state worker paychecks were at risk.

Similarly, budget talks in Illinois have broken down without a resolution, and Arizona, Indiana, Connecticut and Mississippi have struggled to meet their June 30 deadlines to fund the current fiscal year, according to NCSL's FY 2010 budget status website.

California is in by far the worst shape, as lawmakers and Gov. Arnold Schwarzenegger continue to battle over taxes and other issues related to a multi-billion dollar shortfall.

SUPREME COURT WILL HEAR CHALLENGE TO OHIO TAX ON SATELLITE TV; WON'T REVIEW LAWSUIT AGAINST PLAIN DEALER

The Ohio Supreme Court said Wednesday it would hear an appeal from two satellite television providers who want to overturn a sales tax they claim is discriminatory because it applies to them, but not to cable TV competitors. Justices voted 6-1 to accept for review the case of DIRECTV, Inc. and Echostar Satellite LLC in their battle with State Tax Commissioner Richard Levin.

The companies are trying to reverse a decision from the 10th District Court of Appeals that upheld application of the sales tax to about one million satellite TV households. The satellite providers estimate the levy amounts to a penalty of \$80 a year on average for each of their subscribers.

"Ohio law taxes satellite TV service, but not cable. Why the discrimination?" Peter Rosato, the Columbus attorney representing DIRECTV, said earlier in asking the court to hear the case.

DIRECTV characterized the satellite tax as "a textbook case of local protectionism."

It charged that the cable industry in Ohio lobbied the General Assembly for relief from "out-of-state" competition.

Attorney General Richard Cordray's office had urged justices not to take up the case. It contended there was no material relevance to anyone other than the two competing video broadcasters involved in the litigation.

"The right of states to differentiate among taxpayers is one of the core tenets recognized by the U.S. Supreme Court," Assistant Attorney General Lawrence Pratt said in a court filing.

"Ohio differentiates between satellite broadcasting services and cable broadcasting services by subjecting the former to state sales tax as compensation for local franchise taxes imposed on cable companies," Mr. Pratt said.

Justice Terrence O'Donnell dissented Wednesday, effectively voting to let stand the appellate panel's ruling that upheld the tax.

Plain Dealer: Separately, the court voted 4-3 not to reconsider its earlier decision that blocked a stockbroker from suing a newspaper over stories he claims wrongfully linked him to scandals at the Bureau of Workers' Compensation.

Justices voted in early May not to hear the appeal of Patrick White and his now defunct company, Great Lakes Capital Partners LTD.

Great Lakes sued *The (Cleveland) Plain Dealer* as a result of two articles published in 2005. (See [Gongwer Ohio Report, May 8, 2009](#)).

Great Lakes subsequently asked the court to reconsider its decision.

Voting to deny reconsideration Wednesday were Chief Justice Thomas Moyer and Justices Paul Pfeifer, Judith Lanzinger, and Robert Cupp.

Dissenting - voting to reconsider and accept the Great Lakes appeal - were Justices Evelyn Stratton, Maureen O'Connor, and Terrence O'Donnell.

OHIO GETS \$83 MILLION TO JUMPSTART LOW-INCOME RENTAL HOUSING CONSTRUCTION

The federal government gave Ohio more than \$83.4 million Wednesday to help resuscitate a program designed to encourage developers to construct low-income rental housing.

The money is part of the \$2.25 billion included in the American Recovery & Reinvestment Act to fund the U.S. Housing and Urban Development's Tax Credit Assistance Program, which offers investors financial incentives to provide capital for developers to build multi-family rental housing for low-income families.

"The funding being awarded today is an important step in achieving the goal of putting American people back to work while at the same time providing quality, affordable housing options for low-income families at a time when it is needed more than ever," HUD Secretary Shaun Donovan said in a statement.

The financial crisis has frozen investment for Low-Income Housing Tax Credit projects as the value of tax credits has plummeted and investors remain on the sidelines, HUD said. As many as 1,000 construction projects containing nearly 150,000 units are on hold across the country.

Ohio Housing Finance Agency spokeswoman Erin Biehl said the ARRA funding would help advance at least 40 projects in Ohio.

The agency has been accepting applications for TCAP funding since June 15 and has since received one submission, she said. Financing is available for developers that were awarded tax credits in 2007 or 2008.

"It's going to help them fill any financial gaps that have been left by having a lower equity investment," she said. The credit crisis has forced developers that previously got tax credits through the program to sell them to investors at lower rates than they originally anticipated.

The federal stimulus bill also authorized state housing agencies to exchange some of the federal housing tax credit allocations into grant money for developers, she said.

Under the Tax Credit Exchange program, OHFA will convert about 10% of the agency's annual allocation, or \$21 million, to help developers that haven't been able to find investors, Ms. Biehl said.

Both the federal government and the state have a process in place to assure appropriate use of the funds, she said.

"The developers do have strict guidelines both from our agency and also from the IRS that they have to follow with any funding that they get through tax credits and that will carry over into these other programs," she said. Further, the state has an additional reporting process for federal stimulus funding applicants.

Broadband Money: Separately, U.S. Commerce Secretary Gary Locke joined Federal Communications Commission Chairman Julius Genachowski and Lt. Gov. Lee Fisher in Cleveland Wednesday to discuss the importance of increasing broadband service in urban areas.

The secretary's visit was preceded by Vice President Joe Biden's earlier announcement of \$4 billion in ARRA loans and grants designed to expand broadband service to underserved communities.

"Too many communities across America are stuck with a 20th Century information infrastructure that leaves them ill-equipped to compete in a global, 21st Century economy," Secretary Locke stated. "This initiative will reach the last frontiers of America's information landscape, and the investments we make in places like Cleveland will spur innovation and pave the way for private capital to follow."

PASSED IN THE HOUSE

HB 245 CONTINUING BUDGET (Sykes) To make operating appropriations for the period beginning July 8, 2009, and ending July 14, 2009. 83-11 (Earlier reported from Rules & Reference Committee)

THURSDAY, JULY 2 2009

REPUBLICANS WANT TO BET ON SLOT MACHINE BALLOT ISSUE FOR BUDGET REVENUE; ADMINISTRATION OFFICIALS GRILLED

Senate Republicans said Thursday they want to pass the budget now sans slot machine revenues and ask voters to authorize the governor's plan to expand gambling in November.

Meanwhile, senators got their first crack at interrogating administration officials during a lengthy hearing of a special committee created to review the details of Gov. Ted Strickland's proposal to install video lottery terminals at racetracks.

The Senate Select Committee on Video Lottery Terminals is set to resume on Friday at 10 a.m. Hearings on Saturday and Sunday have been cancelled.

Sen. John Carey (R-Wellston), chairman of the Senate Finance & Financial Institutions Committee, said the General Assembly should just pass the biennial budget (HB 1) without the contentious slot machine provision.

The money that slot machines would generate "really isn't crucial to (fiscal year 2010) revenues for education, so I think we should pass the conference report and allow the voters to vote on the VLT issue," he told reporters. "We could put together a proposal that everybody understands what it is."

A ballot issue would also give track owners greater legal cover, he said about concerns that litigation could slow implementation of the plan.

Sen. Keith Faber (R-Celina) said a ballot issue would buy more time for the administration to start developing a regulatory scheme and for racetracks to line up the necessary financing.

"If we did this by a vote of the people in November, we would still have license revenue in this biennium," he said, noting the governor's proposal only foresees gaming revenue in the final months of FY 2010. "The monthly revenue on this does not break the bank."

During the VLT committee hearing, Sen. Jon Husted (R-Kettering) asked Office of Budget & Management Assistant Director David Ellis about the idea, noting gambling revenues would generate about \$64 million in the first fiscal year, according to administration projections.

Mr. Ellis said waiting for voter approval would delay a substantial portion of the revenue and runs the risk of being rejected. "If you do not do this directly and wait for the ballot you cannot budget \$933 million... to fund the budget today," he said.

Several members asked if the administration had a contingency plan should the VLT proposal get snarled in litigation. Mr. Ellis said passing legislation was the best way to mitigate that risk.

Responding to a question from Chairman Mark Wagoner (R-Toledo), Mr. Ellis said OBM revenue estimates were based on "a fairly aggressive implementation schedule" that was possible because VLTs were a mature technology and would be implemented in a limited number of highly regulated locations.

Michael Dolan, director of the Ohio Lottery Commission, told members his agency would be able to meet the administration's proposed timeframe.

"I believe you will see that the implementation of this proposal involves relatively few complexities, can commence immediately, and be completed in sufficient time to realize the revenue as forecast," he said. "In short, this is not difficult and we can do it quickly."

Director Dolan said a central computer system to track all VLT activity would be developed in partnership with a vendor that already has experience in the field.

The fastest way to implement the program would be to use the state's existing contract with Intralot, Inc. to develop the system, he said. "While not specifically requested by Lottery, in its response to an element of the 2007 gaming system RFP asking prospective vendors to describe their general gaming system capacity, Intralot articulated its capability to offer video lottery central system management as part of its gaming portfolio."

Mr. Dolan faced nearly two and a half hours of skeptical questioning from the committee's Republican members.

Sen. Husted asked when he became aware of the governor's support for the VLT proposal. The director said he found out when the governor announced his budgetary framework nearly two weeks ago.

Director Dolan declined to answer several questions, including an inquiry about the viability of installing slot machines at Lebanon Raceway, which is located on fairgrounds and apparently would require approval of Warren County commissioners.

Sen. Husted's frustration with the director's responses became evident. "I'm asking the person who is supposed to be in charge of this and should be able to answer questions about whether it can be done," he said. "I think this exchange underscores why there are many unanswered questions and why we're uncomfortable granting the authority that's been asked of us."

"I can deliver the video lottery system in any location the legislature desires," Mr. Dolan responded.

The Legislation: The administration proposed limiting the tracks to 2,500 VLTs at each of the seven horseracing tracks for a total of 17,500 machines statewide, according to the most recent draft amendment. Track owners' commissions would be 50% of the gross proceeds and 4% of the revenue would be used for "racing enhancement."

Under the draft proposal, the Lottery Commission would purchase or lease, install, and maintain the VLTs. Tracks would have to spend at least \$80 million within five years to build or improve the facilities that house the machines and would be responsible for personnel.

Each track would pay a one-time licensing fee of \$65 million in four payments spread out between Sept. 15 of this year and Dec. 15, 2010 for a 10-year agreement. However, if gambling in Ohio were expanded through other means, the commission would return all or part of the money.

Revenue Projections: Mr. Ellis told the panel that the agency's revenue estimates of \$933.2 million for the biennium were based on "reasonable assumptions, if not conservative assumptions."

In developing the revenue projections the agency assumed there would be 2,000 VLTs at all seven track generating average daily revenue of \$206.77 per machine 361 days a year. Moreover, the administration believes the tracks will be operating at 80% capacity by May 2010.

"OBM did not assume the entire distribution of revenue would go to the state," he said. Rather, 49% or \$478.2 million would go to the education fund and \$497.1 million remains unallocated based on the anticipation that it would be distributed according to "the collaborative efforts of the conference committee."

Previous studies by the Racing Commission and ODT were based on different licensing fees and assumed the distribution of gross revenues would go toward the tracks, cities, counties and administrative costs, he said.

CONTINUING BUDGET DAY 2: STRICKLAND STAYS HOPEFUL

Debate over the short-changed, contentious state budget raged through both legislative chambers Thursday even as Gov. Ted Strickland held out hope for a speedy resolution and noted other states have it worse.

The GOP-led Senate kicked off hearings on the governor's proposal to install lottery-operated slot machines at horse racetracks as part of his "framework" to resolving a \$3.2 billion imbalance in the fiscal year 2010-2011 plan (HB 1).

The first of two planned meetings of the special committee created by Senate President Bill Harris (R-Ashland) served mostly as a forum for skeptical Republicans to grill administration officials. (*See separate story*)

Majority House Democrats, meanwhile, held the first of three Finance Committee hearings set to field concerns over a scenario in which the slots proposal is not included in the budget and the estimated revenue the machines would generate over the biennium - more than \$930 million - would instead be balanced with an equal amount of state program cuts.

Much of that hearing involved debate over whether or not Senate Republicans had in effect recommended as much since the caucus has yet to propose an alternative to the slots revenue.

Prior to either hearing, both of which lasted several hours and extended into the evening, Gov. Strickland called a news conference to declare that things could be worse - as they are in California, Illinois and Pennsylvania, where budget negotiations had all but broken down and ongoing state government operations were in doubt.

The governor struck a conciliatory tone while further arguing for the need to put "video lottery terminal" authority in statute and reiterating that the ball was in the Senate GOP's court to offer up an alternative if they do not support the new revenue component of his proposal.

"I believe we are continuing good faith efforts" to reach an agreement, he said, and again urged lawmakers to stay in Columbus and skip Fourth of July festivities this weekend to finalize an agreement.

"I was asked... to show leadership and I came forward with a plan," he said. In coming out with a rewrite of the budget in the midst of conference committee talks, he added, "I did something that is unprecedented."

Gov. Strickland dismissed suggestions that by insisting on legislation that he merely wants Republicans to also be on the hook for the divisive slots plan.

"I am not seeking political cover," he said. The slots-at-tracks proposal must be "expressly permitted in statute" in part because the machines are different than the administratively implemented keno game, which he described as a "ticketed lottery game" that was already allowed under current law.

"I have owned the VLT issue. I own that issue and I know that it very likely to be an issue in some future political campaign," he said.

Asked if he had a backup plan absent the slots revenue, Gov. Strickland responded: "I am not going to assume the responsibility of putting forth a second budget. I put forth my best choice."

Gov. Strickland also addressed Sen. Harris' contention that the gambling proposal should be put on the ballot, where Ohio voters have previously rejected casino issues.

"I believe the people have elected us to deal with this economic crisis. I believe my proposal is the best way to do that," he said.

Gov. Strickland said he has proposed enough cuts - an additional \$2.4 billion were contained in his framework.

Referring to recent Statehouse protests by human services advocates and others who maintain the currently proposed reductions will actually result in death for some of the worst-case government service recipients, Mr. Strickland said, "My wife has said to me, 'If you weren't governor you'd probably be out there in the yard with a protest sign.'"

House Hearing: The House Finance & Appropriations Committee, in the first of three hearings set by Chairman Rep. Vernon Sykes (D-Akron) to address "potential Senate budget decisions," heard from three agency chiefs and several government program advocates.

BRUTAL BATTLE LOOMING ON LIVESTOCK STANDARDS CONSTITUTIONAL AMENDMENT

With lawmakers apparently ready to advance a constitutional amendment on livestock farming, animal welfare advocates and the agriculture industry are gearing up for what could become a primal struggle for influence over voters' food supply.

The sudden introduction and passage last week of a constitutional amendment to create livestock standards board came in response to growing concerns that the Humane Society of the United States would chose Ohio for its next ballot issue to eliminate certain animal confinement practices at large scale farms.

While the measure has not yet been approved to go before the voters, the ideological chasm between the two sides - as well as their considerable financial means -holds the potential for an expensive and contentious campaign this fall.

The House and Senate appear to be at odds for the moment over which version of the proposal (HJR 2 & SJR 6) to pass, but Senate President Bill Harris (R-Ashland) said he hoped to pass the measure before the summer recess. With unanimous Senate approval and only 13 House Democrats voting in opposition, the measure stands a good chance of clearing the Aug. 5 deadline to reach the November ballot.

Paul Shapiro, senior director of HSUS's Factory Farming Campaign, said his group met with Ohio Farm Bureau staff earlier this year to try to negotiate an alternative to a ballot issue. However, since the first meeting in February, the bureau refused any further discussion and the legislature's action would eliminate that option.

"It's a very provocative move on the part of the Farm Bureau and it essentially forces our hand. Up until a few weeks ago we were still hoping the Farm Bureau would engage in discussions to come up with some way to avert these types of polarizing and costly battles at the ballot box," he said in an interview.

HSUS is still pondering how it will respond and a full-scale campaign against the proposed amendment is one option, he said. Or the group could wait until next year to counter with a different constitutional amendment.

"We'll certainly be encouraging voters to vote no this November. Whether we will have a broader campaign this November is still to be determined," he said.

HSUS has an impressive record of successfully pushing for animal confinement legislation in six other states, he said. While half of those were legislative compromises, three were successful ballot issues. The group scored its latest victory in California's general election last year, where 63.5% voters approved the measure.

Both HSUS and the agriculture industry each spent about \$9 million on their respective campaigns in California, he said. Asked whether the group was prepared to spend at that level in Ohio, he said: "We only wage ballot measures that we expect to win."

The agriculture industry in Arizona attempted to convince lawmakers there to pass a measure that would have preempted a ballot measure, but the legislature rejected the effort, Mr. Shapiro said.

By contrast, the Ohio General Assembly's swift action "represents the biggest caving of lawmakers to the agribusiness lobby" and has galvanized HSUS supporters, he said, noting the group has more than 400,000 members in Ohio and 11 million nationwide.

"It's such an offensive way to create public policy - the idea from our opponents was to go under the radar and go in a stealth manner so that there could be very little public debate about it," he said.

However, Ohio Farm Bureau spokesman Joe Cornely said the measure was an appropriate response to ensure the safety of the food supply, while protecting consumer choice and the economic feasibility of agriculture from out-of-state special interests.

"This is a proactive effort to make livestock production practices transparent, to ensure the public that what we do on Ohio's livestock farms is acceptable, and to continue agriculture as a viable business in Ohio," he said. "Its about self-determination - we believe very strongly that Ohioans should be in charge of Ohio's laws and regulations."

Mr. Cornely "strenuously" disagreed that HSUS offered to work toward a negotiated alternative to a ballot issue.

"They told us what they wanted to be the ultimate result and said to us, 'Either you will help us get our ultimate result or we will do it through the ballot.' Now to me, that's not a negotiation - that's an edict," he said.

Over the years farmers have become increasingly aware that their economic success is dependent on public approval of their food production practices, he said. A potential HSUS ballot issue "might have provided the impetuous to take a bigger, bolder step than we would have otherwise, but we might have gotten here minus any visit from the Humane Society."

Underlying the dispute is a "very deep philosophical difference," he said.

"We're at polar opposites with the Humane Society on the proper role of animals in society," Mr. Cornely said, calling the group's goal "the elimination of animals in their current way of being used by man."

"We're never going to agree with them on that. It's our belief that people should be able to utilize animals and do so in a humane way and do so regardless of what their purpose is - whether they're pets, or entertainment, for medical research or for food," he said.

While declining to discuss any details of a potential campaign, Mr. Cornely said the Farm Bureau also has an extensive network of active supporters, with about 235,000 members in Ohio. Moreover, most of the other large statewide agriculture and commodities groups support the constitutional amendment.

"We're going to be taking our message beyond just farmers and the agricultural community," he said. "I think our biggest constituency are the people who enjoy milk, meat and eggs.... This is about your right to choose how you're going to feed your family."

Mr. Shapiro said public opinion polls in the state show considerable support for proposals to ban certain large-scale livestock farming practices, pointing to a recent poll by Lake Research Partners that found 67% of 800 likely Ohio voters would vote for such a measure. Only 19% said they would oppose it.

"Ohioans care deeply about the treatment of farm animals and they oppose some standard industry confinement practices, including confining calves in veal crates and hens in battery cages," he said, pointing to poll

AGENCY BRIEFS: FIRST OHIO H1N1 FLU DEATH NOTED

The first Ohio death definitively linked to the H1N1 influenza virus was reported Friday by the Department of Health. A Butler County man in his 40s died of the flu on June 29, the agency said. "The patient had underlying health problems that may have contributed to his death."

The ODH laboratory confirmed the H1N1 infection Friday but was unable to provide further details due to patient confidentiality restrictions. "Patient contacts are being identified to determine whether public health interventions are necessary," the agency said.

"Our hearts go out to this man's family and loved ones," said ODH Director Alvin Jackson, M.D. "This is a sad, and not entirely unexpected, event as influenza and its complications cause some 3,000 deaths annually in Ohio, ranking it among the top 10 causes of death. We continue to urge Ohioans to take proper precautions and will monitor the situation closely."

A total of 332 H1N1 deaths have been reported worldwide and 127 occurred in the United States, according to ODH.

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