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Legislative Update

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MONDAY, AUGUST 24 2009

PARTISAN SPLIT AS CONTROLLING BOARD OK'S \$200,000 BOOST IN COST OF RAIL PASSENGER STUDY

A legislative panel split along partisan lines Monday to approve a nearly 50% increase in a state contract with a California consultant working on Gov. Ted Strickland's plan to resume rail passenger service across Ohio.

The Controlling Board voted 4-3, with Democrats in the majority, to waive competitive selection for a \$200,000 increase in a contract with The Woodside Consulting Group Inc. of Palo Alto.

Last March the panel approved an initial \$450,000 contract between the Ohio Rail Development Commission and the California firm.

Woodside is analyzing the capacity of existing freight rail routes on which Gov. Strickland wants Amtrak to run passenger trains from Cleveland to Cincinnati via Columbus and Dayton.

Ohio expects to submit a request to the Federal Railroad Administration by Oct. 2 for an estimated \$400 million in economic stimulus money to finance needed capital improvements to the system to handle passenger service.

Preliminary estimates call for about \$10 million in annual state subsidy for the route.

Amtrak is preparing a report, due in mid-September, on routes, capacity, ridership, costs and related issues.

The ORDC traced the need for additional funding to the application process and timeline that the FRA disclosed in mid-June.

"The guidelines and deadline required (state agencies) to accelerate passenger rail project development work that was already underway," the ORDC told the board.

"This included asking The Woodside Consulting Group to accelerate its work in order to estimate the extent and the costs of capital improvements necessary to maintain and/or enhance capacity along the rail lines being considered for the 3C service," the agency said.

The ORDC asked the consultant to interrupt its regular analysis process in order to speed delivery of estimates for needed infrastructure improvements.

Voting to approve the waiver, increasing cost of the contract to \$650,000, were Sen. Tom Sawyer (D-Akron), Reps. Vernon Sykes (D-Akron), Clayton Luckie (D-Dayton), and Board President Joe Secrest, representing Gov. Strickland's administration.

Opposing the request were Sens. John Carey (R-Wellston), Mark Wagoner (R-Toledo), and Rep. Jay Hottinger (R-Newark). Sen. Wagoner noted later he objected to the original \$450,000 expenditure earlier this year.

"I understand that they need to expedite the process. But in difficult financial times - we're trying to pinch pennies whenever we can - and it seems to me ... they could have done what they needed to do with \$450,000," Sen. Wagoner said.

OHIO VEHICLE THEFTS DECREASED 13% LAST YEAR

About 29,400 vehicles were stolen in Ohio last year, a 13.1% decline from the 34,000 cars that thieves stole in 2007, the Ohio Insurance Institute announced Monday.

New data, which are based on preliminary estimates from the FBI's 2008 Uniform Crime Report, represent an acceleration of the downward trend in vehicle thefts over the past few years. In 2005, nearly 41,400 vehicles were stolen.

Ohio's declining vehicle theft mirrors a nationwide trend, according to a National Insurance Crime Bureau report that anticipates a 13.1% decrease across the country for 2008. With fewer than 1 million stolen vehicles, last year was the lowest annual total in more than 20 years.

"This is great news for vehicle owners, law enforcement and the insurance industry," Joe Wehrle, NICB's president and CEO said in a statement.

"Comprehensive legislation, aggressive enforcement and rigorous prosecution are the three essential components to a winning crime control program. NICB is proud to contribute to each of those areas through our national legislative affairs program and our network of experienced investigators," he said.

Columbus surpassed Cleveland as the Ohio city with the most vehicle theft cases last year, with 5,311 and 5,281 respectively, according to the Ohio Insurance Institute. In 2007, Cleveland reported 6,793 stolen cars compared to 6,251 in Columbus.

TUESDAY, AUGUST 25 2009

STATE APPEALS COURT RULES FOR PROPERTY OWNERS IN LAKE ERIE SHORELINE DISPUTE

An Ohio appeals court has unanimously found that property owners - not the state - have title to un-submerged land adjoining the waters of Lake Erie.

However, the 11th District Court of Appeals split 2-1 in also concluding that the state no longer could participate in the lawsuit that prompted the ruling.

The majority opinion said the state lacked standing since Gov. Ted Strickland had ordered the Department of Natural Resources to cease activities that had initially made it a party to the litigation.

The Ohio Lakefront Group, which filed the complaint to halt the taking of private property, said it was "very pleased" with the decision.

Tony Yankel, the group's president, said "a few radical bureaucrats" had advanced a theory that all of the deeds along Lake Erie had been invalid for decades, and that the entire shore was public property.

The natural shoreline of Lake Erie stretches 262 miles within the counties of Lucas, Ottawa, Sandusky, Erie, Lorain, Cuyahoga, Lake, and Ashtabula.

"These bureaucrats claimed that the state of Ohio owned dry land between the actual water's edge and the ordinary high water mark, despite the fact that this dry land has always been private property by deed," Mr. Yankel said.

"Appropriately, the court of appeals has reaffirmed the trial court's decision that the state's interest is limited to submerged lands beneath the waters of Lake Erie and does not extend to dry land adjoining Lake Erie," he said in a news release.

"Our deeds, which at a minimum read that we own to the water's edge, are indeed valid," Mr. Yankel said.

The litigation began in 2004.

Judge Eugene Lucci of Lake County common pleas court ruled in December 2007 that shoreline landowners held title to property up to the water's edge, a constantly changing boundary.

Appellate Judge Colleen O'Toole, writing for the 11th District panel, affirmed that conclusion in an opinion released Monday.

"As we have identified, the shoreline is the line of contact with a body of water with the land *between the high and low water mark*," Judge O'Toole said.

"Therefore, the shoreline, that is, the actual water's edge, is the line of demarcation between the waters of Lake Erie and the land when submerged hereunder held in trust by the state of Ohio and those natural or filled in lands privately held by littoral owners," she said.

Judge O'Toole said that setting the boundary at the water's edge respected private property rights, while at the same time providing for the public's use of the waters and land submerged under them.

Judge Diane Grendell concurred in the opinion.

Judge Timothy Cannon concurred in the overall disposition of the case, but dissented over a finding that the state no longer had standing to proceed.

"There is nothing that *prohibits* the attorney general from appearing and representing the state when suit has been filed against it," Judge Cannon said.

"I would not suggest the attorney general needs an order from the governor or legislation from the General Assembly to defend the state in litigation without first giving the attorney general the full opportunity to brief the issue," he said.

"It is, quite simply, ground that does not need to be plowed in this case," Judge Cannon said.

The Department of Natural Resources had no immediate response to the decision.

JUSTICES UPHOLD AWARD OF DAMAGES AGAINST TOWNSHIP IN PUBLIC RECORDS DISPUTE

The Ohio Supreme Court ruled Tuesday that an award of attorney fees to the winning parties in public records lawsuits remains - with two exceptions - discretionary, not mandatory.

Justices offered that view in a 6-1 opinion involving a case from Clermont County.

The court held that township authorities who denied a public records request from an individual - but later gave the same material to a newspaper - now must pay the man \$3,000 in damages and attorney fees.

A Pierce Township resident identified as "John Doe" had asked Police Chief James Smith for records relating to an alleged arson in which a 14-year-old boy was cited.

The Clermont County Juvenile Court had previously notified police that the records were sealed. Chief Smith said in response to the records request that no information was available.

However, when a newspaper asked in mid-December, Mr. Smith provided a redacted report about the offense.

Mr. Doe asked the 12th District Court of Appeals to order Chief Smith and the Pierce Township Board of Trustees to make the requested records available for inspection and copying. He also sought statutory damages, attorney fees, and costs.

The court of appeals held that although it was reasonable for Mr. Smith to have believed - based on the juvenile court's letter - that he could not furnish the requested material, he nevertheless had violated the public records law in failing to provide a sufficient explanation.

The appellate panel awarded statutory damages of \$1,000, and attorney fees of \$2,000. Mr. Doe had sought almost \$17,000 in attorney fees.

The case then went to the Supreme Court. Justices, in an opinion that did not identify an author, affirmed the appeals court decision Tuesday.

They disagreed with Mr. Doe's assertion that a 2007 amendment to the public records law made a full award of attorney fees mandatory in all successful public records cases.

Justices said specific language in the amended statute makes attorney fee awards mandatory only in cases where a public office made no response at all to a records request, or where the office promised to disclose records by a specified deadline and failed to do so.

The Supreme Court said neither of those exceptions applied to the Clermont County case. Justices also ruled that the appeals court did not act unreasonably in awarding Mr. Doe only \$2,000 of the nearly \$17,000 he sought in attorney fees.

"(As) the court of appeals determined, a reduction in the requested fee award was further justified because (the lawyer's) hourly rate of \$250 was 'at the very top of the acceptable range for similar legal services in (the) area,'" they said.

Justice Paul Pfeifer dissented. He would have reversed the appeals court judgment.

HIGHWAY PATROL: SPEEDING IS MAIN FACTOR IN CRASHES INVOLVING JUVENILES

Speeding was involved in more than half of the 61,784 traffic crashes in 2006-2008 in which juveniles were at fault, the State Highway Patrol reported Tuesday.

The juvenile crash report, part of the latest Traffic Safety Bulletin released by the Patrol, found speed a factor in 58% of such crashes, which resulted in 27,838 injuries and 212 deaths on Ohio roadways.

"Teen drivers will be out on the roadways on a regular basis with the start of school, extra-curricular activities and sporting events," Colonel Richard H. Collins, the Patrol superintendent, said in a news release. "We need to remind our young drivers of the consequences of not obeying traffic laws and the importance of the graduated driver license law."

Over the three-year period covered by the report, state troopers issued 34,921 citations to juvenile drivers. The top five counties for juvenile citations were: Clermont (1,199), Stark (1,144), Portage (887), Fairfield (879) and Scioto (874).

So far this year, juvenile drivers have been at fault in 8,018 crashes involving 2,315 injuries and 16 deaths, according to the Patrol. Troopers have issued 5,133 citations to teen drivers so far in 2009, and 18% were for driving 20 mph or more over the speed limit.

WEDNESDAY, AUGUST 26 2009

JUSTICES SPLIT IN UPHOLDING CITY'S 'VICIOUS DOG' ORDINANCE, DISSENTER CALLS OUTCOME 'MORALLY REPUGNANT'

A split Ohio Supreme Court upheld the constitutionality of a vicious dog ordinance in Youngstown on Wednesday, prompting a dissenting justice to characterize the outcome of the case as "morally repugnant."

The 5-2 opinion was the latest in a series involving municipal ordinances and state statutes intended to deal with dogs that injure humans or pets.

Justices reinstated the conviction of Jammie Traylor. He was sentenced to 90 days in jail in 2007 after his Italian Mastiff/Cane Corso dogs attacked another man walking his 16-pound wire fox terrier in Mill Creek Park.

Police subsequently shot and killed both of the larger dogs, one of which weighed an estimated 170 pounds.

Mr. Traylor filed a motion to dismiss the charges against him on grounds the ordinance was unconstitutional. The trial judge denied the motion.

Mr. Traylor was sentenced to 90 days in jail, ordered to pay restitution, complete two years of intensive supervised probation, pay fines and costs, and to own "nothing bigger than a Chihuahua" as a condition of probation.

The 7th District Court of Appeals vacated his convictions after holding that the city ordinance was unconstitutional. The city appealed to the Supreme Court.

Justices on Wednesday reversed the appellate panel and reinstated the conviction.

Justice Evelyn Stratton, writing for the majority, said the issue before the court was whether the ordinance violated procedural due process by failing to give notice to a dog owner that an animal would be considered vicious for purposes of criminal prosecution, and/or by failing to allow an owner a meaningful opportunity to be heard on the dog's classification as vicious.

The ordinance defines a vicious dog, in part, as "any dog which attacks a human being or another domestic animal without provocation."

Justice Stratton noted that the Supreme Court in a 2004 case struck down a state law that requiring confinement of vicious dogs because it failed to provide a dog owner with a meaningful opportunity to be heard, and because the designation of vicious was based only on breed.

In the current case, she said, Mr. Traylor was not charged because of the breed of the dogs, but because they had allegedly attacked a human without provocation.

In cases from 2007, the Supreme Court upheld a Toledo ordinance limiting ownership of vicious dogs, and a state law requiring owners of pit bulls to obtain liability insurance for damages, injuries, or death the animals might cause.

Justice Stratton said Mr. Traylor was given an opportunity for meaningful review in front of the trial court, but did not present any evidence regarding the disposition of his unlicensed dogs.

"Traylor argues that an owner cannot know that his dog is vicious until he is convicted under the ordinance. To hold otherwise, however, is to permit each dog 'one free bite,' a result that would clearly leave society at risk," she said.

"A responsibility of dog ownership is to maintain and control the animal. This ordinance requires no more and no less, and, therefore, it does not violate procedural due process," Justice Stratton said.

Concurring were Chief Justice Thomas Moyer and Justices Maureen O'Connor, Terrence O'Donnell, and Robert Cupp.

Justices Paul Pfeifer and Judith Lanzinger dissented.

"The outcome of this case is morally repugnant. The owner of a dog is being sent to jail for 90 days based on his failure to do something he could not know he was supposed to do," Justice Pfeifer said.

"(Traylor's) dog was not 'vicious' until the moment it bit a human, at which point it was too late for Traylor to restrain his dog," he said.

"The most troubling part of this case isn't that a municipality would pass such an ordinance; it's that this court is sanctioning it," Justice Pfeifer said.

NIEHAUS, GRENDALL DRAFT SEPARATE PROPOSALS ON URBAN OIL AND GAS DRILLING

Five years after the legislature preempted local control of oil and gas drilling in residential areas, and two years after a faulty well caused an explosion in a nearby Geauga County house, lawmakers will soon revisit the contentious issue.

Two Senate Republicans are planning to introduce separate bills soon to address problems with previous legislation that gave the Department of Natural Resources' Division of Mineral Resources Management sole permitting authority over oil and gas drilling operations (HB278, 125th General Assembly).

Sen. Tom Niehaus (R-New Richmond), who sponsored the previous measure, has been working with the oil and gas industry and ODNR to update the law.

Sen. Timothy Grendell (R-Chesterland), who opposed the original legislation, is preparing to introduce a bill that would largely restore local control over drilling.

Sen. Niehaus said the oil and gas industry and ODNR realized the law needed to be updated.

"As with any legislation, some things are working pretty well and other things need to be revisited," he said in an interview.

"I've been extremely pleased with how proactive both the industry and the division have been in sitting down and having some very candid discussions about the issues - safety being paramount," he said.

He said the measure would include provisions to ensure greater public safety, require drilling companies to carry more insurance, provide more resources to fund inspections, and increase public notification requirements.

Discussions over revising the urban drilling program were already underway when a house in Bainbridge Township exploded in 2007, prompting stakeholders to consider a more comprehensive review, he said. The explosion was an isolated incident caused by a nearby driller's negligence, he added.

"Fortunately no one was hurt, but a lot of people were inconvenienced," he said, noting dozens of nearby homeowners' water wells were tainted and residents have had to haul in bottled water for more than a year.

Sen. Grendell said the Bainbridge incident shows his concerns about drilling in residential areas were on target.

"The state of Ohio is not in a position to effectively protect residential property owners from the adverse consequences of oil and gas drilling in residential neighborhoods," he said.

"These houses are unmarketable," he said, noting Geauga County recently reduced property tax values by 60%. "When your well's been contaminated by gas and is unusable, who's going to buy your house?"

ODNR essentially rubberstamps permit applications, he said, noting the division denied less than 1% of the 1,300 applications received last year. "Not exactly the bell-ringer of vigilance."

Sen. Grendell said Sen. Niehaus's bill appears to be an improvement over the current law, "but its not going to go far enough, is my initial reaction."

His measure would increase required setback distances, eliminate mandatory pooling, and boost safety, environmental, financial and insurance requirements, he said.

Moreover, the legislation would give communities a much greater say in where wells are drilled, although it would not completely restore local control, he said.

While still undecided how to handle the details of the thorny topic, Sen. Grendell said he was leaning toward a proposal to create a state oil and gas zoning ordinance that local entities could choose to adopt to regain authority over drilling.

"It's ludicrous to allow an industrial process in residential neighborhoods unless the local community has decided to accept it," he said.

Sen. Niehaus said the current permitting process already gives residents an opportunity to weigh in through public hearings. "I wouldn't say that it doesn't need to be increased, but there is public participation already - there's that opportunity now."

Senate hearings on the bill would help determine whether the current public participation process is sufficient, he said. "Whether we need to revisit that and look at expanding it, it's too early to tell."

Nonetheless, ODNR should retain ultimate control over drilling permits, he said. "Where does the expertise exist to evaluate safety considerations and whether or not wells are being located properly and being drilled properly? I think most people would agree the state has the expertise to make the evaluations."

Both proposals would increase fees on drillers to help pay for the state's regulatory program, since a proposed oil and gas extraction fee was removed from the biennial budget (HB 1).

Trish Lanahan, the agency's legislative liaison, said the agency agreed to scrap the extraction fee, which was projected to generate \$6.2 million, after the industry agreed to update the regulatory program in separate legislation.

The regulatory program requires \$7.1 million a year to operate and provide for additional health and safety measures, she said. The existing severance tax and permitting fees generate only about \$3.4 million and the general revenue fund provides the remainder.

"The forthcoming oil and gas regulatory program update bill will provide for the balance of resources needed through various fees and assessments and GRF support will be phased out," she said. "These include, a fee on brine disposal, a fee on all permit applications involving a mandatory pooling, increases of existing fees and a minimum per-well regulatory assessment."

Sen. Grendell said he faced "an uphill battle" in convincing his colleagues of the need to crack down on urban drilling, since most of it occurs in only the northeastern corner of the state.

"Not enough places are feeling the pain of this residential oil and gas drilling," he said. Moreover, the industry's lobbyist "is working hard at staying in contact with his friends in the legislature."

Sen. Niehaus said he didn't plan to include a provision authorizing drilling in state parks, but is open to the idea. "I am a proponent of drilling in the state parks, but I would want that money to stay in the state parks."

STATE AUDITOR ADDS TWO VILLAGES TO LIST OF 'UNAUDITABLE' GOVERNMENT ENTITIES

State Auditor Mary Taylor on Wednesday placed two villages under the "unauditable" designation, bringing the statewide total for local government entities with indecipherable finances to 37.

The Village of New Alexandria in Jefferson County and the Village of Edgerton in Williams County were declared unauditable for calendar years 2007 and 2008 because, according to the auditor's office, "records and documents necessary to conduct a routine financial audit are missing, incomplete or inaccurate."

"Village officials must maintain proper records of their financial activity in accordance with state law and established record retention schedules." Auditor Taylor said in a news release. "The failure to do so increases the potential of misspending or theft of public funds."

The auditor sent a letter last month to New Alexandria informing them that her office couldn't obtain financial statements for the years in question.

Similarly, Edgerton officials were informed last week that they had failed to complete required documentation related to financial records for the village's bank accounts on a monthly basis over the two-year period.

In both cases, village officials were told that the state auditor "reserves the right to pursue legal action" if officials "fail to revise financial records and provide the information necessary to complete the audit," Ms. Taylor's office reported.

A total of 13 villages across the state are on the list of unauditable entities compiled by the auditor's office. Most of the other 37 entities on the list are charter schools and townships.

THURSDAY, AUGUST 27 2009

INJURED WORKERS, EMPLOYERS URGE BWC CHANGES DURING FORUM

The Ohio Bureau of Workers' Compensation should crack down on fraud, restore discounts for workplace safety programs and improve services to injured workers, agency leaders were told Thursday.

Speaking at a BWC open forum, both injured workers and employers offered suggestions on how the agency can improve its operations.

Jon Lindseth, chairman of the Kindt-Collins Company, urged changes in a number of programs, including one that he said gives employers no incentive to protest "year 6" and onward claims. He said creating that incentive would help lower overall costs.

He also said the agency's maximum value claim limit is too high, noting that his firm hasn't reached the limit in its 94 years of operation.

Mr. Lindseth also raised concerns about changes in the medical program. "There's no possible justification for the bureau to do this except to increase revenue for the bureau," he said, adding that higher workers' compensation costs translate into fewer jobs for Ohioans.

Melissa James, executive director of the Norwalk Area Chamber of Commerce and leader of a local safety council program, asked the board to restore a discount for group members that make use of safety council programs.

She said a new BWC program that is billed as being free imposes real costs on employers in the form of travel reimbursements and lost productivity time. Rather, she said chamber members and non-members alike can get similar training locally at a much lower cost.

"We can't afford what actually ends up being \$14,000 in free training," Ms. James said, calculating the cost of having multiple local employers attend BWC sessions in Mansfield or Pickerington.

Stephanie Snajd said it took her two years to see a specialist to help address her injury that developed after she was exposed to chemicals at work. She said she developed a secondary condition because of that delay, which has prevented her from returning to work for five years. Had she been treated promptly, Ms. Snajd said, she likely would have been back to work in months. The witness also indicated that she had to travel from Columbus to Cleveland to see a doctor because she said local specialists weren't accepting BWC claims.

"Get the worker back to work. Save the worker money. Get them back on track," she said. "It seems the system is set up to destroy an injured worker financially and physically."

Larry Dutton, recounted his experiences from an injury sustained on the job earlier this year. He said he initially saw a physician recommended by his employer, only to find later that the company began "fighting things" after a diagnosis was produced. He said he has been denied an opportunity to see the doctor of his choice, while at the same time receiving no financial benefits from BWC.

"I still haven't received a dime from BWC," he observed. "What are my rights?"

Anthony Perry of Perry Contract Services said he has been "befuddled" by the system's operations for years. He said his company can't afford an attorney to help work on BWC issues, and said he was let down by a third-party administrator that didn't advise him about the possibility of filing for a handicap reimbursement.

Steven Snowberger, safety director for East End Welding, urged the agency to reconsider the "ill-advised" decisions to cancel stackable discounts for drug-free workplace and safety council programs. At a minimum, he said the agency should relieve employers of their commitments to the programs, given that anticipated rate reductions have been eliminated. "The compliance costs are real to employers," he said. "This has amounted to a huge burden for us."

Shawn Mafi, president of Home Health Connection and HHCI Services, said Ohio's workers' compensation rates are too high, and that the state's system doesn't adequately pursue fraudulent claims. He said his employees work in the field, where they are

unsupervised. He said the large majority of his company's injury claims are fraudulent, but said employers who have unsupervised workers are left with little recourse. "There's nothing that employers here in the state of Ohio can do about that," he said. Mr. Mafi said the introduction of private sector forces into the system would help minimize fraud, arguing that private companies scrutinize claims more closely.

ODOT AUTHORIZED TO SPEND \$54.5 MILLION FOR RAIL, REGIONAL MEGA PROJECTS

The Ohio Department of Transportation was authorized Thursday to spend \$54.5 million on four major projects across the state involving highways, multi-modal systems, and high-speed passenger rail.

The Transportation Review Advisory Council gave ODOT authority to spend an additional \$7 million through the Ohio Rail Development Commission to advance a preliminary engineering study on the Ohio Hub.

The Ohio Hub is the state's long-term plan for building a network of high-speed rail passenger routes connecting with lines to major cities in other states.

Cincinnati Eastern Corridor: In related developments, the TRAC authorized spending up to \$20 million in additional state transportation funds for the Eastern Corridor, a multi-modal program connecting the urban and suburban eastern sector of the Cincinnati metropolitan area.

The council unanimously approved ODOT's request for the money that is needed to advance preliminary engineering on the 165-square-mile proposal.

Involved in the Eastern Corridor study is new rail transit service, expanded bus service, expanded highway capacity, and updated transportation management systems.

ODOT said many key routes in the study area have traffic volumes in excess of capacity and exceed the statewide average rate of vehicle crashes. The corridor extends from Cincinnati through eastern Hamilton County and into western Clermont County.

Construction cost of the Eastern Corridor currently is estimated at a minimum \$1.3 billion.

Cleveland Opportunity Corridor: ODOT also received authority to spend up to \$10 million for the Cleveland Opportunity Corridor, a proposed link between Interstate 490 and University Circle near the city's downtown.

The three-mile route is being studied as an alternative to traffic along Interstate 90. The corridor covers about 1,000 acres on the southeast side of Cleveland, anchored by University Circle and the Cleveland Clinic.

The extra \$10 million authorized Thursday will allow ODOT complete preliminary engineering and initial environmental studies needed to determine if the project advances.

Construction estimates amount to a minimum \$300 million.

Extra funding for high-speed rail and the two corridors was made possible as a result of ODOT's allocation of federal economic stimulus money.

Stimulus funds will not be used for the regional mega projects themselves.

Instead, the federal cash will finance other roadway projects for which ODOT had previously allocated state funds. Use of the stimulus money for them frees up state cash for the work approved Thursday.

I-70/71 Split: Separately, the TRAC authorized ODOT to spend an additional \$17.5 million to complete detailed design engineering for reconstruction of the Interstates 70-71 split in downtown Columbus.

The increase brought the total TRAC allocation for the project to \$512.7 million.

Total cost of the reconstruction when completed could reach \$1.6 billion.

"ODOT's engineers continue to review how we might be able to address as much as 70% of the traffic congestion, safety, and connectivity issues by phasing the project," said Scott Varner, ODOT spokesman.

COAL MINING OVERSIGHT PROGRAM FACES FUTURE FUNDING SQUEEZE

Since lawmakers scrapped a proposed mineral "extraction fee" during biennial budget negotiations, the state's coal regulatory program will be facing a budget deficit next fiscal year that could bog down the mining permitting process.

Gov. Ted Strickland proposed the new fee in his executive budget (HB 1) to generate nearly \$900,000 to fund the Department of Natural Resources' Division of Mineral Resources Management. But lawmakers removed the provision in the face of stiff opposition from the coal industry and instead appropriated \$1.8 million in general revenue for fiscal year 2010.

However, the division faces a deficit for FY 2011, Trish Lanahan, legislative liaison for ODNR, said in an interview. She said the agency wants to pursue separate legislation that would include a fee increase on the industry to fund the program into the future.

"We're hoping that, in a non-budget environment we can have a conversation about the proposed extraction fee and explore any opportunity to raise revenue for that program," she said.

"Without the additional revenue for 2011, the program will focus its resources on health and safety priorities with inspection and enforcement. Frankly, the time it takes to review and issue permits will increase."

The program reviews coal mining permit applications to ensure proposed mines minimize environmental impacts, she said. Regulators also make sure companies obtain sufficient financial security and bonding to reclaim the land after the mining is completed.

Ohio Coal Association President Mike Carey said there was plenty of time to work out a solution before the division starts to run out of money in FY 2011.

"I think that ODNR and our industry will work in good faith to come up with something that is mutually acceptable to both parties," he said.

"Nobody wants less permits. Less permits means less coal mining, less coal mining means less severance tax coming into the division," he said. "So everybody's keenly aware we have to have a timely permitting process, and I think throughout this year we'll work together to try to come up with some resolution."

The industry doesn't dispute the division's need for additional resources, but the proposed extraction fee was an inappropriate way to generate the money, Mr. Carey said.

"We've always wanted them to have the resources. It was just we did not believe a new fee was needed that could be raised at any time," he said. "We already have a very high severance tax now."

He said recent changes freed the division from having to support the mine safety program and other obligations, he said. "Those things were no longer a drain on the operations of the division, so we felt that the small amount coming from the general revenue fund was an adequate amount."

Mr. Carey said he would like to see additional GRF to maintain the program. "We like GRF. We think that's the way it should be done, but we'll have to see what happens."

Ohio Environmental Council Deputy Director Jack Shaner said the coal industry should pony up to support the regulatory program, rather than shifting costs to taxpayers.

"Beginning with the Taft Administration, more and more environmental oversight shifted off the general fund to industry," he said, calling the proposed fee a "relatively modest" portion of the \$655 million worth of coal mined in Ohio in 2007. "What makes King Coal so special?"

Although the legislature passed a coal mining measure earlier this year (SB 73), the subject is likely to resurface soon since there were three outstanding issues that could jeopardize Ohio's primacy over the regulatory program, Ms. Lanahan said. Several years ago the federal Office of Surface Mining has threatened to if the improvements weren't made.

"There is legislative action on the horizon dealing with the coal regulatory program," she said, adding the fee could be included in a proposal to address acid mine drainage and financing for long-term water treatment.

FRIDAY, AUGUST 28 2009

SHAKE-UP AT PUBLIC SAFETY AS GOVERNOR ACCEPTS RESIGNATIONS OF DIRECTOR, PATROL CHIEF; GOP SEES ADMINISTRATION 'UNRAVELING'

Ending months of tension and conflict in the top ranks of Ohio's safety forces, Gov. Ted Strickland on Friday accepted the resignations of both his public safety chief and highway patrol superintendent.

The governor's office said Director Henry Guzman of the Department of Public Safety informed the governor Thursday of his desire to move to another role in the administration, and of the need for a fresh start at the agency.

Later on Thursday, Colonel Richard Collins agreed to submit his resignation as superintendent of the Ohio Highway Patrol.

Gov. Strickland characterized both officials as "accomplished professionals whose commitment to public service and the safety and well being of Ohioans is unquestioned. Both have served with distinction for decades."

Director Guzman will continue as department director until a successor is named.

Col. Collins has been asked to serve until the new public safety director who is selected appoints a new patrol superintendent.

Director Guzman thanked Gov. Strickland for the opportunity to lead "this truly diverse agency" with more than 4,000 employees.

"I appreciate the governor's support and look forward to continuing to serve the public to improve and enhance the quality of life for the citizens of our great state," Mr. Guzman said.

Col. Collins said in a news release from the governor's office that he "appreciated the opportunity to serve as superintendent of the finest law enforcement agency in the country."

Separately, Chairman Kevin DeWine of the Ohio Republican Party said Mr. Strickland's administration was "unraveling about as fast as Ohio's economy."

The Department of Development is currently without a permanent director, as is the Ohio School Facilities Commission. New directors have been installed at the Ohio Lottery and the Department of Job and Family Services.

"It's no wonder we're not creating any jobs in this state when the governor spends all his time rearranging deck chairs on the Titanic," Mr. DeWine said.

"It's becoming a Friday tradition for the governor's office to dump out its bad news before the weekend and hope Ohioans don't notice. With double-digit unemployment and 255,000 jobs lost in the past year, they're noticing," he said in a news release.

While the Strickland administration listed a number of accomplishments for Director Guzman and Col. Collins, there also have been a series of bumps in the road.

The latest came this month when *The Columbus Dispatch* reported a probe of Col. Collins' use of a long-standing patrol reimbursement fund without listing the transaction on financial disclosure reports. He welcomed the review, and said he complied with ethics law requirements.

The governor's office said Director Guzman had worked during his tenure to ensure coordinated response, support, and partnership with local government in areas of traffic safety, homeland security, and liquor permit enforcement.

"He was instrumental in improving communications and outreach with Ohio's diverse multicultural communities, initiating statewide efforts to enhance emergency preparedness," the governor's office said.

In April 2007, Mr. Guzman chose Mr. Collins, a 28-year patrol veteran, to become 15th superintendent of the agency. Mr. Collins was a captain serving as commander of the Findlay district at the time.

Motorists experienced two of the safest years on record during his tenure, as fatalities remained at or near historic lows. During his time as superintendent, the patrol completed installation of a vehicle fire protection system on its fleet of cruisers.

The Marion native began his patrol career in 1978 as a cadet dispatcher. He has also held assignments at posts in Marion, Mansfield and Piqua.

BWC BOARD CONSIDERS FURTHER RATE CUTS FOR PUBLIC EMPLOYERS, TOUTS TWO YEAR PROGRESS

During its anniversary meeting Friday the Bureau of Workers' Compensation reconstituted leadership team lauded premium rate cuts over the past two-years and said it was considering further reductions for public employers.

Ohio's 3,800 public taxing districts, which include cities, counties, townships, villages, and schools, could see a rate cut of nearly 20% for the policy year starting in January 2010.

Chuck Bryan, chairman of the Actuarial Committee, told the Board of Directors that staff had recommended a reduction for public employers of 17%. Committee members are considering a cut as high as 19.8%, he added.

The panel will consider specifics of the proposal and vote on next year's public employer rates during its next meeting on Sept. 25, he said.

A recent review by Oliver Wyman Actuarial Consulting, Inc. recommended BWC reduce public employer rates anywhere from 12.1% to 24%.

John Petrick, BWC's chief actuarial officer, said the proposed changes were based on projections that estimate next year's costs, with adjustments for inflation, frequency of claims, and the impact of rising or falling payroll.

"We want to avoid having to follow a decrease in 2010 with an increase in 2011, so we're cautious about the size of the decrease," he said. "That's why the administrator and staff recommend a decrease of 17%."

The potential reduction follows a 5% cut for public employers that the board approved last November. Premium rates for private employers were also reduced 5% in 2008 and 12% in 2009, and state agencies and universities saw rate decreases of 10% and 3.75% respectively.

The bureau touted the rate cuts in a review of accomplishments since the legislature replaced the BWC Oversight Commission with the independent Board of Directors replaced two years ago (HB100, 127th General Assembly).

Board Chairman Bill Lhota said the board and Administrator Marsha Ryan have made bureau operations more accountable and transparent during its tenure.

"I think we have a lot to be proud of but we're not there yet. It's a long journey," he said during the board meeting. "But we're making progress and we're making progress in the right direction."

Administrator Ryan said the board has been working to make Ohio's workers' compensation system "more insurance-like."

"Within its first months, the board took on the issue of establishing fair and stable rates for all employers," she stated.

"In the two years since addressing this difficult and often contentious subject, the rates between group-rated and non-group-rated employers have leveled off significantly, easing the cost of doing business for tens of thousands of employers," she said.

In a news release the bureau touted additional accomplishments over the last two years:

- Reducing the maximum discount to 77%.
- Imposing a 100% cap on premium increases due to an employer's claim history to limit extreme cost swings for many employers.
- Achieving an average 25.3% rate decrease for private, non-group employers.
- Creating two new insurance options (deductible and group retrospective).
- Reducing out-of-pocket cost for employers and improved safety for workers.
- Updating fee schedules for physicians and other medical professionals who provide care for injured workers.

BWC Chief Operating Officer Ray Mazzotta presented the agency's goals for fiscal year 2010, saying the bureau would focus on ensuring stable costs, better services, accurate rates, and safe workplaces.

STATE TALLIES FEWER OVERWEIGHT TRUCK PERMITS SINCE LARGE FEE INCREASE, YET REVENUES RISE

The state says higher fees on overweight trucks are generating more revenue to help offset the damage they cause to Ohio roadways, but the trucking industry says a decrease in permit issuances shows the new fees are a drag on commerce.

Oversized and overweight vehicle permits produced more than \$10.9 million in fiscal year 2009, which started more than three months before the new fee schedule went into effect last October. The Department of Transportation collected only \$4 million in FY 2008.

Meanwhile, the number of permits issued declined from 275,136 in FY 2008 to 236,466 in FY 2009, according to the agency.

ODOT spokesman Scott Varner said the national economic recession is one reason fewer trucking companies are applying for overweight permits.

Moreover, the higher cost is making companies more careful about applying for permits, he said. "Some trucking companies are only purchasing the permits they know they will need, as opposed to purchasing permits just in case - which was a common practice when the permits cost almost nothing."

Ohio Trucking Association President Larry Davis said the high cost of overloaded vehicle permits was causing shippers to think twice about moving freight through Ohio.

Some of the new fees are exorbitant, he said, pointing to a special permit for long double trailers and triple trailers, which are allowed on the Ohio Turnpike but not state highways. A permit for the one-mile trip from the turnpike exit to the trucking terminals increased from \$60 to \$3,000.

"The companies are just not doing it," he said. "I hear a lot of grumbling because gee, it costs a heck of a lot more money to move the same miles."

After years of wrangling between truckers, railroads, and manufacturers, and repeated legislative intervention to prevent fee increases for steel coil haulers, ODOT instituted new fees last year on a variety of truck configurations weighing more than 80,000 pounds, which require special permits.

The new fees were designed to better reflect the wear and tear that overloaded vehicles cause to Ohio roads and bridges, Mr. Varner said. An ODOT study found the additional maintenance costs totaled about \$144 million more than the amount the old permits collected annually.

"We have to find that right balance between, first off safety, but also maintaining our system balanced with being a conduit for commerce," he said. "We need to invest in this highway system and you don't want to do anything that puts logistics at a competitive disadvantage in Ohio."

Comparing Ohio's new fee levels to other states is difficult given differences in configuration, but the agency generally tried to bring costs more in line with neighboring states, he said.

Mr. Davis questioned whether the new fees were in line with what truckers are paying in other states, noting Ohio's 80,000-pound overweight vehicle threshold is lower than other places.

"Right now companies are just trying to keep their doors open. We certainly think we still need to make some changes and work on those permit fees in the future - get them down a little bit and make them more convenient," he said.

For example, haulers have to get different permits that are specific to one location even if they serve different businesses located in the same city, he said.

The economic recession has hit trucking companies especially hard and higher fees are only exacerbating the situation, he said.

"They've got office folks cut back to 30 hours a week, they've got a third of their trucks sitting there in a lot, they're trying to keep their doors open and position themselves for the future," he said. "Freight is just tough right now."

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