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Senate Hears From Supporters Of Public Construction Law Update

Administration and higher education officials made the case Monday for pursuing law changes governing public construction while doing their best to avoid the partisan debate that has emerged over GOP plans to include related provisions in a fast-tracked budget repair measure.

The officials, including leaders of the Department of Administrative Services, Board of Regents and Ohio State University, weighed in during a hearing of the Senate Finance & Financial Institutions Committee, which has again slated a potential vote on the stalled budget fix ([HB 318](#)) for Tuesday.

The "construction reform" language, based on a report of a task force created by [Gov. Ted Strickland](#), is among several provisions, including prison sentencing law changes, that the Senate majority proposes to include in the bill. Senate and House Democrats have vigorously opposed the construction-contracting rewrite, saying it needs to be vetted in separate legislation. (See [Gongwer Ohio Report, December 2, 2009](#))

As passed by the House, the measure would mainly delay the last of five planned 4.2% personal income tax cuts in order to fill most of an \$851 million budget shortfall. It also includes a 5% legislative pay reduction that would be applicable to future terms.

DAS Director Hugh Quill, in speaking to the proposals of the Ohio Construction Reform Panel, said that while the administration believes the reforms would improve Ohio's laws it always viewed the study process as a precursor to further legislative deliberations. ([Director's testimony](#))

"The administration is very aware of the two to three decades of debate over reforming Ohio's public construction laws," he said. "We entered this debate in a spirit of collaboration, hopeful that a process where all sides were in the conversation from start to finish would lead to a compromise that would serve taxpayers well. It is quite apparent from public statements made from several stakeholders over the past two weeks that this collaboration is not complete."

Republicans pointed to past budget testimony from Mr. Quill as well as the support of the reform panel's moderator, attorney Jeffrey Appelbaum ([testimony](#)), in questioning why the administration seemed to be sending mixed signals over the plan.

[Sen. Gary Cates](#) (R-West Chester) said, "If not now, when? It's a question of having the willpower to do this."

"It seems to me that what we're lacking here is the leadership of the governor to get this done," he added.

Director Quill responded that the governor should get more credit for even convening the panel and signing off on the report given the kind of constituencies that would be affected and the potential political fallout.

"We never envisioned this to be fully baked coming out," he said. "We expected the legislature would take this up in both chambers."

Mr. Quill said he's comfortable with the language, but as for the politics of whether or not it should go in the legislation at hand, he added, that is "above my pay grade."

Given the DAS director's acknowledgement that the new laws would apply to local governments, [Sen. Dale Miller](#) (D-Cleveland) questioned the level of participation among such groups in the review panel.

[Sen. Shirley Smith](#) (D-Cleveland) asked whether or not minorities had been unduly excluded from the process, echoing the concerns of the Ohio Legislative Black Caucus. Last week the group complained about the lack of minority representation in expressing concerns that the proposed construction language wouldn't go far enough in assuring the participation of minority contractors in public projects. (See [Gongwer Ohio Report, December 3, 2009](#))

Mr. Quill said organizers did their best to cover all the bases but allowed, "I have concerns that not all constituencies were adequately represented." He said "an incredible amount of outreach" was conducted before, during and after the process.

Mr. Appelbaum disagreed with suggestions that blacks were slighted on the study panel, while reiterating that ample review had been conducted and the state should move forward with what he described as the first step toward getting Ohio caught up with other states in terms of reforms.

"It's fully vetted. It's strong. It works for the state of Ohio," he said.

In testimony, he argued that the subject of enhancing opportunities for minority contractors came up continuously during study panel discussions and said, "the proposed legislation will greatly benefit these companies for a number of reasons."

Those include an increase in the threshold requirement, creation of a general contractor option, criteria within the design-build model and other changes, he said.

Mr. Appelbaum said Ohio's public construction laws haven't changed much in more than 130 years.

"For projects in excess of \$50,000, we continue to utilize a 'one-size-fits-all' approach for each and every project, regardless of the complexity schedule, budget or risk profile involved," he said. "In virtually every other state with which we compete, as well as the federal government, alternate project delivery methods such as construction manager at risk, design-build and general contracting, are available."

Responding to a question from Chairman [Sen. John Carey](#) (R-Wellston), Mr. Appelbaum said the revisions proposed for the bill would save at least 10% on project costs. He said studies have indicated savings from 10-30%.

At one point during the attorney's testimony, Sen. Miller said he didn't understand his response to the lawmaker. "It just demonstrates that this is not something that can be done in a day or a week," he said.

OSU President E. Gordon Gee said he believed estimates of 10% savings were too low. He urged the legislature to act quickly in enacting the reforms, saying the university could save considerably on its planned \$1 billion medical center project, dubbed Project One. ([President's testimony](#))

"Since Project One is out of the gate, any legislation needs to address the particular circumstances of this important project," Mr. Gee said, adding that absent expanded contracting flexibility it would be more difficult to raise \$75 million-plus in private support for the project.

"Put simply, I will not have a satisfactory answer when prospective donors ask me whether their money would be caught up in inefficient, centuries-old regulatory processes."

Sen. Eric Kearney (D-Cincinnati) noted that OSU, like other higher education institutions in the state, had failed to meet its goals for minority contracting under Ohio's MBE and EDGE program guidelines.

"What would change from Ohio State's perspective to meet those goals" should construction reform move forward, he asked.

Mr. Gee pledged that the institution "will meet or exceed those goals" in the future, adding that he believes the proposed legislation "does provide a significant opportunity to be more flexible" and effective at meeting the minority contracting goals.

Regents Chancellor Eric Fingerhut also relayed his strong support for the construction law changes, which have been a priority for the state's higher education leaders for years to no avail. (Chancellor's testimony)

"In higher education, no less than in the business world, time is money, so the ability to move quickly is a competitive advantage," he said. "Savings will also occur through better coordination of construction, fewer disputes leading to construction delays, and the ability to act more quickly on the project schedule."

Chancellor Fingerhut noted that improved efficiency and cost savings are main drivers of a long-term strategic plan for the state's colleges and universities. "We in state government lose credibility when we demand that institutions of higher education make the tough decisions to become more efficient, while one of the biggest efficiencies institutions face is mandated by state law - a situation we have to date failed to face," he said.

Bruce Johnson, president of the Inter-University Council, which represents leaders of the state's four-year institutions, agreed that construction reform is "critical" to meeting strategic goals.

"Construction reform will give Ohio's public universities the tools they need to renovate existing facilities and build new facilities in a more cost-effective and efficient manner," Mr. Johnson said. (IUC testimony)

"Now is the time to enact construction reform," Mr. Johnson said. "To accomplish what we've been asked to do, to meet the expectations set for us, to continue to be the key to Ohio's economic recovery, Ohio's public universities must have the ability to save money and cut costs. These savings can be used to help keep higher education affordable, creating even greater opportunities for access, and they can be put into new projects stimulating even more growth."

Monday's testimony was by invitation only. Senate and House Democrats have argued that the full legislative vetting process, including a review of opinions from a wide array of constituencies, should proceed before a bill is enacted.

"These recommendations should go through the legislative process," Sen. Smith said.

Gov. Strickland reiterated Monday that he agreed with that approach. (*See separate story*)

Governor Says Construction, Prisons Should Not Be In Budget Bill, Sees Alternative To Second Casino Vote

Gov. Ted Strickland voiced support for an overhaul of Ohio's public works contracting and prison sentencing systems Monday while disagreeing with Senate Republican plans to make them part of a stalled budget balancing bill.

Separately, the governor hinted there might be better ways for Franklin County leaders to oppose building a casino in the Columbus Arena District other than a statewide vote on a second constitutional amendment in the May 4, 2010 election.

Mr. Strickland said the state needs, and will eventually have, changes both in the construction contracting and corrections areas.

Senate Republicans want to add those items to a House-passed measure (HB 318) that would delay a scheduled 4.2% income tax cut to erase a projected \$851 million budget shortfall.

"These matters should not be used to muddy up a decision regarding getting this budget in balance," the governor told reporters Monday.

Mr. Strickland pointed out that Republicans controlled all of state government for almost two decades, and chose not to deal with changes in the construction process.

He also endorsed the proposed prison system changes that respond to crowded institutions.

"But it is not necessary - in fact, I believe it is even counter-productive - for my Republican friends to now interject these two issues into what is a pressing need to have a balanced budget," the governor said.

He said issues remain to be worked out in both the construction and prison initiatives.

The Ohio Legislative Black Caucus last week voiced major concerns over the construction issue.

Gov. Strickland said he had been aware of the group's view. He said the administration had been trying to make sure every constituency group felt its concerns had been heard.

"We were making progress. Quite frankly, one of my concerns is that what the Senate has done may have set back the progress that we were making. Perhaps it hasn't happened," he said.

"But a concern I have is that positions could become hardened if there is a perceived effort to push this through without having all of those concerns fully aired," the governor said.

He said concerns of the black caucus were genuine and sincere, and needed to be addressed.

Mr. Strickland said he invited Senate President Bill Harris (R-Ashland) to bring up the construction overhaul and pass it out of the Senate, without making it part of the budget bill.

"The problem is, he's got members of his caucus, I believe, that don't want to vote for construction reform," the governor said.

He characterized as "very puzzling" a proposal from Senate Republicans, who have a 21-12 majority, to offer five GOP votes in return for all 12 Democratic votes in order to pass the budget balancing measure.

Gov. Strickland recalled an assessment of the Senate offer from House Speaker Armond Budish (D-Beachwood), who mentioned House Minority Leader Bill Batchelder (R-Medina).

"Armond said what they're suggesting is the equivalent of him going to Rep. Batchelder, and saying, 'You know, we want to get this bill passed. I can only give you 30 votes, I want 40 of your votes,'" the governor said. "I mean, come on."