



## Ohio Township Association

6500 Taylor Road, Suite A  
Blacklick, Ohio 43004  
(614) 863-0045 • FAX (614) 863-9751  
www.ohiotownships.org  
**Michael H. Cochran, Executive Director**  
**Heidi M. Fought, Director of Governmental Affairs**

## Legislative Update

Friday, September 25, 2009

MONDAY, SEPTEMBER 21 2009

### **SUPREME COURT RULING GIVES OPPONENTS OF LOTTERY SLOT MACHINES CHANCE AT REFERENDUM**

The Ohio Supreme Court ruled Monday that legislation supporting Gov. Ted Strickland's plan to install slot machines at horse racetracks is subject to referendum, but it declined to say if he could implement it on his own.

Justices issued a 6-1 opinion that gives LetOhioVote.org, a ballot issue group, 90 days in which to circulate petitions in its drive to overturn a provision in the state budget that authorizes the Ohio Lottery to operate video slots.

"Ours is still a representative democracy in which legislators derive their authority from the citizens of our state, who enjoy a constitutional right of referendum," Justice Terrence O'Donnell said in the majority opinion.

He said the court was aware of the effect its decision might have on the state budget.

"(However), our own constitutional duty is to ensure compliance with the requirements of the Ohio Constitution irrespective of their effect on the state's current financial conditions," Justice O'Donnell said.

Gov. Strickland proposed installing up to 17,500 slot machines at seven tracks in hopes of generating \$933 million during the biennium to help balance a budget built on billions in federal aid and spending cuts.

Dissenting Justice Paul Pfeifer said that while "the budget crumbles" without the VLT-enabling legislation, the "chaos" which may follow could not be blamed entirely on the court decision.

"The governor and the General Assembly have sown the wind, and now with a budget thrown into complete disarray, we shall all reap the whirlwind," Justice Pfeifer said.

LetOhioVote.org now has 90 days in which to submit at least 241,366 valid signatures, equaling at least 6% of the 2006 gubernatorial vote, and in at least 44 of the state's 88 counties.

If it can do so, the secretary of state's office said the question would appear on the Nov. 2, 2010 general election ballot.

Gov. Ted Strickland said he was disappointed at the court's decision. "(We) need to fully review the court's judgment before determining next steps." (*See separate story*).

Attorney General Richard Cordray's office had previously argued that granting the order LetOhioVote.org sought would be a vain act.

The state contended the Ohio Lottery Commission already has authority needed to implement video gambling without the amendments contained in the budget bill.

Justice O'Donnell said the court declined to address that matter because the parties had not submitted complete evidence and argument on the issue.

"We confine our opinion here to only the narrower issue raised in this case regarding the rights of citizens to a referendum on the VLT provisions of (the budget)," he said.

"Furthermore, declining to address a legal issue not squarely before us is consistent with our reluctance to issue advisory opinions, the principle of judicial restraint, and our duty to liberally construe election laws in favor of the right to vote," Justice O'Donnell said.

Gov. Strickland directed the lottery in July to immediately begin implementing placement of 2,500 video slots at each of the seven tracks. However, he conditioned the directive on the General Assembly's enactment of the VLT provisions in dispute.

Justice O'Donnell said the LetOhioVote.org lawsuit did not deal with policy considerations, but only with whether Ohioans had a right of referendum.

He said the video lottery provisions were subject to a potential challenge because they were not tax levies, appropriations for current expenses, or emergency laws needed to preserve public peace, health, or safety.

The state argued that the VLT provisions were appropriations, and thus exempt from referendum, because they generated part of the revenue that the budget earmarks for education.

Justice O'Donnell disagreed. He said the track slots were not appropriations because they did not set aside a particular sum of money.

Instead, he said, they authorize the lottery to operate VLT games and to adopt administrative rules.

"The VLT provisions of (the budget) do not appropriate anything. A separate provision ... appropriates these funds to education," Justice O'Donnell said.

"Thus, notwithstanding the constitutional mandate that all lottery funds be spent on education, the existence of a separate line item for appropriation of the revenues by VLT's demonstrates that the VLT provisions themselves are not appropriations," he said.

Concurring in the opinion were Chief Justice Thomas Moyer and Justices Evelyn Stratton, Maureen O'Connor, Judith Lanzinger, and Robert Cupp.

### **SLOTS OPPONENTS SUBMIT INITIAL REFERENDUM FILINGS; GOVERNOR 'DISAPPOINTED'; LEGISLATIVE LEADERS REACT**

Five hours after scoring a victory in the Ohio Supreme Court, opponents of state lottery slot machines filed paperwork Monday to begin a drive giving voters an opportunity to reject expanded gambling.

LetOhioVote.org submitted referendum summary language to Attorney General Richard Cordray, and delivered 77 petitions with 2,784 signatures to Secretary of State Jennifer Brunner.

In July, both state officials rejected the documents when the ballot issue group first tried to submit them.

That led to the filing of a lawsuit on which the court ruled Monday.

Justices said parts of the state budget that support Gov. Ted Strickland's plan to install up to 17,500 video slot machines through the Ohio Lottery at seven horse racetracks are subject to referendum. (*See separate story*).

Gene Pierce, one of three members of LetOhioVote.org, said millions of Ohioans deserve the right to vote on an expansion of gambling.

"Today's court decision and our filing bring us one step closer to that public vote," Mr. Pierce said.

Voters have rejected proposals for casinos and slots four times since 1990.

LetOhioVote.org previously said it had hired a national petition management firm to collect signatures for its proposed referendum, at a cost of about \$1.75 million. Mr. Pierce identified the firm Monday as JSM Incorporated of California.

The group also said it had budgeted an additional \$750,000 in related costs, to bring its total potential spending to \$2.5 million.

Attorneys for the state said they believe funding for LetOhioVote.org comes in part from persons and companies that want to install full-scale casinos in the state.

Mr. Pierce declined to identify the group's source of funding Monday. "We will disclose our contributors as the law requires," he said in an interview.

The attorney general and secretary of state have 10 business days in which to review the proposed referendum language and supporting petitions.

If approved, the committee then could begin collecting the 241,366 signatures needed to place the statute before voters in the Nov. 2, 2010 election.

The slots legislation is on hold for at least the 90-day period, and until the election if the referendum petition drive succeeds.

Justices did not take up the question of whether the governor could try to implement the slots plan under his own executive authority.

**Strickland:** Gov. Strickland expressed disappointment over the court's ruling but offered no clues about whether he would try to proceed with the slots plan in the absence of legislation.

"We decided to pursue legislative authorization of video lottery terminals to help fill a state budget gap caused by the national recession without increasing taxes on working people or businesses during these economically challenging times," he said.

"While I am disappointed by this decision, we need to fully review the court's judgment before determining next steps," the governor said.

"The Ohio Lottery Commission has modified its agenda for (Monday's) scheduled meeting, which was to include the video lottery terminal implementation rules, to ensure adequate time to fully review and understand the impact of the court's decision," Mr. Strickland said.

In other reaction Monday:

**Senate:** Senate President Bill Harris (R-Ashland) recalled that Gov. Strickland rejected a GOP proposal in July to place the video lottery issue before voters.

"We said all along that either the voters or the courts would decide this issue. By immediately dismissing the Senate's proposed constitutional amendment to give voters the say on the front end, the governor bet on the courts and he lost. In the end, Ohio voters will still have their say," Sen. Harris said.

"Ironically, the inconvenient delay the governor was seeking to avoid has cost him even more time and funding for schools is more uncertain than ever. He rejected our proposal and pushed ahead. Now we await his solution," he said.

**House:** Speaker Armond Budish (D-Beachwood) said the court's ruling "could have a significant impact on the budget" and on Ohioans coping with the national recession.

"We will be fully reviewing the court's decision to determine the appropriate next steps. I will also be reaching out to leaders on both sides of the aisle to begin discussing the potential impacts of this decision," Rep. Budish said.

"I am hopeful that we can start a productive dialog with Ohio's best interest in mind and work through these challenges together," he said.

**Lottery:** Jeannie Roberts, lottery spokeswoman, said no VLT matters were discussed at the commission meeting Monday.

The panel is to hold an emergency meeting Thursday at its headquarters in Cleveland.

"The lottery's legal staff is reviewing the Supreme Court decision. Until such review is complete, we offer no statement," Ms. Roberts said.

### **HOUSE GOP, DEMOCRATS SPAR OVER ECONOMIC DEVELOPMENT EFFORTS**

House Republicans said Monday that their Democratic counterparts were doing nothing as Ohio's economy sinks and they urged action on 10 proposals they say could stimulate more economic development.

Democrats shot back, saying House Republicans opposed nearly every one of their job creation measures and pointed to at least 11 things they said would help reverse the state's economic slide.

The House Republican Caucus held five separate news conferences around the state to criticize Democrats for ignoring their economic development ideas.

In Columbus, Rep. Cheryl Grossman (R-Grove City) said the House Economic Development Committee met only four times for a total of two hours of hearings.

"That's inexcusable and irresponsible when you look at how many people are out of jobs," she said.

Rather than nurturing job growth, Democrats have passed legislation imposing mandates and higher costs on businesses, Rep. Kris Jordan (R-Powell) said.

"What has happened so far is we've taxed out of existence thousands of jobs at our hospitals, we've killed thousands of insurance jobs, hurt the coalmining industry in the state of Ohio and we've watched as manufacturers shut their doors and move to Indiana, West Virginia, South Carolina, and Georgia," he said.

"But we have focused our time on some other important things, such as forming a commission on bedbugs, community theater month, and Ohio turf grass week," he quipped.

Rep. Bob Hackett (R-London) outlined 10 Republican proposals he said would help spur job creation in Ohio, including bills that would offer businesses a \$2,400 tax credit for hiring an unemployed worker (HB 277) and grant tax credits to college graduates who remain in Ohio (HB 144).

He cited several measures that the caucus said have not yet been introduced, including proposals that would: offer tax credits for specialized crafts; reduce the estate tax; create a zero interest loan program for small businesses; require the administration to track job placement success and report on why companies chose to leave Ohio.

For their part, House Democrats touted several economic development measures they passed over GOP objections.

"Over the past 10 months, House Republicans have offered few ideas and said no to nearly every Democrat-led effort to create jobs and get our economy moving again," Rep. Matt Szollosi (D-Oregon) said in a statement.

"Today's announcement by House GOP members is a positive sign that they have decided to reverse their opposition to the job creation initiatives we've put forth and start joining our efforts to help get Ohio's economy moving again," he said.

The caucus pointed to the \$1.9 billion appropriation of federal stimulus funding for infrastructure projects included in the transportation budget (HB 2) and several provisions of the biennial budget (HB 1), such as:

- Creating the New Markets Tax Credits to attract development in low-income areas.
- Authorizing a Film Tax Credit.
- Creating the Technology Investment Tax Credit for high-tech jobs.
- Establishing the Sporting Events Incentive.
- Expanding the Venture Capital Fund.

The caucus also touted the school funding and education policy overhaul included in the biennial budget and tuition caps on state institutions as economic development measures.

### **ENERGY CONFERENCE HIGHLIGHTS DIVERGENT VIEWS ON STATE, FEDERAL POLICES**

Monday's "Managing Ohio's Energy Future" conference in Hilliard shed a light on the polarizing views surrounding the subject, particularly the pending "cap and trade" climate change legislation currently before Congress.

U.S. Sen. George Voinovich (R-Cleveland) blasted the measure in a speech to the conference, sponsored by the Ohio Chamber of Commerce and other business-oriented interests behind the Ohio Climate Change Dialogue Group.

Environmental advocates countered that new federal regulations would spur Ohio's economic growth in the "clean energy" sector.

Sen. Voinovich, who led the effort to kill similar legislation in the prior session, said he agrees with some concerns about climate change but argued that the cap-and-trade proposal isn't the proper course of action, in part because developing economies such as China wouldn't follow suit with similar environmental protections and restrictions.

"I believe the threat of climate change is very real, and I believe that we must take action as a leader in a worldwide effort to reduce the emission of carbon dioxide," Sen. Voinovich said. "But as we have seen, developing countries have no interest in adopting legally binding emissions reduction policies."

"Unilateral action will not get us there and those that advocate adopting stringent (greenhouse gas) reduction policies under the premise that 'if the United States leads, other nations will follow' are, in my view, naïve. Unilateral concessions in the context of high-stakes international negotiations are never a good idea."

Sen. Voinovich said the bill's GHG limits and renewable electricity mandate would have negative impacts on economies in Ohio and other Midwest, Great Plains and Southeast region states that depend on coal for energy needs.

The proposal, he said, "Contemplates a massive bureaucratic intrusion into American's lives that will have a profound impact on businesses, communities and families with little or no impact on global temperatures."

Environmental advocates, including Environmental Defense Fund Director of Economic Policy and Analysis Nathaniel Keohane, disagreed, saying the federal bill would in fact spur economic growth.

"There is no such thing as 'business as usual' anymore in the climate and energy field," Mr. Keohane said in a statement. "We can see a robust growth of the US economy even with caps on carbon. The clean energy economy is poised for growth."

Andrew Keeler, professor at the Ohio State University's John Glenn School of Public Affairs, said, "The money we would spend reducing green house gases pays economic benefits no matter how you model it. Cap and trade creates broad and efficient incentives for us."

"Using market signals as a part of our response to climate change is good public policy," he added. "It is the most flexible and least intrusive. We are better served if we embrace this in a forward looking way."

Supporters of the legislation pointed to a recent study by the Center for American Progress and the Political Economy Research Institute at the University of Massachusetts-Amherst, which found that the proposal would create 1.7 million jobs, including 67,356 "new clean energy jobs" in Ohio.

"The new energy economy will be bigger than any other economy the U.S has seen," opined Steve Melink, owner and president of Melink Corporation in Milford. "Our company and many others investing in energy efficiency and renewable energy are creating jobs not losing them."

Sen. Voinovich, however, argued that a calculation of the bill's allocation formula using Ohio emissions levels "reveals that Ohio families and workers would be subsidizing their competitors to the tune of \$688 million - assuming a modest carbon price of \$15 per ton - in the first year of the program alone.

"Perhaps the green jobs that the Waxman-Markey proponents are referencing aren't actually US jobs, but jobs in China," he added. "Instead of using the power of the government to increase energy costs, we should use it to decrease barriers to investments in energy solutions."

### **GROUP GIVES OHIO 'C' FOR PROMOTING FINANCIAL STABILITY IN NATIONAL SCORECARD**

Ohio finished in the middle of the pack in a report released Monday that ranks states for their policies toward supporting financial security.

The 2009-1010 Assets & Opportunity Scorecard, released by Policy Matters Ohio and the Corporation for Enterprise Development, is billed as a "comprehensive assessment of family financial security that considers earnings, debt, health insurance, child care, savings, asset-building, and acquisition of education and training."

The scorecard rates the states based on 92 "outcome and policy measures." Ohio received a "C" based on a grading curve.

The report found that the U.S. "as a whole does a poor job of relieving poverty, reducing debt, and ensuring health insurance and retirement."

Ohio's lower scores came as a result of "high debt, low savings, lost jobs, high unemployment, and low educational attainment, the groups found. The state's best scores were for "benefits provided by employers and for the strong moves that lawmakers have made to try to regulate payday lending (albeit, unsuccessfully)."

"Ohio's legacy of union and manufacturing jobs means that we still do a better job than most states of providing health and retirement benefits through the job," Amanda Woodrum, a Policy Matters researcher who authored the report, said in a news release. "We need to do a better job of educating Ohioans, generating high-quality jobs, supporting saving, and protecting what Ohioans have earned."

Among the report's findings, Ohio:

- Earned an A for access to health insurance because 66% (rank 14) are insured by their job and pay an overage share of 23% (rank 11) for those benefits.
- Ranked 7<sup>th</sup> in the nation for the percent of workers participating in an employment-based retirement plan in 2007.
- Ranked 46<sup>th</sup> among states for its high bankruptcy rate and 49<sup>th</sup> for its high foreclosure rate.
- Ranked 40<sup>th</sup> for the percentage of families - 15 - that have zero or negative net worth.

- Ranked 40<sup>th</sup> for the percentage - 30 - of households with no checking, savings or money market accounts.
- Ranked 40<sup>th</sup> for its high unemployment rate and 44<sup>th</sup> for its employment growth of minus 1% from 2007 to 2008.

Policy Matters said the findings point to the need for Ohio policymakers to, among other things: adopt a refundable earned income tax credit for families with children that earn less than \$45,000; make the dependent care tax credit refundable; and provide "universal, high-quality early childhood care and education."

TUESDAY, SEPTEMBER 22 2009

**GOVERNOR SAYS TAX HIKE BACKERS 'FLAT OUT WRONG,' COUNTERS VOINOVICH, SEES NEED FOR DEMOCRAT COURT**

Gov. Ted Strickland on Tuesday branded as "flat out wrong" calls for higher taxes to solve Ohio's budget problems, and indicated a Democratic Supreme Court might have ruled differently on his racetrack slot machine plan.

The Democratic governor also delivered his strongest rebuke yet to criticism over his policies from U.S. Sen. George Voinovich (R-Cleveland), a former governor.

Gov. Strickland said people who have been calling for tax increases were out of touch with problems facing families and small businesses.

"Maybe in their ivory towers a tax increase seems like something that would not be painful or harmful. I have said that I think a tax increase could - could - have the effect of deepening the recession and causing it to last longer. And I continue to hold to that belief," he told reporters.

Gov. Strickland's comments came one day after the Ohio Supreme Court ruled 6-1 that his proposal to install up to 17,500 slot machines at the state's seven horse racetracks is subject to a referendum.

Justices gave LetOhioVote.org 90 days in which to circulate petitions in an attempt to put the question of expanded gambling, through the Ohio Lottery, before voters in the Nov. 2, 2010 general election.

"I think those who believe that higher taxes are the answer to Ohio's economic needs and economic recovery are flat out wrong. I obviously will look at all the options available to me," Gov. Strickland said.

"But for those who seem to take great glee and use phrases like, 'Hot dog, now they're going to have to raise taxes,' I find that troublesome," he said.

"Because I think it doesn't reflect, quite frankly, the level of maturity that I think ought to be expressed when the state of Ohio is facing the kind of serious problems that we are facing," the governor said.

Mr. Strickland referred to a report in *The Columbus Dispatch* that quoted Sen. Voinovich, upon hearing about the court ruling, as saying "hot dog!" and citing a need for the state to raise taxes.

"When a United States senator says 'hot dog,' and then says, 'now they're going to have to raise taxes,' that seems like an immature response to a very, very serious set of economic circumstances facing our state," he said.

Gov. Strickland recalled he had talked numerous times with Sen. Voinovich urging him to support federal economic stimulus legislation.

"At one time in those conversations he said, 'Governor, we're not going to give the states money to pay their bills with.' So he had an opportunity to help Ohio and he chose to vote against Ohio, in my judgment, when he voted against that stimulus bill," the governor said. "I think his vote was irresponsible."

Mr. Strickland said that had the bill not passed, Ohio likely would be facing a deficit of at least \$5 billion.

As he has done on previous occasions, Mr. Strickland declined to totally rule out the option of seeking a tax increase.

"I have never said in all of my political life what I would or would not do regarding taxes or anything else in a pre-emptive way because I just think that is hugely irresponsible for any political person to do that. You have to make decisions as you confront circumstances," he said.

The Supreme Court on Monday put on hold for at least 90 days provisions in the state budget that the governor sought to support his directive ordering the lottery to install video slot machines at the horse tracks.

The proposal is intended to raise \$933 million over the next two fiscal years.

Justices ruled that the lottery budget amendments were not appropriations that otherwise would be exempt from referendum.

Gov. Strickland was asked if a Supreme Court with a Democratic majority might have reached a different conclusion.

"I think this ruling - without wanting to speak disparagingly of the court - I think this ruling is but one more example of why the Chief Justice was correct when he said the court would benefit from having a variety of philosophies and political points of view represented on it. Absolutely," he said.

Gov. Strickland said administration officials are examining whether he has authority to implement video lottery terminals on his own, in the absence of the budget provision.

### **SENATE TAKES UP TELECOM REGULATION OVERHAUL AS STAKEHOLDERS DEBATE IMPACT ON CONSUMERS**

As a Senate committee delved into a proposal to overhaul telecommunications regulation Tuesday, the industry and consumer advocates dispute whether the bill would ultimately benefit or gouge customers.

Sen. Steve Buehrer (R-Delta) told members of the Senate Energy & Public Utilities Committee that the law should be updated to reflect massive changes that have occurred in the telecom industry in recent years.

"Now it is time to eliminate much of the traditional framework of the regulation and move to a more market-oriented yet consumer-friendly model. This bill adopts these needed reforms," he said in sponsor testimony (SB 162).

Local telephone companies have lost more than 40% of their traditional landline customers as consumers have shifted toward cell phone and voice-over-Internet-protocol (VoIP) providers, which are "very lightly regulated" by the federal government, he said.

The measure would also attract investment in high-tech infrastructure and spur economic development in the state, while preserving consumer protections, he said.

Under the bill, the Public Utilities Commission of Ohio would certify new telephone companies, he said. The agency would continue registering wireless service providers and maintain authority over phone number administration and portability, universal service funding, truth in billing, outage reporting, and 911 obligations.

The proposal would apply the Ohio Consumer Sales Practices Act to telephone companies and the PUCO would oversee complaints and investigations and would maintain rulemaking authority, he said.

"Now that there's competition, it only makes sense to update state law and policy to reflect the reality of today's marketplace," he said.

However, Ohio Consumers' Counsel Janine Migden-Ostrander questioned whether slack regulations on wireless and VoIP providers justify deregulating telephone companies.

"The bill is premised upon the fact that we have true competition in the state for telecommunications services, when the fact of the matter is that we do not," she said in an interview.

She pointed to rural areas where residents lack access to broadband and reliable cell phone services. "If those aren't available and you deregulate the phone lines, then what you have is the opportunity for local telephone companies to increase rates for consumers without any kind of check."

Just as the deregulation of electric utilities has resulted in more frequent power outages, deregulating phone companies will likely diminish the quality of line maintenance, she said.

For example, the measure would eliminate the requirement for telephone companies to automatically credit customers' accounts when they fail to repair service within a specified period of time, she said. Instead customers would have to initiate a complaint process.

"Now how many customers are going to know they can even do that, and what is that going to mean in terms of utility companies having the incentive to go in and make repairs quickly?" Ms. Migden-Ostrander said. "The consumer protections we have now in place - they work, they're decent. Why should we take those away?"

Ohio Telecommunications Association President Charley Moses disputed the consumer counsel's analysis, saying the PUCO would continue to regulate landline rates for consumers under the proposal.

Telephone companies agreed to "provider of last resort" conditions that would require them to offer landline-only service, he said.

"If you just want a basic line, you can get it. And that price is regulated, just like it is now," he said. "Much of what this bill does is codify the current practice of the PUCO."

The proposal is necessary to address the "massive shift" away from landline telephone service, which now serves fewer than 4 million people in Ohio, compared to about 9.1 million wireless customers, he said. Although traditional wireline providers have far fewer customers than other options, "we still have much of the traditional regulatory burden."

"We think the bill's good for consumers because if you modernize the process, it allows the companies to invest more in Ohio's infrastructure," he said.

Ohio Cable Telecommunications Association Executive Director Jonathon McGee said his organization opposes the measure.

"We think it's a bill that deals primarily with incumbent deregulation and that there's some things on the competitive side that should be addressed as well," he said.

Chairman Chris Widener (R-Springfield) said he would continue holding hearings on the measure. "We're not going to rush anything but we are interested in regulatory reform."

### **COURT RULING ON SLOTS REFERENDUM COULD DELAY ACTION ON SEPARATE LAWSUIT AGAINST LOTTERY PLAN**

The Ohio Supreme Court on Tuesday asked parties in the latest lawsuit over lottery slot machines at horse tracks for their views about whether justices still have jurisdiction to hear their case in light of a potential referendum.

The Ohio Christian Alliance in Akron and three House Republicans filed a complaint last week against Gov. Ted Strickland and the Ohio Lottery Commission.

The lawsuit contends provisions in the state budget enabling installation of video slot machines are unconstitutional.

Acting on their own initiative, justices Tuesday ordered lawyers for all parties in the case to file arguments on the issue of whether the court now has jurisdiction to proceed in view of its decision on a related matter.

Justices ruled Monday in a case involving LetOhioVote.org that the slots portions of the budget were subject to a voter referendum.

As a result of the court ruling, those provisions were blocked from taking effect for at least 90 days and potentially much longer, depending on the success of slots opponents in circulating petitions for a Nov. 2, 2010 referendum.

However, the same budget language in dispute also vested the Supreme Court with exclusive, original jurisdiction over any claim that the provisions were unconstitutional.

Sen. Timothy Grendell (R-Chesterland), the attorney representing the Ohio Christian Alliance, said opponents normally would have been required to first file their complaint as a declaratory judgment in a common pleas court.

"But because (the budget) has that language that gives the Supreme Court direct jurisdiction ... we ended up going directly to the Supreme Court," Sen. Grendell said in an interview.

"Yesterday's ruling by the Supreme Court, they may be interpreting as having said that (the lottery provision) is not in effect yet for 90 days because of the referendum process," he said.

"If that is true, then the clause that gives direct jurisdiction to the Supreme Court is not in effect yet for 90 days ... and therefore we should go back to the lower court and re-file," Sen. Grendell said.

Justices on Tuesday gave parties in the case up to 18 days to file briefs on the issue of jurisdiction.

### **HUSTED ASKS SUPREME COURT TO OVERTURN BRUNNER RULING ON HIS VOTING RESIDENCE**

A dispute over the voting residence of Republican secretary of state candidate Jon Husted wound up Tuesday at the Ohio Supreme Court.

Sen. Husted asked justices to overturn Democratic Secretary of State Jennifer Brunner's decision to cancel his voter registration in Montgomery County after concluding that he lives in the Columbus area, not in Kettering.

An expedited election matter Sen. Husted filed seeks a court determination that he is a resident of Montgomery County for election purposes.

He also asked justices to order the Montgomery County Board of Elections to maintain his name on poll books and treat him as a validly registered elector pending resolution of the lawsuit.

Sen. Husted charged Secretary Brunner abused her discretion, ignored facts, and clearly disregarded the law by concluding that he was not a resident of Montgomery County.

"The documentary evidence consistently supports (Sen. Husted's) sworn testimony regarding his continued presence in Montgomery County and his unwavering intention to remain a resident of Montgomery County," the complaint said.

It notes that as a candidate for statewide office, Mr. Husted must circulate and file a declaration of candidacy by Feb. 18, 2010.

"The declaration of candidacy form requires that (he) attest, under penalty of election law, that he is a 'qualified elector' of his 'voting residence,'" the complaint said.

It alleged that Secretary Brunner's delay and decision have jeopardized Mr. Husted's ability to vote in Ohio and run for elected office.

**Brunner Decision:** Secretary Brunner late Monday settled the tie election board vote over Sen. Husted's residency status, finding that her would-be successor should have his voter registration canceled in Montgomery County because he lives in the Columbus area.

Sen. Husted said he would seek a reversal of the decision in the courts.

The Montgomery County Board of Elections had deadlocked twice on the issue of whether or not Mr. Husted was a resident for voting purposes, with both Democrats finding that he wasn't and both Republicans siding with the former House speaker.

In a 12-page finding released at about 10:30 p.m., Secretary Brunner cited an Ohio appeals court decision in a previous case and stated that Mr. Husted's circumstances fit a "similar fact pattern."

As such, she said, "His voter registration should be cancelled by the Montgomery County Board of Elections, despite the fact that he is a state elected official who serves in Columbus but says he intends to return to Kettering."

Sen. Husted called the secretary's ruling "another partisan, political decision that is typical of Jennifer Brunner."

"During this dispute Jennifer Brunner failed to follow the law and exceeded her authority," he said in a statement. "Since I could not get a fair resolution from Jennifer Brunner, I will file a legal action and ask for the courts to decide the matter so that I can exercise my right to vote in the November elections."

Mr. Husted seeks the Republican nomination for secretary of state in the 2010 election. Ms. Brunner is running for the Democratic Party nomination for the U.S. Senate next year.

With the matter dating to last October, when a letter questioning his voter status was sent to the election board, the lawmaker had asked the Ohio Supreme Court to order a dismissal by Secretary Brunner because no proper challenge was made and because of an unlawful delay in determining the outcome.

The court, however, only ordered Secretary Brunner to make a decision within seven days.) Her office said it had to release the decision before Tuesday, hence the late-night announcement.

In his prior court filing, Mr. Husted acknowledged that his wife owns a house in the Columbus area and that he stays there with his family "when he is in Franklin County on public business."

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

Ms. Brunner noted in her ruling that among the legal standards governing voter residence is: "The place where the family of a married person resides" except "when the spouses have separated and live apart...."

**Other Reaction:** Progress Ohio filed the original complaint against the lawmaker. Brian Rothenberg, the group's executive director, said in a statement released Tuesday: "The fundamental issue here remains: do public officials have special residency rights when it comes to voting?"

"We filed this complaint because the Franklin County Prosecutor was pursuing charges against Vote From Home students for registering to vote at a home in which they were living in and working out of. I'm sure this will ultimately be decided by Courts, but those young kids were disenfranchised during the Presidential Election, and Mr. Husted's vote still stands."

Senate President Bill Harris (R-Ashland) said the secretary's decision would not affect Sen. Husted's representation of the 6<sup>th</sup> Senate District. He said that status is "not challengeable."

"It's up to us to decide in relationship to a member of our caucus," he said. "There is no doubt in our mind that Jon Husted is a very important member and it's our objective that he remains in that position."

Rep. Jennifer Garrison (D-Marietta), a Democratic candidate for secretary of state, said the ruling raises questions about Mr. Husted's fitness to serve in the statewide office.

"I have stated since I announced my candidacy for Secretary of State, if you want to be Ohio's Chief Elections Officer then you must follow election and campaign finance law," she said. "Candidate Jon Husted has failed to meet the simplest of requirements - to live in his own district."

Ohio Republican Party Chairman Kevin DeWine accused the secretary of state of playing politics and not following the letter of the law.

"Brunner's ties to Progress Ohio are well documented, and she is notorious for her willingness to manipulate the law for partisan advantage," he said. "She's been wasting taxpayer dollars on this case for months by tossing it back and forth with fellow Democrats on the county board of elections in an effort to generate negative publicity and damage a political rival."

## **SENATE COMMITTEE HEARING**

### **Energy & Public Utilities**

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

Sen. Buehrer said in sponsor testimony that the measure would modernize the call-before-you-dig law. "This bill focuses primarily on safety, fixing liability and improving day-to-day operations that go unseen by the public."

Ohio has two underground protection services throughout the state that have been in discussions over merging since the FCC designated 811 as the nationwide call-before-you-dig system in 2005, he said. "Both services recognize that operating two separate systems in a post-811 world makes little sense."

The bill would require all parties to share the cost of operating the underground protection service and would create the State Underground Protection Fund to pay administrative and enforcement costs, he said. Remaining money would be used at the discretion of the commission to improve public education and further the mission of the program.

An advisory committee would review and investigate violations and make recommendations for corrective actions and civil penalties to the new Underground Protection Commission, he said. The three-member panel appointed by the governor would review and investigate complaints and impose corrective action if necessary.

Sen. Buehrer said he has been meeting with interested parties for more than two years to develop the bill. There are currently more than 100 groups that have expressed an interest in the legislation.

Chairman Widener asked how the measure would affect liability. The sponsor said that was "one of the more difficult areas" that involves many technical variables and a working group was trying to find an acceptable solution.

"There's questions of depth, there's questions of terrain. We're trying to fix that liability question so that it doesn't fall completely on the contractor and it doesn't fall completely on the utility," he said.

SB 162 TELEPHONE REGULATION (Buehrer) To revise state regulation of telephone companies, remove telegraph companies from utility regulation, and revise law concerning confidential information of public utilities. (1st Hearing-Sponsor) CONTINUED

WEDNESDAY, SEPTEMBER 23 2009

### **HOUSE OPENS HEARINGS ON EXTENSIVE OVERHAUL OF ELECTION LAWS**

The House began hearings Wednesday on a comprehensive overhaul of election laws that sponsoring Rep. Dan Stewart (D-Columbus) said would save money and ensure "safe, secure and accurate" balloting.

Rep. Stewart, chairman of the House Elections & Ethics Committee, delivered sponsor testimony with co-sponsor Rep. Tracy Heard (D-Columbus).

Among components identified as key in the measure (HB 260) were provisions to reduce the use of provisional ballots, enhance the statewide voter registration database, clarify existing voter identification rules, **eliminate existing special election days**, allow vote-by-mail for special federal elections needed to fill vacancies in the U.S. Congress, and reduce to 21 days the period for in-person absentee voting prior to a general election.

"While this is the most comprehensive approach to election enhancement, I'm sure Rep. Heard would agree that many details have the potential for improvement," Chairman Stewart said.

"However, we must keep in mind ... that with issues as complex as modern day elections we need to find the right balance, and also remember that every time we change something with election law we affect something else," he said.

Rep. Stewart said he hoped for enactment by the end of the year in order for the changes to take effect for the May 4, 2010 primary.

Rep. Robert Mecklenborg (R-Green Twp.), the ranking minority member, said that was "a very tough timetable," but pledged cooperation in the committee process.

"Now, that is not to say that we're going to be agreeing, but we certainly will - on the process side - work with him in that regard," Rep. Mecklenborg said in an interview. "I'm not going to say that it should be in effect before the May primary because I may end up ultimately not voting for this. However, I will say that if there is going to be legislation ... it would make sense for it to be in effect before the May primary which is usually a much lesser turnout and easier for the boards of election to deal with."

Rep. Heard said the legislation includes many recommendations from a series of election conferences that Secretary of State Jennifer Brunner coordinated.

"This comprehensive enhancement bill will ... make life easier for Ohio voters and elections officials. Instead of frequent and often bewildering changes in the law, we can now eliminate huge areas of confusion by making necessary changes all at once," Rep. Heard said.

Among its many provisions, the bill would:

- Eliminate a requirement that a person reside in the precinct in which the person offers to vote.
- Permit voters who have moved within a county, or who have changed their names and moved within a county, to vote a regular ballot, rather than a provisional ballot.
- Require the secretary of state and motor vehicle registrar to match information in the statewide voter registration database with motor vehicle records, as federal law requires.
- Require the secretary of state to adopt a rule for notifying county election boards of any relevant non-match identified.
- Generally prohibit ballot language for any state or local question, issue, or amendment from exceeding 300 words.
- Lower the percentage of votes required for a political party to retain its party status.
- Permit the secretary of state to implement a pilot project to evaluate use of county vote centers for general elections for state and county office in 2010 as an alternative to operating precinct polling places.
- Increase from one to four the number of locations at which a board of elections may permit absentee ballots to be cast in person before the day of an election.
- Eliminate special elections in February and August.

Rep. Mecklenborg objected to a section that permits voters to use identification issued through a nonprofit organization or business in order to cast a ballot. "It should be a state sanctioned ID," he said. He also raised concern about a provision that permits submission of applications for absentee ballots via the Internet.

"The concern is that it would have ... a non-profit type organization establishing a computer base from which people would mass register with no legitimate verification of the signature," Rep. Mecklenborg said.

Overall, he agreed with Chairman Stewart that "there is some common ground" in the legislation.

Rep. Jennifer Garrison (D-Marietta) voiced support for giving election boards the option to conduct voting at remote site locations on the Sunday and Monday prior to an Election Day.

"That's extremely important to me. Those remote access sites are a way to increase voter participation," she said.

Rep. Stewart said county commissioners and election boards contend voting on those days interferes with preparations for a Tuesday election.

Rep. David Daniels (R-Greenfield) questioned whether estimated costs of complying with the bill would outweigh projected savings.

Rep. Edna Brown (D-Toledo) recalled an incident from last November's election in which voters were challenged for carrying into a polling place literature, displaying a photo that had been properly distributed outside the building.

The secretary of state's office said that in the absence of an emergency clause, enactment of the measure would have to occur by Dec. 29 in order for worker training and other steps in advance of the May 2010 primary.

Chairman Stewart said the panel might hold public forums and subcommittee sessions outside Columbus in addition to Statehouse hearings.

### **BOND RATING AGENCY GIVES STATE 'NEGATIVE' OUTLOOK OVER SLOTS MORASS**

Having already put a chunk of K-12 education funding in jeopardy, the lack of certainty around Gov. Ted Strickland's slots-at-racetracks plan has caused a national bond-rating agency to lower its outlook for Ohio's general obligation debt to "negative."

Standard & Poor's Ratings Services announced its outlook revision on Wednesday while maintaining a long-term rating of the GO debt, which plays a part in the state's cost of issuing bonds, at a relatively high AA+.

"We base the outlook revision on our view of the increased implementation risk associated with the recently authorized video lottery terminal plan that was included in the state's fiscal 2010-2011 biennial budget," S&P credit analyst Robin Prunty said in a statement.

The rating firm cited Monday's Ohio Supreme Court's decision that the related budget language is subject to a referendum, which slots opponents are targeting for the 2010 ballot.

"This was a key component to balancing the budget and was expected to generate nearly \$1 billion over the biennium. The court decision adds uncertainty about the timing and realization of these revenues, which were one of the primary revenue enhancements included in the budget and represent a significant risk to Ohio's current budget plan in our view," S&P stated.

"While the state has proactively managed its budget and has made revenue and expenditure adjustments as necessary to restore balance, Ohio has substantially diminished flexibility, in our opinion, following the depletion of the budget stabilization reserve and the ongoing use of general and other state reserves."

Under constitutional requirements, money from the VLT's, because they would be operated by the Ohio Lottery Commission, must be dedicated to K-12 education programs. However, the Conference Committee on the Budget (HB 1), while assuming some \$933 million from the new slots revenue source, backed also out more than \$1.1 billion in general revenue funds from the Department of Education budget.

Strickland spokeswoman Amanda Wurst said Ohio has faced the same budget challenges as other states.

"While Standard and Poor's changed the outlook, all three credit rating agencies, including the S&P, have maintained Ohio's credit rating, which remains the highest quality," she said. "The change in outlook underscores the seriousness of the situation and the need for a collaborative response to Ohio's budget challenges."

"Fortunately, Standard and Poor's, and all three rating firms, have recognized Ohio's sound and proactive financial management despite the challenges of the national recession. Standard and Poor's also made positive note of Ohio's long track record of responsibly managing budget volatility."

Fitch and Moody's rating services had previously cut Ohio's bond ratings from the second- to third-highest levels while revising the state's outlook to "stable." Those two firms have yet to react to the VLT circumstances.

S&P said other factors in Ohio also continue to contribute to concerns.

"We continue to believe that below-average economic performance and a high reliance on nonrecurring measures to balance the current budget will make the return to structural balance more challenging," Ms. Prunty said.

However, S&P added in its release, "Despite these challenges, Ohio has a long track record of managing budget volatility, which continues to be a positive credit consideration in our opinion. We will review the state's response to this revenue uncertainty and how it affects overall structural budget balance."

### **BWC CHIEF DEFENDS GROUP-RATING CHANGES, SAYS THEY BRING MORE BALANCE TO SYSTEM**

BWC Administrator Marsha Ryan repeatedly told members of the Workers Compensation Council Wednesday that group-rating premium increases are part of an essential balancing act that will lead to a legitimate system.

"Getting it right is painful. We all looked for opportunities to make this gradual," she told the panel in presenting a statutorily-mandated report on the state's group-experience-rating program.

Ms. Ryan said the underpinnings of rate reform is BWC's commitment to all employers to establish the right rate for the right risk. She noted the report - submitted to the legislature on Sept. 15 as mandated by law (HB79, 127<sup>th</sup> General Assembly) - declares that by providing more accurate, competitive rates and new performance-based programs, Ohio's workers' compensation system can become an asset for economic development and provide more options for all employers to reduce costs and improve safety.

Highlights of the plan include a decoupling of discounts for group-rated employers and the off-balance factor used to increase rates to offset the discounts, reducing base rates for July 1, 2009 by 25.3% on average, increasing group-rated employers' premiums by an average of 9.6% and capping increases in an employer's individual experience modifier at 100% if the employer's EM is 1.01 or greater and the employer agrees to participate in BWC-approved safety programs. Additionally, the plan implements new options of a deductible program and a group retrospective rating program to provide more performance-based options for employers seeking cost controls.

Administrator Ryan pointed to the study in stating that the signature achievement of the plan is that non-group employers' rates will more accurately reflect the level of risk they bring to the system and are not inflated to cover premium shortages caused by the group-experience rating program. "By setting the base rates for all employers independent of the pricing actions in group-experience rating, BWC eliminated any change of non-group employers bearing any additional costs created by group formation," the study declared.

The BWC, to ensure group employers pay premiums that reflect the costs they bring to the system, implemented a break-even factor for group employers. The factor, which adjusts the discount level for all group participants to the right level for the risks in the group, resulted in a 9.6% increase in group premiums after all adjustments. Besides establishing a collective balanced premium collection, the plan is expected to ensure non-group employers are paying the right rate, and despite the changes, the majority of employers participating in group will continue to receive lower premiums through their participation.

Further, BWC implemented changes related to the group-experience rating program and initiated changes with respect to the rules governing which associations are eligible to sponsor a group-experience-rating or a group-retrospective rating program.

Ancillary items considered in the rate reform evaluation, Ms. Ryan said, included premium volatility, increased use of manual classification to better match risks and a better employer understanding of reserves.

Sen. Stephen Buehrer (R-Delta), chairman of the WC Council, warned other legislative members of the panel of the reaction they would get when 40% of all employers in their respective districts learn of a near 10% premium increase in December. He questioned the timing of the increase "when we need to incentivize employment."

Ms. Ryan responded by saying that when she came to the bureau some 2-1/2 years ago, the staff informed her there was a feeling there was something dysfunctional going on and at the heart of it were questions of actuarial soundness and disparate

rates. "Once we get it right, we will bring reliability and excellence in the system," she said, adding that getting it right could be painful to some but the bureau has looked at all opportunities to implement the changes gradually.

Also on Wednesday, Ohio Workers' Compensation Council Director Virginia McInerney announced she has now completed staff appointments readying the council to go forward with its charge of reviewing all worker compensation legislation, both currently pending and yet to be introduced.

She announced the selections of staff attorneys Kim Finley and Shadya Yazback and executive assistant Sue Irwin. Ms. Finley most recently was a litigator in a Columbus law firm and served several years as associate general counsel with the Office of the Ohio Insurance Liquidator. Ms. Yazback most recently served as a public finance attorney at Bricker & Eckler. Ms. Irwin provided administrative and management support for the Union County Engineer largely responsible for human resources, public information, public construction contracts and cooperative purchases and conducting research, policy development and administration of grants and special projects.

### **ANALYSIS SHOWS RECORD GROWTH IN TRANSIT USE NATIONALLY, BUT NOT OHIO**

A report from an environmental group showed Wednesday that many states saw "dramatic, record-breaking growth" in annual transit riders last year, but in Ohio the number of trips remained flat. The Environment Ohio Research & Policy Center said there was a 4% increase in transit ridership nationwide in 2008, while Americans drove almost 4% less than they did the previous year.

Researchers said the roughly 10.7 billion trips taken via public transportation in 2008 saved more than 4 billion gallons of gasoline. Those trips also reduced carbon dioxide emissions, identified as the leading cause of climate change, by 37 million tons.

Listed among states with the strongest transit growth in riders were Indiana, up 9%; Michigan, up 6%; Kentucky, up 5%; and Pennsylvania, up 4 percent. The report found a 0% increase in transit trips in Ohio, while there was a 4% drop in vehicle miles traveled in 2008.

"Ohio's transit trips did increase, just by less than 1%. Ohio is a large state, so when people are driving less, it's often because they're just not going where they would otherwise go," said Amanda Moore, field organizer for Environment Ohio.

Ms. Moore said that was because Ohio is one of the most populous states in the nation without a large-scale passenger rail system.

"Some states that saw increased ridership levels expanded the coverage of their transit systems last year. In North Carolina, ridership increased by 16% after an expansion of their public transit system," she said.

Although the state lagged the national average, the report said Ohioans saved at least 52 million gallons of gasoline in 2008 by riding transit, the amount consumed by 91,600 cars in the state. The analysis said transportation is responsible for more than two-thirds of the nation's dependence on foreign oil, and about one-third of its carbon dioxide pollution.

Environment Ohio said data from the first six months of this year suggest additional ridership growth, but that budget cuts are posing problems for many transit systems. A survey the American Public Transit Association conducted in May showed at least 80% of systems have seen flat or decreased funding from state sources.

Transit agencies facing service reductions this year included the Southwest Ohio Regional Transit Authority in Cincinnati, and the Greater Cleveland Regional Transit Authority. The report said the Cleveland RTA faced a 13% fare increase, while the fare boost for Richland County Transit in Mansfield amounted to 50 percent.

Environment Ohio recommended creation of a national standard for reducing oil consumption and pollution through transportation. It also proposed:

- Increased spending on transit, high-speed rail, walking and biking.
- More equalized funding for transit projects in relation to road projects.
- Increased funding for transit maintenance and daily operations, in addition to improving and expanding capacity.

Ms. Moore endorsed Ohio's move toward development of railroad passenger service on an Amtrak route linking Cleveland, Columbus, Dayton, and Cincinnati. The Ohio Rail Development Commission faces an Oct. 2 deadline to apply for federal economic stimulus funds to finance an estimated \$517 million in equipment and capital improvements for the system.

"The 3C rail project gives our state the opportunity to connect 60% of its population along one corridor. It allows us to travel without worrying about traffic, parking or lost time that could have been spent working, eating or studying," Ms. Moore said.

## HOUSE COMMITTEE HEARING

### Elections & Ethics

HB 260 ELECTION LAWS (Stewart) To revise the Election Law. (1st Hearing-Sponsor)

THURSDAY, SEPTEMBER 24 2009

### **STATE AUDIT OF HAMILTON COUNTY NOTES LINGERING JFS ISSUES; COMMISSIONER QUESTIONS TONE OF TAYLOR STATEMENT**

The latest state audit of Hamilton County noted continuing problems with financial statements thrown into disarray several years ago due to the misuse of federal funds.

The way the findings were announced, meanwhile, prompted criticism from local officials including County Commissioner David Pepper, who plans to challenge State Auditor Mary Taylor in the 2010 election.

The state's review of the county's fiscal year 2007 books came with an "adverse opinion," which according to the state auditor's office means "the county's financial statements are not in order."

That's in part because hundreds of millions in questioned spending of federal monies by the county's Department of Job and Family Services, detailed in 2006 audits by the state auditor and Ohio DJFS, has yet to be resolved.

"The report repeats a significant issue outlined in a 2006 special audit of the Hamilton County Job and Family Services department that continues in 2007," the state auditor's office stated in a news release. "The issue involves how the county managed millions of dollars intended to pay for various social programs using a complicated system of interfund transfers and other reimbursement methods."

The problems first came to light with an ODJFS probe, released in 2006 just prior to the state auditor's review, that found the county had illegally intermingled child welfare funding with money for other programs from 2000-2004. The state agency issued findings for recovery totaling \$224 million and said other "questioned costs" that lacked sufficient documentation exceeded \$1.7 billion, although some of the latter included overlapped items that may have been questioned multiple times.

The 2006 audits set off a firestorm of finger pointing, with the state saying the county had egregiously erred and the county blaming the state for a lack of guidance. The parties are still negotiating with the federal government on how to resolve the issues.

Anticipating the release of the latest audit, Hamilton County Administrator Patrick Thompson issued a conciliatory statement, saying it has been a priority of the new board of commissioners "to resolve the JFS special audit that covers a prior period of activity, and as part of that, we are pleased to begin the process of returning the County back onto a regular audit cycle."

"We are grateful to the State Auditor's Office for stepping up to the plate and completing the fiscal year 2007 audit. This will help Hamilton County when interacting with the financial markets and federal granting agencies."

Subsequently, county officials received Auditor Taylor's news release announcing the latest audit results. In it the official urged the county to make adjustments to its books.

"This is not a clean audit, giving us no other choice but to issue a rare and serious adverse opinion because Hamilton County has not booked adjustments from a previous special audit and we know that their 2007 financial activity and ending balances are not properly stated," Auditor Taylor said in the statement.

"County officials should correct their financial statements to accurately reflect these findings and recommendations. Financial accountability and transparency are essential to good government and the people of Hamilton County deserve better."

Mr. Pepper, who joined the board of commissioners in 2007 and is the only announced candidate for the Democratic nomination for state auditor, characterized the tone of Auditor Taylor's statement as overly critical, out of context and politically motivated.

"The story is, Hamilton County - long before I got to the commission - has been working through this big ugly mess of the JFS audit," he said in an interview. "The new commission since 2007 has been working very hard to resolve it with the state and federal government."

"Everybody knows that until the JFS audit is resolved we can't properly state those balances" referred to in the latest audit, Mr. Pepper said. "Hamilton County is in a holding pattern waiting for that sort of bureaucracy and negotiation to work itself out to some conclusion."

"But to have this broader, out-of-context statement made... the tone of this release is very, unfortunately, both political and destructive," he said. "In the end, it's more about the politics of this race."

Taylor spokesman Chris Abbruzzese said in response to the commissioner's comments, "Our auditors are required to adhere to strict professional standards when they are conducting an audit and we consider this a very serious issue."

"The facts are the facts and we have a very good track record here at the auditor of state's office," he said. "In fact, we release more than 4,000 audits here every year and I can't remember the last time somebody took issue publicly with one of our financial audits."

Commissioner Pepper said he doesn't have an issue with the audit itself, per se, or the staff that completed it. However, he said the auditor's statements could be damaging to the ongoing JFS negotiations and could be misconstrued by bond-rating agencies.

"It isn't helpful in press releases announcing audits that, without any context and a tone that is far more related to a campaign next year than anything else, it's stated in a way that is over the top," he said. "If the financial markets respond and don't go through the details it could cost Hamilton County taxpayers money."

Auditor Taylor's office said the review of the county's 2007 books uncovered some continuing problems, such as payments of more than \$7 million to operate Hillcrest School for juvenile offenders. The county, according to the auditor, "could not demonstrate to auditors that the charges were appropriate and allowable."

"It is an error that could result in substantial penalties because state and federal tax dollars are involved," the auditor's office stated. "The audit recommends that the county correct the Hillcrest issue by making adjustments to the county books and improving internal controls to ensure that financial transactions are properly tracked and documented."

### **SUPREME COURT RAISES JURISDICTION QUESTION IN SECOND LAWSUIT OVER LOTTERY SLOTS**

For the second time this week, the Ohio Supreme Court on Thursday asked parties in a lawsuit over lottery slot machines for their opinions about whether justices have jurisdiction to hear the case in view of a possible referendum.

Justices ordered lawyers for the Ohio Policy Roundtable and Gov. Ted Strickland to file briefs on the question that arises as a result of the court's ruling on a separate complaint.

At issue is the court's 6-1 decision Monday in a case involving LetOhioVote.org that found legislation authorizing the Ohio Lottery to implement the governor's track slots plan is subject to referendum.

Justices effectively put the legislation on hold for at least 90 days, and possibly much longer if slots opponents are successful in a petition drive to place the measure on the Nov. 2, 2010 ballot.

The same statute vested the Supreme Court with exclusive, original jurisdiction over any claim that the provisions were unconstitutional.

A separate lawsuit the Ohio Policy Roundtable filed in the Supreme Court earlier this month contends the state's plan to install up to 17,500 slot machines at seven horse racetracks is unconstitutional on three grounds.

Parties in the Ohio Roundtable case were given up to 18 days Thursday in which to file briefs on whether justices could hear the case.

If the Supreme Court determines it lacks jurisdiction, the challenge would have to be re-filed in a common pleas court.

The order mirrors one the Supreme Court issued Tuesday in a third lawsuit that the Ohio Christian Alliance, Akron, and three House Republicans filed against Gov. Strickland and the Ohio Lottery Commission.

### **STATE EXPANDS WINTER HEATING ASSISTANCE PROGRAM, ORDERS UTILITIES TO RECONNECT SERVICE**

More Ohioans will qualify for the state's heating assistance program this winter since the administration increased eligibility for the program, the Department of Development announced Thursday.

Meanwhile, state regulators ordered electric and gas utilities to reconnect or maintain service to struggling customers.

Income eligibility guidelines for the federally funded Home Energy Assistance Program rose for fiscal year 2010 to 200% of the federal poverty level, or \$44,100 a year for a family of four, Director Lisa Patt-McDaniel said in a news release. Previous eligibility was capped at 175% FPL.

"This important change aligns with the Governor's Anti-Poverty Task Force recommendation to raise income guidelines for programs that assist Ohio's unemployed and underemployed population," Ms. Patt-McDaniel said. "By increasing the income levels we will be able to assist more eligible households through HEAP benefits."

The state expects to receive about \$220 million in federal HEAP funds for the upcoming program year, DOD said. The program offers a one-time payment for the current winter heating season.

The Winter Crisis Program, a part of HEAP administered by community action agencies, provides assistance to eligible households that are disconnected, threatened with disconnection, or have less than a 10 day supply of bulk fuel, the agency said.

Separately, the Public Utilities Commission of Ohio ordered utilities to reconnect or continue service to customers having trouble paying their bills for the 25<sup>th</sup> consecutive year.

However, participants will have to pay the amount owed or \$175, whichever is less, plus a service reconnection fee capped at \$36, the agency said. Customers may use the plan to have service reconnected one time between Oct. 19 and April 15.

There is no income eligibility requirement to use the order, but participants must also sign up for a payment plan to pay the past-due balance on their utility bills.

"We recognize that many Ohioans may be facing economic hardships," PUCO Chairman Alan Schriber stated. "For 25 years our winter reconnect order has provided Ohio's struggling families with an opportunity to have their home heating service reconnected or maintained during difficult times."

Last year, more than 347,000 customers took advantage of the winter reconnect order, the PUCO said. Regulated natural gas and electric utilities supply service to approximately 6 million residential customers in Ohio.

FRIDAY, SEPTEMBER 25 2009

### **BWC BOARD CUTS PUBLIC EMPLOYER RATES, TIGHTENS GROUP RATING MARKETING RULES**

The Ohio Bureau of Workers' Compensation Board of Directors voted Friday to cut premiums for about 3,800 Ohio cities, counties, townships, and schools by an average of 17% starting in January.

BWC Administrator Marsha Ryan said the agency reviewed current workers' compensation insurance costs, payroll trends, decreasing claim occurrences and other economic factors and determined a 17% reduction was appropriate.

"At a time when public employers are working with very limited resources and revenue, I'm pleased we are able to provide some economic relief by lowering their workers' compensation costs," she said in a statement.

Rates for individual public employer taxing districts will vary based on their claims history, the BWC said. Some entities may see slight increases while others will experience decreases.

The board is expected to vote on rule changes to set the actual rates for each public employer industry group at its November meeting.

In other business, the board modified rules to prohibit group rating program sponsors and their affiliates from advertising discounts higher than what can be realistically achieved.

"This rule change levels the playing field for all group sponsors by restricting marketing practices that could mislead employers seeking group membership," Actuarial Committee Chairman Chuck Bryan stated.

Board members also moved toward diversifying fixed income and equity investments in the State Insurance Fund, according to the agency.

The board accepted Barclays Global Investors' proposal to serve as BWC's passive indexed manager for the fund's international equities, which represent 10% of invested assets, or about \$1.6 billion, the bureau said. The firm will manage all international equities benchmarked to the All Country World Index.

The Board of Directors also created the new Medical Services Committee to develop policy on medical and vocational rehabilitation services to benefit injured workers and employers.

The next BWC Board of Directors meeting is set for Friday, Oct. 30 at 8 am in the William Green Building, 30 W. Spring St., Columbus.

### **AGENCY BRIEFS: ODOT FINDS FACEBOOK FANS OF RAIL PLAN; GRANTS ANNOUNCED**

The Department of Transportation has turned to a social networking site to build an online "fan base" for Ohio's 3C "Quick Start" Passenger Rail Plan.

Since initiating the Facebook page last week, the agency in partnership with the Ohio Rail Commission has seen more than 1,000 subscribers plug in to get more information.

"Social networking sites such as Facebook are increasingly becoming a very useful tool in sharing information, especially among our younger populations," ODOT Director Jolene M. Molitoris said in a news release. "It would send a great message to Washington if we could get two-thousand or more fans before we submit our application to the Federal Railroad Administration for stimulus funding on October 2nd."

Meanwhile, ODOT said that more than 7,000 people have responded to an online survey at 3CisMe.ohio.gov, the state's online portal for passenger rail information. In the month since the survey has been active, more than 93 percent of respondents favor the medium-speed passenger rail start-up plan.

**Ohio EPA:** The Ohio Environmental Protection Agency said Friday that a study of Ohio River tributaries in five watersheds spanning Washington, Monroe and Belmont counties would entail the collection of samples through October. The biological sampling data from 67 sites in the study area would be used to determine where water, sediment and aquatic communities are healthy, the agency said in a news release.

The Central Ohio River Tributaries under study are: McMahan Creek, Captina Creek, Sunfish Creek, Weegee Creek, Pipe Creek, Big Run, Newell Run, Narrows Run, Leith Run and Mill Creek. All flow into the Ohio River at various locations.

"Another goal of the sampling effort is to identify where Ohio EPA needs to focus work with local governments, landowners and concerned citizens to find solutions to problems," OEPA stated.

The agency also announced this week that the city of Columbus has cleaned up the Jeffrey Place property located on N. 4<sup>th</sup> St. and E. 1<sup>st</sup> Ave. and it is now available for residential use.

The EPA, the Department of Development, the city of Columbus and the property's owners (i.e. Courtyard Townhomes LLC, Green Arbors Housing LP, Jeffrey Loft 1 LLC and Waterford LP) removed the environmental barriers associated with redeveloping the property to ensure it is protective of public health and the environment, according to a news release. A \$3 million Clean Ohio Revitalization Fund grant helped make the project possible.

The property was formerly known as Jeffrey Mining and Manufacturing Company/Dresser Industries. The company manufactured mining and other heavy equipment from the late 1890s through about 1980 when the plant closed. Two residential structures, roads and utilities were constructed on the property in recent years.

**Development:** Director Lisa Patt-McDaniel this week announced the Community Facility Improvement Program, a \$300,000 investment fund to support improvements to public buildings in Ohio's 32 Appalachian counties.

"This program will provide support to repair, upgrade, and enhance public buildings in Ohio's Appalachian communities, making them safe and ready for use," the director said in a news release. "Improving our community buildings will leverage additional investment in distressed and small communities, providing crucial investments to advance Appalachian Ohio."

The agency also announced two low-interest loans approved by the Minority Development Financing Advisory Board that, pending Controlling Board clearance, are expected to create 51 positions and retain 263 jobs

The loan recipients are: Anderson DuBose, Inc. in Solon, which has been recommended for a \$2 million loan at a rate of 1% for 15 years to support the consolidation of the company's warehousing and distribution functions; and New Horizons Baking Company in Norwalk, recommended for a \$1.1 million loan at a rate of 1.5% for 12 years to support the construction of an addition to house new energy efficient ovens.

## **ATTORNEY GENERAL'S OPINIONS**

No. 2009-036: Requested by Auditor of State Mary Taylor, CPA. Syllabus:

Federal law addresses the question of when a subdivision, as defined in R.C. 135.181(A)(3) and which has a security interest in a pool of securities pledged under R.C. 135.181(B) by an institution designated as a public depository to secure the repayment of all public moneys deposited in the institution and not otherwise secured by law, may present a claim to the Federal Deposit Insurance Corporation for securities in the pool. Pursuant to 12 U.S.C.A. § 1821(d)(9), 12 U.S.C.A. § 1821(e)(12), and 12 U.S.C.A. § 1823(e)(1), such a subdivision may present such a claim for securities in the pool when the Federal Deposit Insurance Corporation, as receiver, is liquidating or winding up the affairs of the institution, provided that the subdivision's security interest in the securities meets the following two criteria: (1) it is legally enforceable and perfected; and (2) it is set forth in a written agreement that has been approved by, and recorded in the minutes of, the board of directors or loan committee of the institution and has been maintained continuously, from the time of its execution, as an official record of the institution.

Subject to the caveat that the questions addressed in this opinion are ultimately subject to determination by either the Federal Deposit Insurance Corporation or a court of law as matters of federal law under 12 U.S.C.A. § 1821(e)(12), a reading of Ohio law standing alone indicates that the security interest of a subdivision in a pool of securities pledged under R.C. 135.181(B) by an institution designated as a public depository to secure the repayment of all public moneys deposited in the institution and not otherwise secured by law is "legally enforceable" when the conditions set forth in R.C. 1309.203(B) are satisfied.

Subject to the caveat that the questions addressed in this opinion are ultimately subject to determination by either the Federal Deposit Insurance Corporation or a court of law as matters of federal law under U.S.C.A. § 1821(e)(12), a reading of Ohio law standing alone indicates that, pursuant to R.C. 1309.308(A), a subdivision that has a security interest in a pool of securities pledged under R.C. 135.181(B) by an institution designated as a public depository to secure the repayment of all public moneys deposited in the institution and not otherwise secured by law has a "perfected security interest" in securities in the pool when the subdivision's security interest in the securities attaches and all of the applicable requirements for perfection in R.C. 1309.310-.316 have been satisfied.

Subject to the caveat that the questions addressed in this opinion are ultimately subject to determination by either the Federal Deposit Insurance Corporation or a court of law as matters of federal law under 12 U.S.C.A. § 1821(e)(12), a reading of Ohio law standing alone indicates that the security interest of a subdivision in a pool of uncertificated securities deposited with a qualified trustee in accordance with R.C. 135.181(E) is (1) "legally enforceable" when the conditions set forth in R.C. 1309.203(B) are satisfied and (2) "perfected" by establishing "control" as defined in R.C. 1308.24.

## **COMMITTEE SCHEDULE FOR WEEK OF SEPTEMBER 28**

### **TUESDAY, SEPTEMBER 29**

**Senate Energy & Public Utilities**, (Chr. Widener, 466-3780), Finance Hearing Rm., 6 a.m.

SB 162 TELEPHONE REGULATION (Buehrer) To revise state regulation of telephone companies, remove telegraph companies from utility regulation, and revise law concerning confidential information of public utilities. (2nd Hearing-Invited testimony)

**House Public Utilities**, (Chr. DeGeeter, 466-3485), Rm. 121, 4 p.m.

--PUCO Commissioner Ronda Fergus will provide technical expert and background testimony

HB 276 TELEPHONE REGULATION (Sayre) To revise state regulation of telephone companies, remove telegraph companies from utility regulation, and revise law concerning confidential information of public utilities. (1st Hearing-Sponsor & Invited testimony)